

**2014 Standard Civil Contract**

**Specification**

**2014 Standard Civil Contract**

**Specification**

**General Rules**

<b>Number</b>	<b>Section Heading</b>
1	General
2	Service Standards
3	Carrying out Controlled Work
4	Payment for Controlled Work
5	Carrying out Licensed Work
6	Payment for Licensed Work

## General Rules

### Section 1 General

#### Scope of the Specification

- 1.1 This Specification sets out the General Rules and Category Specific Rules of civil Contract Work (including the Service Standards applicable to that work). All the procedures and rates governing payment for Controlled and Licensed Work can be found in Legal Aid Legislation and are referred to in this Specification. The table below sets out the Forms of Civil Legal Services that are covered by this Contract, which you must deliver in accordance with your Schedule.

Controlled Work	Legal Help. Help at Court. In so far as it is available under Part 3 of the Merits Regulations, Legal Representation before a Mental Health Tribunal. Exceptional Case.
Licensed Work	Legal Representation that is not Controlled Work or Special Case Work. Exceptional Case.

- 1.2 Where there is any conflict between the General Rules and Category Specific Rules, the latter have precedence.

#### Interpretation

- 1.3 Unless otherwise stated, definitions which are set out in Legal Aid Legislation, the Standard Terms and Category Definitions 2014 apply to this Specification and are not repeated here.
- 1.4 Definitions relating to Category specific fee schemes are set out in the relevant Category Specific Rules.
- 1.5 In this Specification, the following expressions have the following meanings:

"*Access Point*" means a smaller area within a Procurement Area to which the same obligations under this Specification as apply to Procurement Areas will be attached unless otherwise stated in this Contract;

"*Alternative Dispute Resolution*" or "*ADR*" means forms of dispute resolution other than determination by a court or tribunal or direct negotiation between the parties or their legal advisors; ADR includes all forms of mediation, arbitration or early neutral evaluation. For the avoidance of doubt ADR is not a reference to our

dispute resolution procedures, which are set out at Clauses 27 and 28 of the Standard Terms;

"*Authorised Litigator*" means an individual who conducts litigation services as an authorised person in accordance with the Legal Services Act 2007;

"*Case Involvement Standard*" means the standard for Supervisors set out at Paragraphs 2.14 to 2.16;

"*Caseworker*" has the meaning given at Paragraph 2.26;

"*Category*", "*Categories*", "*Category of Law*" or "*Category of Work*" means the definitions of each category of law that apply to this Specification, which are set out in the Category Definitions 2014 and are available on our website;

"*Category Definitions 2014*" means the document published on our website that outlines the Categories of Work that apply to this Specification, which is incorporated into this Contract. This document may be amended by us provided that had it been a Contract Document such amendments would not have been prohibited by Clause 13.1 of the Standard Terms;

"*Category Specific Rules*" means Sections 7 and 8 of this Specification which apply only to Contract Work carried out within specific Categories of Law, and all other provisions of this Specification which are expressed to apply only to a particular Category or Categories;

"*Client and Cost Management System or CCMS*" means our online system for managing the electronic transmission of information between us and Providers (including any Counsel or other third parties you appoint in accordance with Clause 3 of the Standard Terms) in connection with civil Contract Work that is part of the Online Service;

"*Contract Guide*" means a guide issued by us specifically in relation to the Contract and published on our website;

"*Controlled Legal Representation*" or "*CLR*" means legal representation provided as Controlled Work under the Procedure Regulations;

"*Controlled Work*" has the meaning given in regulation 21(2) of the Procedure Regulations;

"*Costs Limit*" means as described in regulation 35(1)(a) of the Procedure Regulations;

"*Counsel*" means either a barrister in independent practice;

"*Delegated Function*" means a function of the Director or the Lord Chancellor delegated to you by an Authorisation;

"*Emergency Representation*" has the meaning given in regulation 2 of the Procedure Regulations;

"*Escape Fee Cases*" means as described at Paragraphs 4.11 to 4.17;

*"Exceptional Case"* means a case in which civil legal services other than those described in Part 1 of Schedule 1 to the Act are provided to an individual in accordance with section 10 of the Act;

*"Exclusive Schedule Arrangements"* mean arrangements under which services can only be undertaken by Providers who have been issued with a Schedule authorising such work in accordance with Paragraph 1.28 and Category Specific Rules;

*"Exempted Person"* has the meaning given in regulation 20 of the Procedure Regulations;

*"Family Help"*, *"Family Help (Higher)"* and *"Family Help (Lower)"* have the meaning given in regulation 6 of the Procedure Regulations and regulation 15 of the Merits Regulations;

*"Family Mediation"* has the meaning given in regulation 7 of the Procedure Regulations and regulation 16 of the Merits Regulations; *"Financial Regulations"* means regulations made under section 21 of the Act;

*"First-tier Tribunal"* means the First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007 (as amended);

*"Form of Civil Legal Services"* has the meaning given in regulation 3 of the Procedure Regulations and regulation 12(3) of the Merits Regulations;

*"Gateway Work"* has the meaning given in regulation 20 of the Procedure Regulations;

*"General Rules"* means Sections 1 to 6 of this Specification that apply to all Categories of Work;

*"Graduated Fee"* means a range of Standard Fees payable under this Specification which are designated as Graduated Fees under Category Specific Rules;

*"Help at Court"* has the meaning given in regulation 5 of the Procedure Regulations and regulation 14 of the Merits Regulations;

*"Help with Family Mediation"* has the meaning given in regulation 8 of the Procedure Regulations and regulation 17 of the Merits Regulations; *"Hourly Rates"* means payment on the basis of time reasonably spent on a case (as opposed to payment by way of a Standard Fee) where payment is based on the rates set out in the Remuneration Regulations;

*"Independent Costs Assessors"* means the independent assessor appointed by us;

*"Judicial Review"* has the meaning given in paragraph 19(10) of Part 1 of Schedule 1 to the Act;

*"Legal Competence Standard"* means the standard for Supervisors so designated in Category Specific Rules;

*"Legal Help"* has the meaning given in regulation 4 of the Procedure Regulations and regulation 13 of the Merits Regulations;

*"Licensed Work"* has the meaning given in regulation 2 of the Procedure Regulations;

*"Mandatory Electronic Working"* means information in relation to civil Contract Work that you must provide to the Director or us electronically through CCMS in accordance with the Specification. Without limitation, examples of the type of information you must provide to us electronically are:

- (a) making applications for determinations and amending Certificates' details (including scope);
- (b) information about the Counsel you have instructed on a case (subject to Certificate scope or application for prior authority);
- (c) submitting requests for prior authorities and Payments on Account;
- (d) submitting Claims for Licensed Work;
- (e) appealing or reviewing decisions made by us on Claims; or
- (f) reviewing or appealing determinations about whether an individual qualifies for civil legal services.

*"Matter"* means a Controlled Work matter governed by this Specification;

*"Matter Start Limit"* means a limit set out in a Schedule on the number of Controlled Work Matter Starts you may commence and as set out in Paragraph 1.15;

*"Mental Health Tribunal" or "MHT"* means the First-tier Tribunal (established under the Tribunals, Courts and Enforcement Act 2007) acting under any provision of the Mental Health Act 1983 or paragraph 5 (2) of the Schedule to the Repatriation of Prisoners Act 1984, or the Mental Health Review Tribunal for Wales;

*"Merits Regulations"* means The Civil Legal Aid (Merits Criteria) Regulations 2012;

*"Miscellaneous Work"* means work covered by the Miscellaneous Work section in the Category Definitions 2014 that you are authorised to undertake under this Contract but which does not fall into any of the exclusive Categories of Work as described at Paragraph 2.28;

*"Office"* means an office which you occupy (either continuously or part time) and which satisfies the requirements of Paragraph 2.32;

*"Outreach Services"* means services authorised under Paragraphs 2.35 to 2.37;

*"Paragraph"* means unless otherwise specified, one of the Paragraphs of this Specification;

*"Patient"* means a person who by means of mental disorder within the meaning of the Mental Health Act 1983 (as amended) is incapable of managing and administering his or her affairs;

*"Permanent Presence"* means presence in a Procurement Area as defined at Paragraphs 2.33 to 2.34;

*"Prescribed Rate"* means an Hourly Rate prescribed in the Remuneration Regulations;

*"Procedure Regulations"* means The Civil Legal Aid (Procedure) Regulations 2012;

*"Procurement Area"* means a geographical area specified by us under Paragraph 1.19 for which we have issued you with Matter Starts;

*"Protected Party"* has the meaning given in regulation 2 of the Procedure Regulations;

*"Remuneration Regulations"* means regulations made under section 2(3) of the Act;

*"Schedule Authorisation"* means authorisation to carry out work in a particular Category of Law as set out in your Schedule;

*"Schedule Payment Limit"* means the maximum sum we will pay you, while a Schedule is in force, for Controlled Work;

*"Section"* means, unless otherwise specified, one of the ten main sections of this Specification;

*"Service Standards"* means the requirements set out in Section 2 together with any other requirements so designated in Category Specific Rules;

*"SMP Reconciliation Protocol"* means the document of that name published on our website, setting out our approach to reconciliation and to review and amendment of Standard Monthly Payments due under this Specification;

*"Special Case Work"* has the meaning given in regulation 2 of the Procedure Regulations;

*"Special Cases Unit"* means our special cases unit responsible for managing Special Case Work;

*"Special Children Act 1989 Case"* has the meaning given in regulation 2 of the Merits Regulations;

*"Special Controls Review Panel"* is described in regulation 58(3) of the Procedure Regulations;

*"Standard Fee"* means a fee payable under this Specification for a case or an item of work which is calculated on a basis other than Hourly Rates;

*"Supervision Standard"* means the standard for Supervisors set out at Paragraphs 2.17 to 2.22;

*"Supervisor"* means a person who meets the Supervisor standards set out at Paragraph 2.11;

*"Supplementary Matter Starts"* mean Matter Starts issued by us under Paragraphs 1.20 to 1.23; and

"Upper Tribunal" means the Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007 (as amended).

### **General powers – Controlled and Licensed Work**

- 1.6 For Controlled Work, the decisions to provide services are taken by you on behalf of the Director in accordance with an Authorisation. This Specification controls the number of Matters you may start through Matter Start Limits. You have our authority to commence Controlled Work Matter Starts without further permission from us in accordance with and as set out in your Schedule. You must report all Controlled Work Matter outcomes promptly, fairly and accurately in accordance with the Contract Guide.
- 1.7 This Contract operates as a license for you to undertake Licensed Work. Any restrictions on the number of Licensed Work cases you may undertake will be set out in your Schedule or otherwise in writing. You must report all Licensed Work case outcomes promptly, fairly and accurately in accordance with the Contract Guide.
- 1.8 A determination that an individual qualifies for civil legal services provided as Licensed Work will be made by the Director unless you can take this decision in accordance with Legal Aid Legislation and any Authorisation made under it. A list of the Delegated Functions which apply to Licensed Work, subject to any Authorisation given to you by the Director is set out at Paragraph 5.2.

### **Electronic working**

- 1.9 All communications with the Director or us relating to civil Contract Work must be made electronically, unless we have notified you that we are prepared to receive communications on paper or otherwise.
- 1.10 We will introduce Mandatory Electronic Working during the Contract Period and give you at least three months' notice of the date it will take effect.
- 1.11 When Mandatory Electronic Working is in force under this Contract in accordance with Paragraph 1.10, CCMS will be our primary method of communication with you for Licensed Work. You will submit associated evidence or requested documentation to the Director and/or us using one of the following two methods:
- (a) uploading a file to CCMS in .pdf, .tiff or .rtf format, not exceeding 8MB in size for a single document; or
  - (b) submitting information to our central postal hub, in the format we specify and with the system generated cover sheet.
- 1.12 Pursuant to Paragraph 1.11:
- (a) we or the Director may reject any evidence you provide to us which is not submitted in the form we or the Director require;
  - (b) where we or the Director request copies of original documentation, you must make a copy of the original evidence;



- (c) where we ask you to obtain a declaration from your Client we will require you to retain a copy of the original declaration and Client signature on your file. We may request the original signed declaration at any time during or after the Contract Period but no later than six years from the date the Contract ends;
- (d) you must keep original copies of any evidence you could be reasonably expected to retain as evidence of work conducted on the case. We may request the original evidence at any time during or after the Contract Period but no later than six years from the date the Contract ends; and
- (e) we will provide you with training on how to use the CCMS system and submit associated evidence using our website. We will use the website to notify you of any exceptions to the process, including any alternative methods of submitting information to us.

### **Your Schedules**

1.13 Schedules will be issued covering the terms and limits which are specific to you and your Contract Work. A Schedule is the mechanism by which we allocate Controlled Work and identify which Categories of Work you may undertake in accordance with the rules set out in the Specification. The various terms and limits of a Schedule are further defined and explained in the Specification.

1.14 Schedules are issued annually unless we specify otherwise.

#### *Matter Starts*

1.15 Schedules contain Matter Start Limits which may be increased in accordance with the procedures set out under Paragraphs 1.20 to 1.23, or decreased under Paragraphs 1.16. Otherwise, Schedules may be amended:

- (a) with your consent (where consistent with the other provisions of this Contract);
- (b) in accordance with Clause 13 of the Standard Terms; or
- (c) by way of a Sanction.

1.16 If we consider it unlikely that you will perform the volume of work specified in your Matter Start Limit in any Category, we may reduce that limit and amend the relevant Schedule accordingly. We will consider doing so in light of the volume of Matter Starts you report to us during this Contract.

1.17 Before reducing any Matter Start Limit under Paragraph 1.16 we will give you at least 14 days to make representations as to why the amendment to your Schedule should not be made. If we accept your representations, we will cancel or modify the amendment. If we do not accept your representations, we will give reasons for our decision.

1.18 Matter Starts in a Category can be used for any Contract Work within the scope of that Category.

### *Procurement Areas*

- 1.19 We publish Procurement Areas and Access Points for each Category of Law on our website. When you are allocated Matter Starts under a Schedule, the Schedule will specify which Procurement Area or Access Point those Matter Starts relate to.

### *Supplementary Matter Starts*

- 1.20 Schedules also act as a framework under which we may issue you with Supplementary Matter Starts during the period they cover. We may issue Supplementary Matter Starts either in accordance with an invitation to tender, or under Paragraph 1.22. Matter Starts will only be issued to you with your agreement including pursuant to Paragraph 3.57.
- 1.21 Before issuing Supplementary Matter Starts, we will consider, subject to the provisions of this Contract, all the circumstances including whether we are satisfied that there is evidence of unmet need for the applicable Category of Law within your Procurement Area.
- 1.22 Without prejudice to Paragraph 1.21 but subject to the limit set out at Paragraph 1.23, we may issue Supplementary Matter Starts to you if we are satisfied that either:
- (a) you are unable to meet an urgent demand from Clients for your services from your current Matter Start allocation; or
  - (b) an urgent need for services arises as a result of another Provider in your Procurement Area ceasing to provide or reducing the provision of such services for any reason; or
  - (c) there is a general increase in demand for services of that type within your Procurement Area.
- 1.23 We will not issue Supplementary Matter Starts to you under Paragraph 1.22 in a Procurement Area for a Category if doing so would bring the total number of Supplementary Matter Starts issued to you in that Procurement Area for that Category to a figure which is higher than 50% of your allocation of Matter Starts in that Procurement Area for that Category at the start of your current Schedule period.

### *New Schedule*

- 1.24 A Schedule will expire on the date specified in your Schedule or Contract for Signature. When a Schedule expires but this Contract remains in force, we will issue you with a new Schedule unless you have given us notice that you do not wish us to do so in accordance with this Contract.
- 1.25 Subject to the other provisions of this Contract, your Controlled Work Matter Start allocation for any new Schedule will be calculated as follows:
- (a) we will calculate for each Category and Procurement Area the number of Matter Starts correctly reported by you as having started under your current Schedule;

- (b) we will estimate the number of Matter Starts you are likely to commence to the end of that Schedule; and
- (c) in the new Schedule we will issue you with at least 80% of this Matter Start total (calculated in accordance with this Paragraph 1.25(a) and (b)) in each Category (adjusted pro rata if the new Schedule covers a different length of time to the existing one).

1.26 Not Used

1.27 Matter Starts under a new Schedule, which are not subject to Paragraph 1.25, will be allocated under the same principles as set out at Paragraph 1.21 and subject to the other provisions of this Contract.

### **Exclusive Schedule Arrangements**

1.28 Not used.

### **Provision of Information**

1.29 If you have provided Controlled or Licensed Work to a Client and that Client chooses to instruct another Provider with regard to the same matter or issue, you are required, on request from the new Provider and only with the consent of the Client, to give to the new Provider the Client's file, or a copy, and reasons for the termination of the retainer, as soon as practicable.

### **Misrepresentation**

1.30 If you know or suspect that the Client:

- (a) has failed without good reason to provide information or documents relevant to either your decision to carry out Controlled Work or the Director's determination that the Client qualifies for civil legal services provided as Licensed Work; or
- (b) in providing required information or documents in relation to Contract Work has made a statement or representation knowing or believing it to be false,

then you must immediately cease work and report the relevant circumstances to your Contract Manager.

1.31 The application form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the matter, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

### **Payment other than through the Contract**

1.32 Except as otherwise provided by us you must not charge a fee to the Client or any person for the services provided under this Contract or seek reimbursement from the Client or any other person for any disbursements incurred as part of the provision of such services.

- 1.33 Where you have been carrying out Contract Work on behalf of a Client, you must not accept instructions to act privately in the same matter from a Client unless you have advised the Client in writing of:-
- (a) the consequences of ceasing to be in receipt of Legal Aid; and
  - (b) any further Legal Aid services which may be available, whether from you or another Provider.
- 1.34 You must not ask your Client to instruct you on a private basis simply because your costs calculated on an Hourly Rate basis have reached the level of the Standard Fee or Graduated Fee payable for the Matter or case on which you are acting.
- 1.35 Where a Client elects to instruct you privately in relation to a matter in which you have been providing Contract Work, a copy of the letter dealing with the matters required by Paragraphs 1.33 and 1.34 must be kept on the file.
- 1.36 Subject to Paragraph 1.38, you cannot be retained to act for the Client in the same matter under this Contract and on a privately paying basis at the same time.
- 1.37 You may charge privately for civil legal services which are not described in Part 1 of Schedule 1 to the Act (including for making an application for a determination under section 10 of the Act). If the case later becomes an Exceptional Case you may not charge privately for any work which becomes payable under Legal Aid pursuant to a determination under section 10 of the Act. For the avoidance of doubt, where you have already received payment from the Client for work which has become payable under Legal Aid pursuant to a determination under section 10 of the Act, you must refund such payment to the Client.
- 1.38 Subject to Paragraph 1.39, all payments for Contract Work must come through us, except:
- (a) where the statutory charge in your favour arises; or
  - (b) where you are responsible for collecting a contribution that is payable.
- 1.39 This Paragraph represents our authority pursuant to section 28(2)(b) of the Act, for you to receive payment from another party under a Client's costs order or Client's costs agreement (as defined in Legal Aid Legislation) and to recover those costs at rates in excess of those provided for in this Contract or any other contract with us. This applies in respect of both Licensed and Controlled Work and applies also to costs recovered in respect of Counsel's fees. It also applies notwithstanding any Costs Limit on a Certificate in Licensed Work cases.
- 1.40 Paragraph 1.39 does not entitle you to take any form of enforcement action. This must be specifically authorised under Legal Aid Legislation.
- 1.41 Where an order or agreement for a sum of money is payable to the Client, in which the proportion of the sum that represents the damages and the costs are not specified, we do not authorise you to retain any part of the sum, and you must

claim the costs of any relevant work from us under the relevant provisions of this Section 1.

### **Transitional provisions**

- 1.42 In relation to fees and remuneration rates, the terms of this Specification apply to all matters commenced by you on or after the Contract Start Date. For the purposes of this rule you must refer to the transitional provisions set out in secondary legislation made under the Act in relation to when we will treat a matter as having been commenced prior to the Contract Start Date. You may claim for Contract Work on any Matter Start properly commenced prior to the Contract Start Date under your Previous Contract specification.
- 1.43 Help at Court and Controlled Legal Representation do not constitute a separate Matter Start where Legal Help has already been provided in relation to the same matter. If Legal Help has been commenced prior to the Contract Start Date any subsequent provision of Help at Court or Controlled Legal Representation in relation to the same matter will, subject to Category Specific Rules and subject to the transitional provisions set out in secondary legislation made under the Act, be governed by the remuneration provisions of your Previous Contract specification.
- 1.44 In relation to fees and remuneration rates for Licensed Work, this Specification applies to any application you or your Client make for Legal Aid on or after the Contract Start Date. Subject to the transitional provisions set out in secondary legislation made under the Act, remuneration for Licensed Work commenced prior to the Contract Start Date will be governed by your Previous Contract specification.
- 1.45 In accordance with Clause 1.27 of the Standard Terms, for the purposes of deciding under this Specification whether a new Matter Start is justified, nothing in the transitional provisions of this Specification prevents the existence of any Matter Starts under any Previous Contract Specification being taken into account. Similarly, where Key Performance Indicators are based upon cases concluded under this Contract, this will include cases started under any Previous Contract specification.
- 1.46 In relation to all matters other than fees and remuneration rates, and subject to Category Specific Rules and the transitional provisions set out in secondary legislation made under the Act, this Specification (including any procedures for assessing remuneration) applies to all work done on or after the Contract Start Date.

## **Section 2            Service Standards**

### **General**

- 2.1        This part of the Specification sets out Service Standards which must be met when carrying out Contract Work, in addition to those set out in Category Specific Rules. Compliance with these Service Standards may also be taken into account in future invitations to tender for contracts for Legal Aid.
- 2.2        In addition to the Service Standards required by this Section 2, your Schedule may set out additional services which you are required to provide, based on the Tender Documents, during the Contract Period. Any proposed reduction in the range of services offered to Clients must be notified to us in accordance with Clause 21.10 of the Standard Terms.
- 2.3        Service Standards must be complied with by you as a whole organisation and by each of your Offices, unless we agree otherwise.

### **The right to do Contract Work**

- 2.4        The minimum requirement to undertake Contract Work under this Specification depends on:
  - (a)        holding the Quality Standard set out in your Contract for Signature;
  - (b)        either having Schedule Authorisation in the Category of Law the Contract Work relates to, or being entitled to carry out the work as Miscellaneous Work;
  - (c)        in the case of Controlled Work only, having sufficient Matter Starts under your Schedule allowing you to undertake the work; and
  - (d)        not being prevented from carrying out such work under any other provision of this Contract.

### **Use of Agents, Counsel and Approved Third Parties**

- 2.5        You may instruct Agents, Counsel or Approved Third parties from time to time to carry out or assist with Contract Work where you are satisfied that it is in the interests of your Client to do so, subject to your compliance with the rules on working with third parties in Clause 3 of the Standard Terms. However, you may not entrust an entire Matter or case to Counsel or an Approved Third Party and you may only entrust an entire Matter or case to an Agent if the Agent satisfies all the conditions set out in Paragraph 2.6.
- 2.6        The conditions referred to in Paragraph 2.5 are that:
  - (a)        the Agent's work is subject to your supervision;
  - (b)        the Agent works solely or mainly for you;
  - (c)        the Agent is integrated into your processes, including Data Protection and equal opportunities, and is shown in your management structure;

- (d) the Agent's work is covered by your insurance;
- (e) you retain responsibility for each Matter or case undertaken by the Agent; and
- (f) Matters and cases undertaken by the Agent are not referred to a separate organisation.

2.7 Where you instruct an Agent you may claim payment for the work as if you had carried it out directly. Where you instruct an Agent to carry out services which are covered by a Standard Fee or Graduated Fee, any fees or costs related to your use of the Agent will be included in the Standard Fee or Graduated Fee and may not be claimed separately.

2.8 Unless we have specified otherwise, you may not rely on the use of any Agent or Counsel as evidence of satisfying any of the Service Standards in this part of the Specification.

### **Minimum Matter Starts**

2.9 In any Category and Procurement Area for which you have been allocated Matter Starts you may be given a minimum number of Matter Starts. You must use at least this number of Matter Starts during the period covered by your Schedule. We will monitor your progress against this requirement during the Schedule period.

### **Supervisor standards**

2.10 In order to receive or maintain a Schedule Authorisation in any Category you must (unless Category Specific Rules specify otherwise):

- (a) have at least one full time equivalent Supervisor in that Category. For the purpose of this Paragraph 2.10 "full time equivalent" means the equivalent of one individual working 5 days a week and 7 hours on each such day (excluding breaks); and
- (b) such person (or such each persons) must be either a sole principal, one of your employees or a director of or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively) and must at all times during their working hours (except as required for the proper performance of their role (such as attending court and/or Clients)) work from one of or any combination of your Offices.

Subject to Paragraphs 2.23 to 2.24, if you cease to meet the requirements of this Paragraph 2.10 your right to undertake work in the relevant Category will cease. Any breach of this Paragraph 2.10 shall be a Fundamental Breach.

2.11 To qualify as a Supervisor for the purposes of any Category of Law under this Contract a person must for the duration of this Contract:

- (a) comply with the Case Involvement Standard in that Category as set out at Paragraphs 2.14 to 2.16;

- (b) comply with the Supervision Standards set out at Paragraphs 2.17 to 2.22;
  - (c) comply with the Legal Competence Standard for that Category as set out in the Category Specific sections of this Specification. The Legal Competence Standard will be measured as at the time a person makes the application as a Supervisor and at any point during the Contract when we request confirmation of compliance with the Supervision Standard. The Supervision Standard is also set out fully in the Supervisor self-declaration forms for each Category; and
  - (d) be either a sole principal, one of your employees, or a director of, or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively).
- 2.12 If any Supervisor ceases to comply with the requirements of Paragraph 2.11, or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence, you will notify us and such member of your personnel must immediately cease acting as a Supervisor.
- 2.13 A Supervisor may delegate some functions to one of your employees who does not meet all the requirements in Paragraph 2.11 (a) to (c) to act as their deputy supervisor. However, the Supervisor must continue to supervise the deputy supervisor who must have a training and development plan to provide the necessary skills and experience to become a Supervisor in future.

### **Case Involvement Standard**

- 2.14 All Supervisors must meet, in the relevant Category of Law, a minimum Case Involvement Standard of 350 hours in each of the last three years. There are minimum and maximum allowances by which Supervisors can meet the 350 hours and they are as follows:
- (a) direct (personal) casework (this may include direct (documented) supervision) – minimum of 235 hours (of which direct (documented) supervision cannot make up more than 120 hours);
  - (b) file review (including face-to-face) – maximum 60 hours (i.e. approximately 50% of 115 hours);
  - (c) external training delivery (CPD-accredited) – maximum 115 hours;
  - (d) documented research and the production of publications - maximum 115 hours; and/or
  - (e) other supervision - maximum 115 hours.
- 2.15 If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 1050 hours over the last five years. This requirement is subject to the same minimum and maximum allowances set out in Paragraph 2.14, adjusted pro-rata.



- 2.16 The Case Involvement Standard will be measured as at the time a person becomes a Supervisor and at any point during the Contract when we request confirmation of the Case Involvement Standard.

### **Supervision Standards**

- 2.17 All Contract Work must be supervised by a Supervisor in the relevant Category of Law.

- 2.18 All Supervisors must have experience of at least one case where they have demonstrated their ability to recognise the possibility of a contravention of convention rights under the Human Rights Act 1998 (as amended) and meet one of the following supervisory skills standards:

- (a) has supervised in the relevant Category of Law at least one full time Caseworker (or equivalent) for at least one year in the previous five year period;
- (b) Completed such training covering key supervisory skills that we approve from time to time in the previous 12 months period;
- (c) completed the Level 3 or higher National Vocational Qualification (NVQ) standard (or any replacement from time to time) in supervising in the previous five year period.

The Supervision Standard in this Paragraph 2.18 will be measured as at the time a person becomes a Supervisor and at any point during the Contract Period when we request confirmation of the Supervision Standard.

- 2.19 A Supervisor must ensure that all persons performing Contract Work have a professional legal qualification or, where a professional legal qualification is not required in respect of Contract Work, such persons must perform a minimum of 12 hours' work each week in the relevant Category of Law.

- 2.20 Arrangements must be in place to ensure that each Supervisor is able to conduct their role effectively including but not limited to:

- (a) designating time to conduct supervision of each Caseworker;
- (b) ensuring that the level of supervision provided reflects the skills, knowledge and experience of each Caseworker.

- 2.21 Each Supervisor must conduct file reviews for each Caseworker they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The Supervisor must record the outcome of files reviews, together with the details of corrective action taken (if any).

- 2.22 Without limiting Paragraph 2.10, where a Caseworker undertakes Contract Work in a location other than where their Supervisor is based, the Supervisor must conduct, as a minimum, face-to-face supervision at least once per calendar month.

## **Temporary Supervisor absence**

- 2.23 If a Supervisor is for any reason temporarily unable to act you may for a period of up to 6 weeks either:
- (a) nominate a Caseworker who does not meet all the Supervisor requirements (as defined in Paragraph 2.11) to supervise; or
  - (b) nominate an external Supervisor to supervise.
- 2.24 If you estimate that your Supervisor may be unable to supervise for more than 6 weeks, or following completion of the 6-week temporary period described in Paragraph 2.23 the Supervisor is not able to resume supervision, you must immediately inform your Contract Manager who will decide at their reasonable discretion what you must do to comply with the Contract. This may include:
- (a) extending the use of an employed Caseworker as Supervisor for a limited period;
  - (b) formalising the external supervision arrangement for a limited period;
  - (c) by written notice specifying that you must put in place another employed Supervisor by such period as the notice specifies; or
  - (d) applying a Sanction.

## **Minimum Supervisor ratios**

- 2.25 A Supervisor must not supervise more than four Caseworkers. In each Category in which you have Schedule Authorisation you must, without limiting Paragraph 2.10, maintain a ratio of at least one full time equivalent Supervisor for every four full time equivalent Caseworkers at each Office from which you are carrying out work in that Category. Such Supervisors must actively supervise such Caseworkers. For the purpose of this Paragraph 2.25 "full time equivalent" has the meaning as in Paragraph 2.10(a).
- 2.26 For the purpose of Paragraph 2.25 and subject to Category Specific Rules, a 'Caseworker' means a person other than a Supervisor who:
- (a) is either an employee or is an Agent who complies with all the conditions set out at Paragraph 2.6;
  - (b) regularly undertakes civil legal advice work in the relevant Category (unless the Caseworker holds a professional legal qualification he or she must undertake a minimum of 12 hours advice work each week in the relevant Category); and
  - (c) is a fee-earner to whom a specific caseload of Contract Work in the relevant Category is allocated and who is responsible for the progression of those cases (under supervision).
- 2.27 Individuals who only undertake administrative tasks (which you may not claim for under this Contract) or only conduct triage (early diagnosis of an individual's

overall legal problems prior to a matter being opened), are not Caseworkers for the purpose of this definition.

### **Exclusive Categories of Work**

- 2.28 All Categories of Work are exclusive under this Contract. You must have Schedule Authorisation in a Category to undertake work in that Category unless it is Miscellaneous Work.
- 2.28A Subject to the terms of your Schedule, you may use up to 5 of your total Matter Starts allocation as Miscellaneous Work.

### **Overlapping Categories**

- 2.29 Certain cases may fall within more than one Category, in which case you can choose which Category to carry the case out in, in accordance with the Category Definitions 2014.

### **Presence in Procurement Area**

- 2.30 Your Schedule may specify one or more Procurement Areas for each Category. Unless otherwise specified in your Schedule, for the Categories specified in the table below you must as a minimum maintain a presence in each relevant Procurement Area for the duration of this Contract of the type specified in this table:

<b>Category of Law</b>	<b>Presence required</b>
Mental Health	See Category Specific Rules
Community Care	Permanent Presence

- 2.31 Not used.

### *Offices*

- 2.32 For the purposes of the Permanent Presence requirements set out at Paragraphs 2.33 to 2.34, an Office must be a building which is suitable to cater for the needs of your Clients and personnel, enabling you to satisfy all relevant Health and Safety legislation, the Quality Standards and Service Standards of this Contract and to protect Client confidentiality. An Office must have waiting facilities and at least one confidential interview room which allows Client privacy to be protected. An Office must be a secure location suitable for the storage of Client files, have the appropriate equipment to deliver services and be suitable to undertake work to progress a Client's case. Hotels and vehicles cannot count as Offices for these purposes (although such temporary arrangements may form part of authorised Outreach Services under Paragraph 2.35). An Office must have good access for Clients.

### *Permanent Presence*

- 2.33 To provide a Permanent Presence you must have a permanent (i.e. continuously occupied by you) Office in the Procurement Area. In any Category for which you

are required to provide a Permanent Presence, the majority of services authorised for that Category under any Schedule issued to that Office must be accessed from that Office. The Office must be open and physically accessible to Clients in normal business hours every day from Monday to Friday (excluding Bank Holidays, religious holidays and any unavoidable temporary closures). You must be able to arrange appointments for Clients and to provide face-to-face legal advice in any Category of Law for which you are required to provide a Permanent Presence on any day that the Office is open. Where an Office is shared, we must be satisfied that it is clear to Clients at all times which organisation they are dealing with.

- 2.34 Whenever the Office is open Clients must be able to contact a person at the Office by telephone to *arrange appointments* and, where appropriate, receive advice in emergency cases. Out of hours, Clients who telephone must be able to access information about opening hours and who to contact in an emergency.

### **Location of work**

#### *Outreach Services*

- 2.35 In providing Controlled Work that is not Gateway Work you must attend your Client in the Office or other permitted location named in the Schedule unless the Controlled Work is:
- (a) provided via any Outreach Services service specifically authorised by a Schedule or other contract issued by us;
  - (b) approved by us in writing in advance;
  - (c) provided to a Client at their location for good reason;
  - (d) Controlled Legal Representation or Help at Court at the appropriate court or tribunal; or
  - (e) appropriate travel to attend on Counsel, experts, witnesses or site inspections.
- 2.36 You may perform Outreach Services without our prior authority if authorised by your Schedule and in accordance with the terms set out in the Schedule.
- 2.37 Outreach Services under Paragraphs 2.35 to 2.36 may not be taken into account in satisfying the requirements for Permanent Presence.

#### *Services outside the Procurement Area*

2.38 Not Used.

2.39 Not Used.

### **Referral and signposting arrangements**

- 2.40 You must have appropriate arrangements in operation so that you can refer or signpost a Client or potential Client to another Provider where:
- (a) you do not provide the services the Client requires;

- (b) you have so much work that you are unable to provide appropriate services to a Client within a reasonable time;
  - (c) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services; or
  - (d) you are required to make a referral under the professional conduct rules of your Relevant Professional Body.
- 2.41 You must signpost a potential Client at an early stage if it becomes clear that the enquiry concerns a subject which is outside your area of expertise.
- 2.42 If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current case or hold case information or documents, you must inform the Client of any cost implication of referral. Information about advice and assistance already given and any relevant documentation must be forwarded to the new Provider.
- 2.43 Where you make a referral to another Provider you must ensure, so far as practicable, that that Provider is authorised by us to provide services in the Category of Law most relevant to the Client's problem.
- 2.44 Where you refer an existing Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.

#### *Gateway Work*

- 2.45 You must signpost Clients or potential Clients to the helpline in respect of Gateway Work unless that Client or potential Client is an Exempted Person as described in the Procedure Regulations.

### **Key Performance Indicators ("KPI"s)**

#### *KPI Scope and Procedures*

- 2.46 KPIs must be complied with for all relevant cases concluded:
- (a) within any Category;
  - (b) under a particular Form of Civil Legal Services; and/or
  - (c) in relation to Judicial Review, across all Categories.
- 2.47 The reference to "all relevant cases" in Paragraph 2.46 means all cases of the specified type concluded by you other than cases which are excluded from the scope of the KPI in question.

- 2.48 When assessing KPI compliance with KPI 1 or 2 we will consider all relevant cases concluded and reported by you over any period of not less than three months. We will consider cases over a period longer than three months (but not exceeding twelve months) if there are insufficient cases to satisfy the minimum volumes set out in Paragraph 2.50 or if, for any other reason, we are not satisfied that the volume of cases concluded within three months is sufficient to reach conclusions about your KPI compliance.
- 2.49 Where we have assessed your compliance with a particular KPI over a period ("the first period") under Paragraph 2.48, in any future assessment of your compliance with that KPI we will not take into account any period which overlaps with the first period.
- 2.50 The minimum volume of cases we will take into account will be:
- (a) 10 for the purposes of KPI 1 below; and
  - (b) 5 for the purposes of KPI 2 below.
- 2.51 KPIs will be based on cases concluded within the Contract Period, including those started under any Previous Contract and we are only concerned with your KPI performance from the Contract Start Date.
- 2.52 Each KPI obligation will be considered independently.

*KPI 1 – Value: Controlled Work Escape Fee Cases Assessment reduction*

- 2.53 This KPI applies to Controlled Work only. It relates to costs assessed by us in all Controlled Work cases which are not covered by a Standard Fee or Graduated Fee. The KPI will take into account the total costs claimed in relevant cases, including disbursements and Counsel's fees, but excluding VAT.
- 2.54 **The aggregate amount by which the costs claimed by you in all relevant cases are reduced on assessment (after any appeals have been completed) must not exceed the following percentage: 10%.**

*KPI 2 – Value: Licensed Work Assessment reduction*

- 2.55 This KPI applies to Licensed Work only. It relates to final decisions on assessment of costs (whether by us or by the court) in all Licensed Work cases which are not covered by a Standard Fee or Graduated Fee. However it includes assessments in cases where Advocacy is covered by a Standard Fee or Graduated Fee but other costs are payable by way of Hourly Rates (see the Family Specification for further details). The KPI will take into account the total costs claimed under all relevant certificates, including disbursements and Counsel's fees, but excluding VAT.
- 2.56 **The aggregate amount by which the costs claimed by you in all relevant cases are reduced on assessment (after any appeals have been completed) must not exceed the following percentage: 15%.**

*KPI 3 – Value: Fixed Fee margin*

- 2.57 This KPI applies to Controlled Work in all Categories. It applies only to work covered by Standard Fees or Graduated Fees excluding all disbursements and Escape Fee Cases. It reflects the maximum saving we would expect to see for a Provider from the introduction of Standard Fees or Graduated Fees flowing from efficiency savings and case mix. This KPI applies to Family Licensed Work and it only applies to work covered by Standard Fees or Graduated Fees paid under the Care Proceedings Graduated Fee Scheme or the Private Family Law Representation Scheme, excluding all disbursements and Escape Fee Cases.
- 2.58 **KPI 3A: The amount by which your total Claims for Standard Fees or Graduated Fees at Controlled Work exceeds the amount which you would have been payable to you if all the work had been claimed at Hourly Rates must not exceed: 20%.**
- 2.59 **KPI 3B: The amount by which your total Claims from for Standard Fees or Graduated Fees for Family Licensed Work under the Care Proceedings Graduated Fee Scheme and the Private Family Law Representation Scheme exceeds the amount which would have been payable to you if all the work had been claimed at Hourly Rates must not exceed 20%.**

*KPI 4 – Value: Rejection rates for Licensed Work*

- 2.60 This KPI applies to Licensed Work in all Categories of Work. It applies to all applications for a determination that an individual qualifies for Licensed Work. It also applies to all Claims that are submitted to us for payment for Licensed Work. The KPI will be calculated on the basis of all applications and Claims submitted in a Schedule period across all Categories.

**KPI 4A: The number of applications for determinations that are rejected by us must not exceed 5% of all applications for determinations in that Schedule period.**

**KPI 4B: The number of Claims rejected by us must not exceed 5% of all Claims submitted in that Schedule period.**

*KPI 5 – Value: Refusal rates for Licensed Work*

- 2.61 This KPI applies to Licensed Work in all Categories of Work. It applies to all applications for a determination that an individual qualifies for Licensed Work. The KPI will be calculated on the basis of all applications submitted in a Schedule period across all Categories.

**KPI 5A: The number of applications for determinations that are refused by us must not exceed 15% of all applications submitted in that Schedule period.**

## **Section 3            Carrying out Controlled Work**

### **Scope of Controlled Work**

- 3.1        You may undertake Controlled Work for Clients provided it falls within the scope of a Category of Law that you are authorised to undertake in your Schedule, subject to:
- (a)        the Act and any secondary legislation made under it (including the Merits Regulations and the Financial Regulations);
  - (b)        any limitations set out in your Schedule; and
  - (c)        the provisions of this Contract.
- 3.2        Decisions relating to the making and withdrawal of determinations about Controlled Work are delegated to you by the Director in accordance with an Authorisation.
- 3.3        You should exercise the Delegated Functions in every appropriate case and these decisions should not be referred to the Director or anyone else to whom he has delegated his determination making function in accordance with an Authorisation although advice may be sought in cases of difficulty or doubt. These Delegated Functions must in all circumstances be exercised in accordance with the terms of this Contract.

#### *Help at Court*

- 3.4        You may only provide Help at Court in relation to proceedings for which advocacy may be undertaken in accordance with Legal Aid Legislation and where Help at Court is available under the Merits Regulations.

#### *Controlled Legal Representation*

- 3.5        You may undertake Controlled Legal Representation before a Mental Health Tribunal in accordance with the Merits Regulations, Financial Regulations and Procedure Regulations and the provisions in this Specification, provided that your Schedule permits you to carry out Controlled Work in the relevant Category of Law

#### *Provisions on Standard Fees and Graduated Fees*

- 3.6        Subject to the provisions for Escape Fee Cases, where a Matter is payable by a Standard Fee or Graduated Fee you accept that fee as full remuneration for all work required at the Controlled Work level, and must not seek to end a Matter because of the level of time incurred relative to the Standard Fee or Graduated Fee.
- 3.7        You must apply for Licensed Work on a Client's behalf at the appropriate point, and not delay such an application in order to claim a Matter as an Escape Fee Case.

### **Application procedures**



- 3.8 Between the Schedule start date and the Schedule end date, you may commence cases in Controlled Work by using the Matter Starts that, in any Category of Law, we have allocated to you in the Schedule.
- 3.9 Subject to Paragraphs 3.57 and 3.58, you may not use more Matter Starts than allocated to you in your Schedule.
- 3.10 The assessment of means section and the Client's details must be fully completed and the form signed by the Client in your presence before the Controlled Work is commenced, subject to the exceptions set out in the Procedure Regulations and Paragraphs 3.14 to 3.20 of this Specification. However:
- (i) where the form is signed in the course of an interview you may record all reasonable time from the beginning of that interview; and
  - (ii) where you act for a Client under the Housing Possession Court Duty Scheme and subsequently open a Matter Start for that Client in relation to the same proceedings, you may include your time spent under the Housing Possession Court Duty Scheme within your Claim for the Legal Help Matter Start.
- 3.11 The completed form must be kept on the file. We may prescribe different forms for different Categories of Law or types of case or Client and for different Forms of Civil Legal Service. We may amend the form or forms from time to time upon giving at least 28 days notice to you.

*Application on behalf of a Child or Protected Party*

- 3.12 You may only accept an application from an "other person" as specified in regulations 22(5) and 22(6) of the Procedure Regulations if:
- (a) there is sufficient connection between the Child or Protected Party and the other person to ensure that the other person is likely to act responsibly in the interests of the Child or Protected Party; and
  - (b) the other person has sufficient knowledge of the Child or Protected Party, the problem and the Child's or Protected Party's financial circumstances to give proper instructions to you.
- 3.13 Where Controlled Work is carried out under the regulations specified in paragraph 3.12, the application will be in the name of the Child/Protected Party but signed on his/her behalf. The form should be completed in the name of the Child/Protected Party but signed by the person who is applying on behalf of the Child/Protected Party with an annotation to that effect.

*Postal applications*

- 3.14 Subject to Paragraphs 3.15 to 3.17, an application for Controlled Work may be accepted by post where the Client requests that the application is made in this way and it is not necessary for the interests of the Client or his or her case to attend you in person.
- 3.15 Applications by post may not be accepted where the Client is resident outside the European Union and:

- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until they have returned to the European Union, or
- (b) the services could be applied for on the same matter by a person resident in the European Union, or
- (c) it is otherwise unreasonable to accept the application.

3.16 An application form may not be accepted by fax unless:

- (a) this is permitted under your Schedule; and
- (b) your Client is a Child or vulnerable adult and Controlled Work is urgently required for your Client's safety; and
- (c) you take reasonable steps to obtain the original of the signed application form.

3.17 The number of Matters where your Client does not attend you either because you accept a postal or faxed application under Paragraphs 3.14 to 3.16 or provide telephone or email advice under Paragraphs 3.18 to 3.20, must not exceed 10% of your total Matters opened in any Schedule period. For the avoidance of doubt, where you accept a postal or faxed application under Paragraphs 3.14 to 3.16 or provide telephone or email advice under Paragraphs 3.18 to 3.20 in order to comply with your duties under the Equality Act 2010, this will not count towards the 10% limit set out in this Paragraph 3.17.

*Advice over the telephone, by email or other remote communication*

3.18 You may give advice to a Client over the telephone, by email or other remote communication before that Client has signed the application form where:

- (a) the Client requests and it is not necessary for the interests of the Client or his or her case to attend you in person; and
- (b) the Client meets the criteria in the Merits Regulations and Financial Regulations for the provision of Legal Help,

and may make a Claim for this work provided that the Client subsequently signs the application form.

3.19 The Client does not have to attend your Office to sign the application form after having been given advice in the manner set out in Paragraph 3.18. You may send the form to your Client, after you have given the advice, for signature and return, subject to Paragraph 3.17.

3.20 No payment will be made in respect of any Matter where your Client has not signed and returned an application form and any work you undertake before your Client signs the application form is at your risk.

### *Controlled Legal Representation*

- 3.21 You must evidence your determination that a Client qualifies for Controlled Legal Representation by completing and signing a prescribed form. The prescribed form must be signed by or on behalf of a Supervisor.

### **Financial eligibility**

- 3.22 The thresholds for financial eligibility are those set out in the Financial Regulations.

- 3.23 Satisfactory evidence in support of the prospective Client's information as to their means must be provided to you before you assess financial eligibility, subject to the provisions of Paragraph 3.24. The evidence (or a copy) must be retained on the file.

- 3.24 You may assess the prospective Client's means without the accompanying evidence where:-

- (a) it is not practicable to obtain it before commencing the Controlled Work;
- (b) pre signature telephone advice is given; or
- (c) exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the case.

- 3.25 Unless Paragraph 3.24(c) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence shows that the Client is not financially eligible, you may claim the work carried out as a Matter Start provided that:

- (a) you have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means;
- (b) you have acted reasonably in initially assessing financial eligibility on the information available;
- (c) you do not claim:
  - (i) any disbursement; or
  - (ii) if the Matter is remunerated at Hourly Rates, profit costs beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means; and/or
- (d) you do not report time incurred beyond the period it was practicable to obtain satisfactory evidence of the Client's means.

- 3.26 Not Used

- 3.27 When assessing the means of a Child or Protected Party, the appropriate means which you must take into account are:

- (a) those of the Child/Protected Party; and
- (b) in all cases other than applications for Legal Representation in non-family proceedings, those persons who are liable to maintain the Child/Protected Party or usually contribute substantially to his/her maintenance, subject to the exception provided for by the Financial Regulations.

3.28 When assessing means where you accept an application for Controlled Work directly from a Child you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain him/her. The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child (and any conflict of interest), you reasonably consider it just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain him/her.

### **Matter Start rules**

#### *General*

3.29 Paragraphs 3.30 to 3.45 and relevant Matter Start Category Specific Rules in Sections 7 and 8 of this Specification set out the rules for when a Legal Help Matter Start may be commenced. No Standard Fee or Graduated Fee may be claimed for a Matter Start which does not comply with these Matter Start rules and if we discover a breach of the Matter Start rules, on Audit or otherwise, any excess payments may be re-claimed.

3.30 The following rules are of general application:

- (a) a Matter Start should be commenced only where all applicable criteria in the Merits Regulations and Financial Regulations are met in respect of opening the new Matter. In particular, each separate Legal Help Matter Start must satisfy the sufficient benefit criteria set out in regulation 32(b) of the Merits Regulations;
- (b) a Matter Start cannot be in more than one Category of Law;
- (c) each separate Matter Start must be the subject of a separate application form. You must identify, and record on the appropriate case file, any point at which the work that you are performing for any Client becomes two separate Matters and you open a separate Matter Start;
- (d) each Matter Start is unique to the Provider that commences it. Where, pursuant to Paragraph 3.36, you provide Controlled Work to a Client on a matter on which Controlled Work has been undertaken by a previous Provider, you must commence a new Matter Start; and
- (e) you must not open a new Matter Start in the Debt Category unless:
  - (i) you have and can record a valid Gateway Work reference number; or

- (ii) you certify that your Client is an Exempted Person and you retain evidence of this on file.

*When can more than one Matter Start be opened for a single Client?*

- 3.31 You must not open more than one Matter Start for a Client unless the Client has more than one separate and distinct legal problem. Legal problems will only satisfy this test if they are genuinely separate and distinct, typically because they arise out of different causes or events, and where either:
- (a) they necessarily fall under different Categories; or
  - (b) if they fall within the same Category, both
    - (i) if legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and
    - (ii) each problem requires substantial legal work which does not address the other problem(s).
- 3.32 For the purpose of Paragraph 3.31(b)(ii) "substantial legal work" must consist of at least:
- (a) an additional 30 minutes of preparation or advice; or
  - (b) separate communication with other parties on legal issues.
- 3.33 Where the Client raises several issues at the first meeting, a single Matter Start should be commenced to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single Matter Start should be used for the provision of further Controlled Work. However, more than one Matter Start may be opened at the initial meeting where this is justified under Paragraph 3.31.
- 3.34 Whether a further Matter Start is justified depends on the nature of the Client's problems and does not depend on whether you purport to limit your retainer to only particular stages or aspects of the Client's problem.

*When can subsequent Matter Starts be opened?*

- 3.35 Once a Matter Start has commenced, whether under this or any Previous Contract specification, a new Matter Start can only be opened for the same Client if the Client has a new legal problem which is separate and distinct, as defined in Paragraph 3.31. Any work which does not relate to such a separate and distinct problem must be carried out under the original Matter Start, whether or not circumstances have changed or developments have occurred as the case has progressed and whether or not the original Matter Start was carried out by you or another Provider.

- 3.36 As an exception to Paragraph 3.35, you may commence a Matter Start in relation to the same problem in respect of which your Client has already received Controlled Work services if:
- (a) a period of at least 6 months has elapsed since the Claim for that Controlled Work matter was submitted; or
  - (b)
    - (i) there has been a material development or change in the Client's instructions; and
    - (ii) save where the matter was concluded under Paragraph 3.66(b), a period of at least 3 months has elapsed since the Claim for that Controlled Work Matter was submitted.
- 3.37 For the purposes of Paragraph 3.36(b):
- (a) the fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions;
  - (b) a decision or other response from another party to any correspondence, application, appeal or review or other request that was made in the course of the original Controlled Work Matter cannot constitute a material development in the case; and
  - (c) a change in the law that is anticipated within the original Matter cannot constitute a material development in the case.
- 3.38 Where a Matter has been closed under Paragraph 3.36 and claimed for but further work is necessary and a separate Matter Start is not justified:
- (a) the work already undertaken and the further work should be taken into account in determining whether the Matter is an Escape Fee Case that escapes from the Standard Fee or Graduated Fee provisions. If we agree to pay the matter as an Escape Fee Case, we will take into account any payments already made by way of the Standard Fee or Graduated Fee;
  - (b) you may Claim further disbursements as part of the Matter where appropriate;
  - (c) where the Matter has already been paid as an Escape Fee Case, the further work is payable on an Hourly Rates basis, subject to Assessment; and
  - (d) unless the Matter is accepted as an Escape Fee Case, the further work carried out will be included in any calculation of average costs per Matter.

#### *Multiple Clients*

- 3.39 Where you act for more than one Client in relation to the same general legal problem a single Matter Start should generally be used. Matter Starts in respect of more than one Client may be commenced only where the following are satisfied:

- (a) if proceedings were issued each Client would need to be a party to those proceedings;
- (b) each Client has a separate and distinct legal interest in the problem or issue; and
- (c) in considering whether there is sufficient benefit for the second or any subsequent Client to receive Legal Help, you take into account the fact the Legal Help that is already being provided in relation to the same general problem.

*Previous Controlled Work carried out by a different Provider*

- 3.40 You are required to establish whether previous Controlled Work has been provided to the Client in respect of the same Matter by making reasonable enquiries including (but not limited to);
- (a) asking the Client;
  - (b) examining any documentation provided by the Client; and
  - (c) considering the length of time that the issue or matter has been in existence and any steps in the issue or matter which have occurred.
- 3.41 If you fail to make reasonable enquiries in this situation any Claim for Controlled Work in relation to the Matter may be disallowed where the Client has already received Controlled Work in relation to the same Matter.
- 3.42 Where Controlled Work has been given for the same Matter from another Provider within the six months preceding the application, you must obtain the consent of the Client to contact the previous Provider on his/her behalf as soon as practicable in writing to:
- (a) confirm the reasons for the termination of retainer; and
  - (b) request a transfer or copy of the file.

Where the Client refuses to give you consent to contact the previous Provider, then you may not provide Controlled Work for that Client and may not make any Claim for payment in respect of any such work under this Contract.

- 3.43 When you have made a request for a Client's file under Paragraph 3.42, you may not start work for that Client until you have received the file and considered its contents unless it is absolutely necessary to take steps immediately to protect the Client's position or meet a court deadline. If you undertake Controlled Work in a situation of urgency and then, having received the file, conclude that the requirements of the Merits Regulations, Financial Regulations and the Procedure Regulations were not satisfied, you must cease acting for that Client immediately, but may still make a Claim for the work you have undertaken under Section 4.
- 3.44 When providing Controlled Work in the circumstances of Paragraphs 3.40 to 3.43 you must record the justification for doing so on the file. Changes to a third or subsequent Provider on the grounds of dissatisfaction with the service provided by

or breakdown in relationship with a previous Provider will require greater justification. You must have regard to any Contract Work already carried out on the Matter by the previous contracted Provider and ensure that the Contract Work you carry out does not involve unnecessary duplication.

- 3.45 Where Controlled Work is provided in contravention of Paragraphs 3.40 to 3.44, the work provided cannot be claimed as Contract Work except under Paragraph 3.43.

*Specific situations*

- 3.46 A Legal Help Matter Start is not justified in the following circumstances:
- (a) providing information to Clients or to other persons contacting your organisation;
  - (b) supplying a new Provider with a former Client's file or a copy, or information about the circumstances of termination of the retainer, under Paragraph 3.42;
  - (c) where on the day that work is carried out you are satisfied that the Merits Regulations, Financial Regulations and the Procedure Regulations are met for a determination that an individual qualifies for Emergency Representation, or other Licensed Work, in relation to the same Matter and you determine or intend to determine that the Client qualifies for such work. All work carried out on the day of your determination in relation to the Licensed Work may be claimed under the resulting Certificate. This Paragraph 3.46(c) shall not prevent the opening of a Matter Start where Legal Help is required on matters not covered by Licensed Work.
- 3.47 Where Controlled Work has already been carried out for a Client then, subject to Category Specific Rules, a separate Matter Start would not be justified in the following circumstances:
- (a) Controlled Work in relation to an interim remedy in a Matter on which Controlled Work has already been provided;
  - (b) Controlled Work in relation to enforcement, a review, or an appeal (including an application for a determination that the Client qualifies for Licensed Work) in a Matter on which Controlled Work has already been provided;
  - (c) Controlled Work in relation to making a complaint in relation to a Matter where Controlled Work is at any time provided in relation to a substantive legal remedy in the same Matter;
  - (d) if a Client seeks advice as to whether he or she must change Provider from a Provider already providing Controlled Work. The provisions in Paragraphs 3.29 to 3.46 should be applied before any work is provided under a new Matter Start;



- (e) providing Controlled Legal Representation in a Matter for which you have been providing Legal Help;
  - (f) providing Help at Court in a Matter for which you have been providing Legal Help; or
  - (g) any work undertaken on a case by an Agent on your behalf will form part of the same Matter Start as the parts of the case handled by you.
- 3.48 Notwithstanding Paragraph 3.47(b), where the Client faces enforcement proceedings because he or she is alleged to have breached the terms of a suspended or postponed order, or is alleged to have breached the terms on which proceedings were adjourned, further Legal Help may be provided under a new Matter Start.
- 3.49 Any advice given to a Client over the telephone before that Client has signed the application form under Paragraph 3.18 will count as the same Matter Start as work carried out after the application form has been signed. If the Client does not, for any reason, subsequently sign the application form then you may not Claim for this work or count it as a Matter Start.

### **Declining Controlled Work**

#### *Decline for good cause*

- 3.50 In addition to making a determination that an individual does not qualify for Controlled Work, you may for another good cause decline to receive an application.
- 3.51 Good cause for declining to receive an application under Paragraph 3.50 includes:
- (a) where you lack appropriate Matter Starts under your Schedule to take on the case or Matter;
  - (b) where you do not have the capacity to take on the case or Matter;
  - (c) where you do not have the necessary skill or expertise to take on the case or Matter; or
  - (d) other professional conduct reasons such as actual or potential conflict of interest.
- 3.52 You must give us such information about declining to receive an application under Paragraph 3.50 as we may require.
- 3.53 You must not decline to receive an application under Paragraph 3.50:
- (a) which is within the scope of your Contract and which you have the appropriate skills and capacity to carry out, on any grounds which directly or indirectly discriminate on the grounds of a protected characteristic (as defined in section 4 of the Equality Act 2010); or

- (b) because a potential Client's protected characteristic (as defined in section 4 of the Equality Act 2010) may result in additional costs or disbursements being incurred compared with a Client without them.

*Declining on the basis of likely cost*

- 3.54 "Good cause" in Paragraph 3.50 does not include any considerations regarding the level of any Standard Fee or Graduated Fee you may be entitled to receive under this Contract. You may not decline to receive an application under Paragraph 3.50 on the grounds (however stated) that the Standard Fee or Graduated Fee you would be entitled to Claim for that work does not represent what you consider to be appropriate remuneration in the circumstances of the individual case or Matter.

*Controlled Work following a refusal of Legal Representation*

- 3.55 Any provision of Legal Help in relation to a review or an appeal of a determination that the Client does not qualify for civil legal services provided as Licensed Work will not be a separate Matter Start if you have previously provided Legal Help in relation to the case and you may not claim a separate Standard Fee or Graduated Fee.

**Refusing Controlled Legal Representation**

- 3.56 Pursuant to an Authorisation, you may make and withdraw determinations about Legal Representation that is Controlled Work.

**Authorising Matter Starts**

- 3.57 You may apply for Supplementary Matter Starts on a form specified by us unless otherwise authorised in your Schedule.

- 3.58 You may accept an application for Controlled Work notwithstanding the fact that you have reached the maximum number of Matter Starts authorised by your Schedule in the relevant Category of Law if the following conditions are met:

- (a) the application is:
  - (i) in relation to a Special Children Act 1989 Case or civil proceedings falling within a paragraph of Part 1 of Schedule 1 to the Act where the Client is at real and immediate risk of loss of life or liberty;
  - (ii) by a Client seeking an injunction or other order for protection from harm to the person;
  - (iii) by a Client seeking a committal for breach of any other order; or
  - (iv) by a Client who is a Protected Party; and
- (b) it is necessary to make a determination that an individual qualifies for Controlled Work as a matter of such urgency that it is not reasonably practical to obtain permission from us via a Schedule amendment before providing the Controlled Work; and

- (c) we receive notification from you (on the form provided by us) within five working days of a determination that an individual qualifies for Controlled Work; and
- (d) your Contract allows you to carry out work in the relevant Category of Law.

### **Use of Counsel**

- 3.59 Where you instruct Counsel under Legal Help in a case that is covered by a Standard Fee, you are responsible for agreeing Counsel's fees and paying them out of the Standard Fee. Counsel's fees under Legal Help do not count as a disbursement unless the case escapes from the relevant Standard Fee and may not be taken into account in determining whether a case escapes from that fee.
- 3.60 If you instruct Counsel under Legal Help and the case escapes from the Standard Fee you may, when claiming your fees on the basis of Hourly Rates, Claim payment from us of Counsel's fees as if such fees were a disbursement incurred by you. The Hourly Rates set out in the Remuneration Regulations shall not apply to Counsel's fees claimed under this Paragraph 3.60.
- 3.61 Where you claim Counsel's fees under Paragraph 3.60:
- (a) you must record the justification for the instruction of Counsel in terms of the complexity or other exceptional circumstances of the case and the relevant expertise of Counsel;
  - (b) Counsel must set out details of the time spent in his/her invoice; and
  - (c) you must pay Counsel the full fee stated by the Counsel's invoice and claimed from us, irrespective of any reduction in respect of Counsel's fees on assessment.
- 3.62 You may not instruct Counsel under Help at Court.
- 3.63 Instruction of Counsel under Controlled Legal Representation is governed by sections 8 (Immigration).

### **Clients with a financial interest in your costs**

- 3.64 If your Client has or is likely to have a financial interest in any Claim or assessment (because the statutory charge applies, they are obliged to make a contribution to their legal costs, or otherwise) they are entitled to be made aware of the costs you are incurring. You must on a regular basis:
- (a) notify your Client that they have a financial interest and explain why;
  - (b) explain that when you make your Claim for costs they have a right to make representations (see Paragraph 6.59); and
  - (c) provide them with an update of your costs, including information in relation to the fees of Counsel, experts and other disbursements.

- 3.65 If your Client has or is likely to have a financial interest in a Matter paid by a Standard Fee or Graduated Fee:
- (a) the information to be provided under Paragraph 3.64(c) must include:
    - (i) the Standard Fee or Graduated Fee together with disbursements or other additional payments payable at that point of the case;
    - (ii) the point at which the costs of the Matter may increase through being paid as an Escape Fee Case or higher level of Graduated Fee; and
    - (iii) the costs that would be payable if the Matter were paid at Hourly Rates.
  - (b) except where urgent work is required, you must notify your Client before undertaking work that may lead to the Matter being paid as an Escape Fee Case or at a higher level of Graduated Fee.

### **Ending Controlled Work**

- 3.66 You may make a Claim for a Controlled Work Matter when any of the following events occurs:
- (a) the Client decides not to proceed, or indicates that they wish to take the Matter forward themselves;
  - (b) the Client fails to give instructions for three months (unless the Matter is on hold);
  - (c) a determination is made that the Client qualifies for civil legal services provided as Licensed Work (unless further Legal Help is required on Matters not covered by the determination) or the Matter begins to be funded outside this Contract;
  - (d) you consider that the Matter (having regard to Paragraphs 3.29 to 3.49 and any Category Specific Rules on commencing Matter Starts) is completed;
  - (e) the determination that an individual qualifies for Controlled Work has been withdrawn under the Procedure Regulations;
  - (f) you can no longer act through a conflict of interest or other reason of professional conduct.
- 3.67 Unless we notify you otherwise, regardless of whether payment for work must be made under a Standard Fee or Graduated Fee, you must submit all your Controlled Work Claims on our Contract Report Form which will require you to report your profit costs (calculated in accordance with the relevant Hourly Rates set out in the Remuneration Regulations), disbursements, Counsel's fees and VAT.

### **Exceptional Case**

3.68 You are authorised, under this Contract, to apply for an Exceptional Case in respect of Controlled Work in accordance with the procedures set out in the Procedure Regulations.

## **Section 4          Payment for Controlled Work**

### **General regime**

#### *Levels of payment for Controlled Work*

- 4.1 We will pay you for Controlled Work carried out in accordance with this Contract and properly claimed under one of the following payment methods:
- (a) Standard Fees;
  - (b) Graduated Fees; and
  - (c) Hourly Rates.
- 4.2 Not used.

### **Standard Fee and Graduated Fee schemes**

- 4.3 We will pay for each Matter Start covered by Standard Fees and Graduated Fees which is:
- (a) properly conducted: and
  - (b) claimed in accordance with the terms of this Contract.

The fees for the relevant Category of Law are set out in the Remuneration Regulations. By taking on the Client to undertake Controlled Work covered by a Standard Fee or Graduated Fee payment, you are accepting that Standard Fee or Graduated Fee as full payment for all work reasonably required for the Client in that Matter at the Controlled Work level (unless the Matter subsequently becomes an Escape Fee Case).

- 4.4 Standard Fees and Graduated Fees are inclusive of profit costs, travel and waiting time and Counsel's fees (subject to the Category Specific Rules at Sections 7 and 8 of this Specification), but are exclusive of other disbursements and VAT.
- 4.5 Subject to Category Specific Rules and the Escape Fee Case provisions set out in this Specification, payments for Legal Help and Help at Court shall be by way of the Standard Fees specified for the relevant Category of Law in the Remuneration Regulations.
- 4.6 Disbursements incurred on Controlled Work Matters and not covered in Paragraph 4.24 may be claimed separately.
- 4.7 For the avoidance of doubt no payment is due for a Matter Start where no Claim is made, or where the amount of your Claim on an Hourly Rates basis would be nil.

#### *Recovery of costs*

- 4.8 Nothing in this Contract affects your rights to recover costs from another party in proceedings or prospective proceedings in excess of the amount payable by us as a Standard Fee or Graduated Fee.

4.9 Subject to Category Specific Rules, where you recover costs in a Matter in relation to which a determination has been made that the Client does not qualify for civil legal services provided as Licensed Work:

- (a) where the costs you are able to recover cover all items of work carried out under the Matter, you must elect whether to retain the costs recovered or to claim for the Matter under the terms of this Section 4; otherwise
- (b) you may retain the costs recovered, and:
  - (i) if the work not covered by these costs meets the relevant Escape Fee Case threshold, claim the Matter as an Escape Fee Case; otherwise
  - (ii) claim the relevant Standard Fee or Graduated Fee.

However, you must not claim from us for a disbursement in addition to retaining costs paid by another party, other than to the extent that the disbursement can be justified as an item of legal aid only costs under Paragraph 6.51.

4.10 Where, following a determination that the Client qualifies for civil legal services which are provided as Licensed Work you are able to recover costs under a Client's costs order in respect of work carried out under a Controlled Work Matter you should report to us:

- (a) where the Matter was paid as an Escape Fee Claim, the value of the work covered by the costs recovered, calculated at the relevant Hourly Rates under the Remuneration Regulations; otherwise
- (b) the lower of
  - (i) the costs recovered; and
  - (ii) the Standard Fee or Graduated Fee, or the part or parts of the Graduated Fee, paid to you in respect of which work is covered by the costs recovered,

together, in either case, with the value of disbursements covered by the recovered costs, and we will recoup the total sum from you as part of balancing your Claim.

### **Escape Fee Cases**

4.11 Subject to Category Specific Rules, where the amount of any Claim as calculated on the basis of Hourly Rates exceeds the Escape Fee Case threshold for the relevant Category specified in the Remuneration Regulations then you can apply to us for the Claim to be treated as an Escape Fee Case, on a form specified by us.

4.12 Escape Fee Cases will be remunerated on the basis of Hourly Rates.

4.13 We will not normally refuse to treat a Claim as an Escape Fee Case on the grounds that the case or Matter should have been split into more than one case or Matter. However, where it appears that a Claim covers clearly unrelated matters with the

intention of avoiding payment by a Standard Fee or Graduated Fee, we may ask you to resubmit your Claim accordingly (in which case we will not refuse to pay for more than one Matter Start by virtue of the fact that there is only a single Controlled Work application form). Any decision to request resubmission of Claims under this Paragraph will be subject to the appeals procedure set out in Paragraphs 6.67 to 6.86.

- 4.14 We may assess the costs of each Escape Fee Case Claim or a sample of them and where the amount assessed as payable for the Claim is:
- (a) nil, we will not make payment for the Claim; or
  - (b) otherwise below the Escape Fee Case threshold referred to in Paragraph 4.11, we will pay the appropriate Standard Fee or Graduated Fee,
- otherwise, we will pay the amount assessed as payable for the Claim.
- 4.15 Where we refuse an application to agree a Claim as an Escape Fee Case an appeal may be made against that decision to an Independent Costs Assessor. The procedures in Section 6 shall apply to any such appeal.
- 4.16 Any refusal by us of a request by you to treat a Claim as an Escape Fee Case is excluded from Clauses 27 and 28 of the Standard Terms.
- 4.17 Claims for Escape Fee Cases must be submitted within three months of the Matter being reported.

### **Hourly Rates**

- 4.18 Hourly Rates may only be claimed for Controlled Work where specifically authorised under this Specification and in accordance with the Costs Assessment Guidance. We will pay for each Matter Start covered by Hourly Rates that is properly conducted and claimed in accordance with the terms of this Contract at the Hourly Rates set out in the Remuneration Regulations. You may also Claim for disbursements incurred in accordance with Paragraphs 4.21 to 4.26.
- 4.19 The Hourly Rates applicable to Legal Help, Help at Court and Family Help (Lower) are set out in the Remuneration Regulations. Where different Hourly Rates are payable according to the Category of Work, you may only claim the Category specific Hourly Rate if you have a Supervisor in the relevant Category and you are acting under a Matter Start authorised in your Schedule.
- 4.20 For all work carried out under Miscellaneous Work, the rates in the Remuneration Regulations apply.

### **Disbursements**

- 4.21 You may incur disbursements where:
- (a) it is in the best interests of the Client to do so;
  - (b) it is reasonable for you to incur the disbursement for the purpose of providing Controlled Work to the Client;



- (c) the amount of the disbursement is reasonable and where applicable complies with Paragraph 6.61 of this Specification; and/or
- (d) incurring the disbursement is not prohibited by this Section 4 or the applicable part of this Specification.

4.22 We may prescribe types of disbursements that may or may not be incurred in the provision of Controlled Work.

4.23 The provisions for reimbursing and claiming for the costs of disbursements depend on the type of Controlled Work and the basis of remuneration as set out in the Remuneration Regulations and/or Sections 4 and 6 of the Specification.

4.24 A non-exhaustive list of disbursements, which may not be incurred in the provision of Controlled Work, appears in the table below:

<b>Disbursements which may not be claimed under Controlled Work</b>
Costs of (or expenses relating to) the residential assessment of a Child or treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by us.
Ad Valorem stamp duties.
Capital duty.
Client's travelling and accommodation expenses save in the circumstances prescribed in the Costs Assessment Guidance and unless they relate to treatment, therapy, training or other interventions of an educative or rehabilitative nature or to the residential assessment of a Child.
All fees, charges and costs of Child contact centres, including assessments and reports on supervised contact, and of other professional assessments of contact between Children and adults.
Court fees unless for a search/photocopies/bailiff service or as part of Controlled Legal Representation or otherwise permitted by Category Specific Rules.
Discharge of debts owed by the Client, for example, rent or mortgage arrears.
Fee payable on voluntary petitions in bankruptcy.
Fee payable to implement a pension sharing order.
Fee payable to the Office of the Public Guardian.
Immigration application fees.
Mortgagees' or lessors' legal costs and disbursements.
Passport fees.
Probate fees.
In the Family Category of Law only, costs of or expenses in relation to the provision of Family Mediation, conciliation or any other dispute resolution including Family Group conferences.
In the Family Category of Law only, costs or expenses of risk assessments within section 16A Children Act 1989 (as amended) and undertaken by Cafcass officers or Welsh family proceedings officers,

including assessments of the risk of harm to a Child in connection with domestic abuse to the Child or another person.

In the Family Category of Law only, costs of or expenses relating to any activity to promote contact with a Child directed by the court under Section 11A to 11G Children Act 1989 (as amended). This includes all programmes, consideration of suitability under s11E and other work to or with a view to establishing, maintaining or improving contact with a child or, by addressing violent behaviour, to or with a view to enabling or facilitating contact with a child.

Any administration fee charged by an expert including, but not limited to, (i) a fee in respect of office space or provision of a consultation room, (ii) a fee in respect of administrative support services, such as typing services, (iii) a fee in respect of courier services and (iv) a subsistence fee.

Any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.

- 4.25 If you propose to incur a disbursement which does not appear in the list in the table at Paragraph 4.24 then you must consider whether the disbursement is recoverable or not by reference to its purpose and the provisions of Paragraph 4.21. The cost of the provision of legal advice by a person who is neither a lawyer nor supervised by a lawyer cannot be treated as a disbursement.
- 4.26 You may not use the Legal Help scheme where the main purpose is to incur the disbursement on behalf of the Client rather than to provide substantive legal advice or assistance to the Client.
- 4.27 Rates for instructing experts are specified in the Remuneration Regulations.

### **Standard Monthly Payments**

- 4.28 We will make Payments on Account for Controlled Work by Standard Monthly Payments. These payments may include payments in respect of final Claims or Payments on Account or a mixture of both. As these payments are triggered by our receipt from you, within 20 days after the end of each month, of the appropriate Contract Report Forms, late receipt of the Contract Report forms will delay payment.
- 4.29 We will specify the amount of any Standard Monthly Payments (and of any Schedule Payment Limit) in your Schedule. We will set the amount of your Standard Monthly Payments (and of any Schedule Payment Limit) so as to pay or recover any amounts underpaid or overpaid under any previous Schedule.
- 4.30 Your Standard Monthly Payments may be reviewed and amended but only where this is consistent with the SMP Reconciliation Protocol. We will only amend the SMP Reconciliation Protocol during the life of this Contract by agreement with the Consultative Bodies or in accordance with the principles and procedures set out in Clause 13 of the Standard Terms (as if the Protocol had been a Contract Document).

## **Applying for payment**

- 4.31 In respect of Controlled Work:
- (a) you are required to make a Claim for Controlled Work in accordance with this Specification; and
  - (b) we may exercise our rights to assess your Claim(s) in accordance with this Section 4.
- 4.32 Within 6 months of the conclusion of a Controlled Work Matter (in accordance with Paragraph 3.66) you must make a Claim for payment for that Matter.
- 4.33 In order to make a Claim for Controlled Work you must submit a report to us claiming an amount to be reconciled against the payments made to you under the Contract (a "Credit") based on the appropriate Hourly Rates, Standard Fee or Graduated Fee applicable to the Controlled Work carried out, plus disbursements, and VAT. The report must be submitted on a form and in a format approved by us, within 20 days of the end of each month.
- 4.34 Unless we agree otherwise, you must submit all Controlled Work Claims via our website, in accordance with operational instructions that we will provide to you, provided that if our website is unavailable at any time between 9am and 5pm on a Business Day on which you wish to submit a Claim, and if it remains unavailable throughout the following Business Day you may submit Claims in writing or in such other manner as we may reasonably specify, giving the same information as you would have given had our website been available for use.

## **Assessment procedures**

- 4.35 Paragraphs 6.8 and 6.56 to 6.86 also apply to the assessment of Controlled Work Matters other than where they are expressed as applying to Licensed Work cases only.

### *Standard Fees and Graduated Fees*

- 4.36 We have the right to Assess all your Claims for Standard Fees and Graduated Fees in accordance with the provisions of the Contract. However, we will not amend any Standard Fee or Graduated Fee payable to you as a result of an Assessment except as set out in this rule:
- (a) we will not pay for work that is outside the terms of the Contract;
  - (b) where your Contract is terminated and you do not (or are not permitted to) complete your Matters and cases then:
    - (i) if the Contract terminates under Clause 25.2 of the Standard Terms, or you terminate the Contract pursuant to Clause 25.1 of the Standard Terms, subject to the other provisions of this Paragraph and to any Category Specific provisions, we will pay the Standard Fee or Graduated Fee or pay the case as an Escape Fee Case, as appropriate; or

- (ii) otherwise, we may pay the lower of the Assessed amount or the Standard Fee or Graduated Fee;
  - (c) where more than one Standard Fee or Graduated Fee has been made for a case that should, in our reasonable view, have been treated as one Matter Start (see Paragraphs 3.29 to 3.49 and the Category Specific Rules) then we may Assess the costs of any additional Standard Fee and Graduated Fee Claims as nil, so that only one Standard Fee or Graduated Fee is payable. Any appeal or review of such an Assessment under the Specification will proceed on the basis of determining this issue;
  - (d) in the case of Graduated Fees, we may decide that you have claimed at the wrong level and restrict your payments to a lower level of Graduated Fee;
  - (e) where you have failed to evidence on file that the relevant criteria in the Merits Regulations and Financial Regulations have been met;
  - (f) where you have failed to retain on file evidence that is described in the Procedure Regulations; or
  - (g) where work is not within the scope of Legal Aid.
- 4.37 We may also take into account the results of any Assessment under Paragraph 4.36 in:
- (a) assessing your performance under this Contract; and
  - (b) deciding whether your work should be subject to quality assessment or another form of Audit.

#### *Claims for Hourly Rates*

- 4.38 We have the right to Assess all your claims for Controlled Work at Hourly Rates. We may Assess the claim either before or after the Credit (as defined in Paragraph 4.33) in relation to that Claim has been given. Where an Assessment is carried out after a Credit has been given in relation to any Matter, then that Credit may be adjusted accordingly.

#### *Controlled Work Costs Audits*

- 4.39 When we assess a sample of your Controlled Work Claims, whether paid or payable as a Standard Fee or Graduated Fee or by Hourly Rates, we may apply any findings (see Paragraph 4.40) to your other claims for payment for Controlled Work. When we apply findings in this way, we may do so for all cases commenced under this Contract (or any Previous Contract it has replaced) where costs have been claimed from us either:
- (a) since the date the file sample was requested for the last contract compliance audit; or
  - (b) from a date 12 months immediately preceding the date the file sample was requested for assessment on the current Audit;

whichever is the most recent.

4.40 "Findings" for the purposes of Paragraph 4.39 includes not only findings on particular practices (such as failing to assess financial eligibility) but in relation to more general matters, such as:

- (a) claiming excessive time for preparation or attendances;
- (b) the average percentage reduction on assessment of a sample of your files;
- (c) claiming for more than one Standard Fee or Graduated Fee where we consider that only one such fee should be payable; or
- (d) where we consider the wrong level of Standard Fee or Graduated Fee has been claimed.

4.41 When findings (as set out at Paragraph 4.40) are applied to a Claim under these provisions, then we have assessed that Claim.

#### **Exceptional Case**

4.42 You are authorised, under this Contract, to be paid in accordance with the Remuneration Regulations for any Exceptional Case that you undertake under this Section 4.

## **Section 5            Carrying out Licensed Work**

### **Scope of Licensed Work**

#### *Undertaking Licensed Work*

- 5.1        You may only perform Licensed Work:
- (a)        that is within the scope of the Act and for which the Client qualifies in accordance with the Merits Regulations and the Financial Regulations;
  - (b)        in accordance with the Procedure Regulations;
  - (c)        that is covered by the terms of a Certificate;
  - (d)        that is not prohibited by any restriction in your Schedule; and
  - (e)        in cases in an exclusive Category of Law as defined by Paragraph 2.28, where you have a Schedule Authorisation in that Category.

#### *Delegated Functions in respect of Licensed Work*

- 5.2        Subject to Paragraph 5.2A below, provided you have Schedule Authorisation in the relevant Category of Law, and subject to any restriction within your Schedule and to Paragraphs 5.3 and 5.4, you may carry out the following actions on behalf of the Director in accordance with an Authorisation:
- (a)        make a determination that a Client qualifies for authorised representation provided on an emergency basis;
  - (b)        amend or refuse to amend a limitation or condition to which a determination in respect of Emergency Representation is subject;
  - (c)        any actions in the Category Specific Rules set out at Sections 7 and 8; and
  - (d)        any additional actions delegated to you in accordance with an Authorisation.

5.2A      The requirement to have Schedule Authorisation in the relevant Category of Law referred to in Paragraph 5.2 above shall not apply by way of restriction on the exercise of Delegated Functions where expressly exempt under an authorisation made by the Director under section 5(3) of the Act or under regulations pursuant to section 5(4) of the Act.

- 5.3        The Delegated Functions set out at Paragraph 5.2 are subject to the following:
- (a)        **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), section 47(5) National Health Service and Community Care Act 1990 (as amended), section 19(3) Care Act 2014 or section 36 of the Social Services and Well-being (Wales) Act 2014 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;

- (b) public interest cases: you do not have the power to make a determination that a Client qualifies for civil legal services on the grounds that the case has a significant wider public interest; and
- (c) Exceptional Case: you do not have the power to make a determination under section 10 of the Act.

Decisions on public interest are taken by the Director (where necessary after referral to the Special Controls Review Panel).

- 5.4 The Director may extend or restrict the extent of your Delegated Functions relating to Licensed Work, by varying an Authorisation.

### **Application procedures**

#### *Electronic applications*

- 5.5 Where you submit an application electronically you must, where necessary, register your Client's details on our online Client registration system (in accordance with such Contract Guide as we may issue), and you will be deemed to have certified that:

- (a) your Client has signed a printed copy of the application form;
- (b) you have retained this form on your file;
- (c) you have explained to the Client their obligations and the meaning of their declaration;
- (d) you have given to the Client to keep our leaflets referred to in their declaration and have explained the statutory charge to them;
- (e) you have provided as accurately as possible all the information requested on the application;
- (f) you have seen and retained copies of any documentary evidence referred to in support of the application; and
- (g) your Schedule authorises Licensed Work in the proceedings to which the application relates.

#### *Case starts*

- 5.6 This Contract does not restrict the number of Licensed Work cases you may undertake unless any such restriction has been imposed on you by way of Contract

amendment or Sanction and is set out in your Schedule. Category Specific Rules may however require a minimum volume of Licensed Work cases.

### **Financial eligibility**

- 5.7 Where you submit an application for Licensed Work electronically, you will be the person responsible for determining financial eligibility pursuant to the Financial Regulations unless the assessment of means is referred to us at our request or in accordance with Paragraph 5.8.
- 5.8 You must refer an assessment of a Client's means to the Director if you are aware of any of the following circumstances:
- (a) the Client is based overseas;
  - (b) the Client is self-employed, a partner in a business, a company director or a shareholder in a private or limited company;
  - (c) the Client has negative disposable income;
  - (d) there is suspected fraud;
  - (e) the case involves personal insolvency or there are assets held under a freezing order;
  - (f) there is an interest under a will or trust fund;
  - (g) the Client has access to a third party's assets, assets that have been sold or transferred, or assets are held overseas;
  - (h) there is an apparent aura of wealth;
  - (i) the Client has previously provided false information;
  - (j) the Client has had a previous determination revoked or withdrawn due to non co-operation with a means enquiry; or
  - (k) the Client's means are subject to an ongoing investigation.

References to "Client" in this Paragraph 5.8 include any person whose means are to be or may be aggregated with those of the Client under the Financial Regulations.

### **Special Case Work and Special Cases Unit**



- 5.9 You must refer any application for a determination that a Client qualifies for civil legal services provided as Licensed Work or case which is currently subject to a determination that the Client qualifies for Licensed Work to the Special Cases Unit if the case falls within the circumstances described in the Procedure Regulations in which the Director may treat a case as Special Case Work.
- 5.10 The Director may also refer any application for a determination that a Client qualifies for civil legal services provided as Licensed Work, or case covered by a Certificate currently in force, to the Special Cases Unit if the case falls within the circumstances described in the Procedure Regulations in which the Director may treat a case as Special Case Work.

### **Prior authority**

- 5.11 You may apply in writing to us, in advance on a form we specify, for prior authority for incurring an item of costs where:
- (a) that item of costs is either unusual in its nature or is unusually large;
  - (b) you propose to instruct a Queen's Counsel or more than one Counsel (see Paragraph 6.60(d));
  - (c) prior authority is otherwise required under the Specification; or
  - (d) you seek to pay an expert higher rates than are set out in the Remuneration Regulations.
- 5.12 Where you have been granted prior authority, the item of costs will be allowed on Assessment unless it becomes apparent that the authority was obtained as a result of your provision of incorrect information or circumstances have changed materially between the authority being obtained and the costs being incurred. However:
- (a) any prior authority given takes effect subject to any overall limitation on costs (including the Costs Limit) specified in the relevant Certificate; and
  - (b) the fact that you have obtained prior authority for an item of costs must not prevent your seeking to recover the full costs of that item from another party under any relevant inter partes costs order.

### **Use of Counsel**

- 5.13 Other than in relation to the instruction of Queen's Counsel or more than one Counsel (see Paragraph 5.11(b)), you do not require our authority to instruct Counsel, but Counsel's fees will only be paid to the extent that they are assessed as reasonable and proportionate and within the scope of the Certificate.
- 5.14 All instructions delivered to Counsel must:
- (a) include a copy of the current Certificate which records a determination, where available;
  - (b) include a copy of any prior authority to instruct Counsel; and

(c) be endorsed with the Certificate reference number, where available.

- 5.15 Where the Certificate has not yet been issued at the point that instructions are delivered to Counsel, a copy must be provided to Counsel within 14 days of your receiving it.

### **Clients with a financial interest in your costs**

- 5.16 Paragraphs 3.64 and 3.65 apply also in relation to Licensed Work cases. In Licensed Work cases your Client will also have a financial interest in your costs where his/her determination has been revoked.

### **Application of the statutory charge to Licensed Work**

- 5.17 You must not accept instructions to propose an order or settlement or agree a consent order having the effect that money that may be subject to the statutory charge is not paid to you or to us as required by regulations made under section 25 of the Act, or that otherwise may hinder our enforcement or protection of the statutory charge.
- 5.18 In complying with your duty under regulations made under section 25 of the Act to report to us where money or other property is recovered or preserved by your Client (including costs), and in any subsequent communications in relation to the statutory charge, you must provide all relevant information and not seek in any way to mislead us in relation to the application or extent of the statutory charge.
- 5.19 Your retainer under a Certificate in respect of Licensed Work does not extend to making representations to us, the Land Registry or Adjudicator of the Land Registry against application, extent or enforcement of the statutory charge in relation to services under that Certificate.
- 5.20 Where you fail to take steps required under Legal Aid Legislation or this Contract to protect the statutory charge, we will be treated as having suffered loss for the purposes of Clause 14.12(b) of the Standard Terms.
- 5.21 In cases where a proportion of the Client's damages is or may be required to be paid by the Client pursuant to regulations made under section 23(3) of the Act, you must report this to us in the format we specify.

### **Exceptional Case**

- 5.22 You are authorised, under this Contract, to apply for an Exceptional Case in respect of Licensed Work in accordance with the procedures set out in the Procedure Regulations.

## **Section 6            Payment for Licensed Work**

### **General regime**

6.1        Subject to:

- (a)        our and the court's right to assess Claims for Licensed Work; and
- (b)        our right under this Contract to reduce payments,

we will pay you for Licensed Work which is properly conducted and claimed in accordance with the terms of this Contract and in accordance with the provisions set out in the Remuneration Regulations. All payments are subject to the Category Specific provisions at Sections 7 and 8 of this Specification.

6.2        We will pay you after our receipt from you of each individual case Claim.

6.3        All provisions in this Contract as to the timing of payment for individual case Claims are subject to Paragraphs 6.4 to 6.9.

6.4        Subject to our receipt from you of "all necessary information and payments" in connection with an individual case Claim (and provided you have complied with your obligations in respect of the bill or Claim and the case to which it relates) any payment for it due under this Contract will be made no later than 28 days after the "relevant date" (see Paragraph 6.5). Normally, payment will be included in one of the regular settlements that we make, the dates of which are published on our website.

6.5        Subject to Paragraph 6.7, the "relevant date" for the purposes of Paragraph 6.4 is:

- (a)        where a bill or Claim has been assessed by a court, 7 days after compliance and receipt of "all necessary information and payments", as required by Paragraph 6.4; and
- (b)        for any other bill or Claim (including claims for Payments on Account) either:
  - (i)            the date on which we have assessed it or otherwise passed it for payment; or
  - (ii)          the date of receipt of "all necessary information and payments" and compliance, as required by Paragraph 6.4,

whichever is later. Where there is an appeal against an Assessment, the date of the appeal decision is the date of the Assessment, for the purposes of this Paragraph 6.5.

6.6        In Paragraphs 6.4 and 6.5:

- (a)        "all necessary information" comprises all information that we require to enable us to perform our functions under the Act, whether required from you or Counsel or an expert you have instructed. Such information may

include but is not limited to: correct and properly completed forms; information to enable us to assess the bill or Claim; information to enable a decision to be made as to whether the statutory charge on property recovered or preserved applies or whether there should be a re-assessment of the Client's means; and/or information necessary to demonstrate that this Contract has been complied with and responses to all reasonable queries;

(b) "all necessary payments" means any payments that, under this Contract, you are obliged to make in respect of the case and may include payment to us of property recovered or preserved for the Client.

6.7 If you have failed to comply with your obligations in respect of the bill or Claim or the case to which it relates the relevant date (if later than that provided by Paragraph 6.5) is 14 days after all necessary steps to protect our (and the Client's) position have been completed.

6.8 You must comply with the provisions on claiming and assessment in respect of Contract Work set out in the terms of this Contract, Legal Aid Legislation and the Civil Procedure Rules.

#### *Basis of Assessment*

6.9 All assessments of Contract Work are to be on the Standard Basis as defined by Civil Procedure Rule 44.4(2), subject to the other provisions of this Specification and any Contract Guide.

#### **Fee definitions**

6.10 We will pay for Licensed Work in accordance with the provisions set out in the Remuneration Regulations . All rates are exclusive of VAT.

6.11 For this purpose the Family Prescribed Rates set out in the Remuneration Regulations apply to all Family Help (Higher) and Legal Representation provided in the Family Category with the exception of the following:

(a) proceedings under the Inheritance (Provision for Family and Dependants) Act 1975;

(b) proceedings under the Trusts for Land and Appointment of Trustees Act 1996; and

(c) Judicial Review proceedings,

which will be paid at non-family Prescribed Rates.

6.12 Prescribed Rates also apply to relevant work within detailed assessment proceedings.

#### **Hourly Rates enhancements**

- 6.13 The following rules apply only to remuneration by way of Prescribed Rates under the Remuneration Regulations (but excluding for this purpose any determination as to whether a case escapes from any Standard Fee or Graduated Fee - see Category Specific Rules). No other form of enhancement or uplift is payable for such work.
- 6.14 The threshold test: on assessment of Licensed Work we or the court may allow fees at more than the Prescribed Rate in respect of any item or class of work where it appears, taking into account all the relevant circumstances, that:
- (a) the work was done with exceptional competence, skill or expertise;
  - (b) the work was done with exceptional speed; or
  - (c) the case involved exceptional circumstances or complexity.
- 6.15 Where we or the court consider that any item or class of work should be allowed at more than the Prescribed Rate, it shall apply to that item or class of work a percentage enhancement in accordance with the following provisions.
- 6.16 In determining the percentage by which fees should be enhanced above the Prescribed Rate we or the court shall have regard to:
- (a) the degree of responsibility accepted by the legal advisor;
  - (b) the care, speed and economy with which the case was prepared; and
  - (c) the novelty, weight and complexity of the case.
- 6.17 The percentage above the Prescribed Rate by which fees for work may be enhanced shall not exceed 50%. The exception to this is that in proceedings in the High Court, Court of Appeal, Upper Tribunal or Supreme Court, we or the court may allow an enhancement not exceeding 100% where it is considered that, in comparison with work in other proceedings in those courts which would merit 50% enhancement, the item or class of work relates to exceptionally complex matters which have been handled with exceptional competence or speed.
- 6.18 We or the court may have regard to the generality of proceedings to which the relevant Prescribed Rates apply in determining what is exceptional within the meaning of this provision.

### **Fast track proceedings**

- 6.19 Where proceedings are allocated to the fast track as defined in Part 28 of the Civil Procedure Rules:
- (a) the amount payable by us to any advocate, whether from your personnel or a representative instructed by you, shall not exceed the amount of fixed costs allowable under Civil Procedure Rule 45.38;
  - (b) the amount payable by us to any legal representative attending court to assist the advocate shall not exceed the amount allowable under Civil Procedure Rule 45.39(2) regardless of any amounts actually awarded by the court under Civil Procedure Rule 45 VI.

## Payments on Account

- 6.20 Your right to apply for Payments on Account for Licensed Work is governed solely by the provisions of Paragraphs 6.21 to 6.31 and Category Specific Rules.
- 6.21 On any Licensed Work case, you may apply to us for a Payment on Account of your disbursements incurred, or about to be incurred, under the Certificate.
- 6.22 On any Licensed Work case, subject to Paragraph 6.24 and Category Specific Rules, you may apply to us for a Payment on Account of your profit costs incurred under the Certificate provided that:
- (a) an application for a first Payment on Account may not be made earlier than 3 months after the issue of the Certificate;
  - (b) you may make no more than two applications within any 12 month period; and
  - (c) cumulative Payments on Account for profit costs under a Certificate must not exceed 75% of the amount of your incurred profit costs, calculated at the date of each application for the Payment on Account.
- 6.23 When deciding whether to make any Payment on Account, we will exercise our reasonable discretion and are entitled to take into account:
- (a) the limitations on the Certificate; and
  - (b) the financial situation of your account with us.
- 6.24 Your Schedule may specify a Maximum PoA Limit. Payment on Accounts will not be made where this would cause the Maximum PoA Limit to be exceeded. If any Maximum PoA Limit is exceeded, the excess is automatically repayable to us. If you become aware that any Maximum PoA Limit is exceeded, you must notify us to enable us to adjust your account (or to require repayment) should we wish to do so.
- 6.25 Category Specific Rules in the Specification may provide different payment terms for a specified Category of Law. If any such provisions state that they override any of the above payment provisions, then they shall do so.
- 6.26 If you are in practice as solicitors, we agree that you may pay Payments on Account in to your office account, if permitted or required to do so under any accounts rules applicable to you.
- 6.27 Any Payment on Account will be an "overpayment or mispayment" under Clause 14.12 of the Standard Terms where:
- (a) it is made in respect of a Claim in breach of Paragraphs 6.22 or 6.24;
  - (b) it is "repayable" under Paragraph 6.28.
- 6.28 A Payment on Account is "repayable" to us when any of the following occurs:

- (a) three years have elapsed since the date of issue of the Certificate for the case in respect of which the Payment on Account was made;
- (b) three months have elapsed since the case ended;
- (c) we have requested information from you about the case and you have failed to provide it to our reasonable satisfaction within 14 days; or
- (d) the Payment on Account was on account of third party fees or other disbursements and they have not been incurred within one month of receipt of the Payment on Account (or to the extent that they have not been incurred up to the amount of the Payment on Account, the excess of the Payment on Account is repayable).

6.29 If you become aware that any of the events set out in Paragraphs 6.27 or 6.28 has occurred you should notify us within 14 days of becoming aware to enable us to adjust your account (or to require repayment) should we wish to do so and you shall promptly make any repayment requested by us.

6.30 Before seeking repayment in respect of an overpayment or mispayment under Paragraph 6.27, we will give you an opportunity to state why we should not do so. If you have made out good reason why we should not do so, then we shall not seek repayment.

6.31 Any Payments on Account made to you in respect of a Licensed Work case become repayable to us on a final assessment of the Claim made in respect of that case and may be set-off against any payment due to you under Clause 14.11 of the Standard Terms.

### **Assessment procedures**

6.32 In respect of Licensed Work, for Claims where the court is responsible for Assessment (in accordance with Paragraph 6.37), you must first submit your Licensed Work Claims for Assessment by the court and when this Assessment is complete you must make a Claim for payment from us within 3 months of receipt by you of the final assessment certificate from the court.

6.33 In respect of Licensed Work Claims where we are responsible for Assessment (in accordance with Paragraphs 6.37 to 6.38) you must submit to us a Claim for payment and Assessment on the required form.

6.34 All claims for Assessment and payment by us must be submitted within 3 months of the right to claim accruing. The right to claim accrues in the following circumstances:

- (a) when an assessment certificate is issued by the court; or
- (b) where the Claim is to be assessed by us when:
  - (i) a final order of the court is made for detailed assessment of your costs under this Section 6; or

- (ii) the later of: the date of service of a notice of discontinuance under Civil Procedure Rule 38.3 in respect of the entire proceedings under the determination to which the Certificate relates; or 3 months after the date of the dismissal of application to set the notice of discontinuance aside under Civil Procedure Rule 38.4; or
- (iii) an offer to settle is accepted or a payment into court is made under Civil Procedure Rule Part 36 in respect of the entire proceedings under the determination to which the Certificate relates; or
- (iv) if none of (i) to (iii) above apply, the date of the withdrawal of the determination (or, where relevant, the date that the withdrawal has been finally confirmed on appeal).

6.35 We may require you to submit your Licensed Work claims through the Online Service. Where you submit your Claim for costs electronically you will be deemed to have certified that:

- (a) the information provided is correct;
- (b) the work for which the Claim is made has not and will not be the subject of any other claim for remuneration from public funds; and
- (c) where the Client has a financial interest in your Claim, you have complied with Paragraph 6.59.

*Late claiming where your Client has a financial interest*

6.36 If, in a case where your Client has a financial interest in your Claim you fail to submit your Claim as required in Paragraphs 6.32 or 6.34, we may serve notice requiring you submit your claim within two months of the date of that notice. Where you fail, within the time specified by that notice, either to submit your claim or to provide a satisfactory explanation, we may disallow your Claim to the extent of your Client's financial interest. Any disallowance of your costs under this Paragraph will be treated as subject to the appeal procedures in this Section 6, whether or not the case falls for assessment by us.

**Court assessment**

6.37 Except where:

- (a) it is or may be necessary for the court to carry out a detailed assessment of costs payable to the Client by another party to the proceedings; or
- (b) having regard to interests of the Client and public funds, the weight or complexity of the case and all the other circumstances, we consider it appropriate to direct that the costs be subject to detailed assessment,

your Claim for payment for Licensed Work will be assessed by us.



- 6.38 A direction under Paragraph 6.37(b) may relate to an individual case or to any class of case, identified by the level of costs to be assessed or otherwise. In cases where costs are to be subject to assessment by the court, detailed assessment proceedings must be commenced within the time specified in the Civil Procedure Rules.

### **Rules applying to detailed assessments**

- 6.39 Costs you incur in detailed assessment proceedings may be included in the Licensed Work Claim to which the detailed assessment relates and are not payable separately. The amount of such costs payable shall be as determined by the detailed assessment itself, except as provided by Paragraph 6.40.
- 6.40 Costs claimed may not be claimed under Paragraph 6.39 that relate to the detailed assessment of work covered by a Client's costs order or costs agreement in addition to the costs recovered under the Client's costs order or costs agreement, other than Legal Aid only costs within the definition of 6.51(b) and (c).
- 6.41 The costs you incur in any appeal against a decision made in a detailed assessment may only be claimed from us to the extent that this is ordered by the court hearing the appeal.
- 6.42 You cannot Claim costs under the Certificate for either:
- (a) detailed assessment proceedings (including any appeal) that do not include an assessment of Legal Aid costs unless we have specifically authorised this work at Contract remuneration rates in the interests of recovering public funds; or
  - (b) detailed assessment proceedings in respect of a costs order against the Client, unless an amendment to the Certificate has been specifically granted for this purpose.
- 6.43 For the avoidance of doubt:
- (a) the costs referred to in Paragraphs 6.39 and 6.42 do not form part of the statutory charge and are not subject to the Costs Limit on the relevant Certificate(s); but
  - (b) the costs of preparing and checking a bill of costs do form part of the statutory charge (where it applies to a case) and are subject to the final Costs Limit on the relevant Certificate.
- 6.44 Where fees of Counsel that you have instructed are reduced on a detailed assessment (or provisional assessment) you must notify Counsel of this reduction within 7 days of the date of that assessment, and subsequently endorse your bill of costs with the date of this notification; where Counsel's fees have not been reduced you should certify that no such notification is necessary.

### **Costs payable by another party**

- 6.45 Where a Client's costs order or Client's costs agreement has been made you may in addition to the costs under that order or agreement ('inter partes costs') claim

from us your Legal Aid only costs, as defined by Paragraph 6.51, at the rates specified in the Remuneration Regulations.

- 6.46 Where you have agreed and received the inter partes costs you may seek Assessment solely of your Legal Aid only costs under the provisions of Paragraphs 6.32 to 6.44. Otherwise, any Assessment of your costs must be in respect of your full Claim.
- 6.47 Unless inter partes costs have previously been agreed, the Assessment of your costs under Paragraph 6.34(b)(i) must be concurrent with the detailed assessment of the inter partes costs.
- 6.48 The time period under Paragraph 6.34 for submitting to us a Claim for assessment under Paragraphs 6.33 or 6.34 may be extended with our agreement, but not beyond 3 months from the point that inter partes costs are agreed.
- 6.49 Where you do not intend to make a Claim in respect of a matter you must report to us on the form specified by us within 2 months of your receipt of inter partes costs.
- 6.50 You must notify us of any Client's costs order or Client's costs agreement within the time period specified at Paragraph 6.34, if you have not already submitted a Claim or reported under Paragraph 6.49 in respect of the matter.
- 6.51 'Legal Aid only costs' are costs:
- (a) of Contract Work not covered by a Client's costs order or Client's cost agreement;
  - (b) of completing our forms and communicating with us; or
  - (c) that have not been allowed on inter partes detailed assessment or the paying party has reasonably refused to pay in agreeing inter partes costs:
    - (i) in respect of which we have granted prior authority under Paragraph 5.11;
    - (ii) in respect of work which we have specifically requested or authorised for the purposes of considering the making, withdrawal or amendment of a determination in respect of Legal Aid;
    - (iii) that represents a reasonable adjustment you have made as a Provider under the terms of the Equality Act 2010;
    - (iv) in respect of the travel expenses of a Client other than to attend court as a witness of fact.
- 6.52 Where a Client's costs order or Client's costs agreement specifies that another party shall pay a proportion of the Client's costs (but not a fixed sum), for the purposes of Paragraph 6.51 work is not covered by that order or agreement in the

same proportion that the Client's costs are not payable under that order or agreement.

- 6.53 Where you agree and receive inter partes costs in the circumstances of Paragraphs 6.46 or 6.49 we authorise you pursuant to Legal Aid Legislation to retain those inter partes costs, subject to accounting to us for any interest due under Paragraph 6.54.
- 6.54 Where interest has been received or is payable on inter partes costs, you are entitled to the proportion of the interest which relates to the amount (if any) by which the inter partes costs exceed the amount paid or payable by us in relation to the relevant dispute or proceedings. The remainder of the interest is payable to us.

### **General provisions on claiming and assessment**

- 6.55 You may only Claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment. This is without prejudice to your right to Claim Standard Fees and Graduated Fees.
- 6.56 You must submit your Claims in accordance with the terms of any limitations placed upon that case including, but not limited to, limitations on Certificates. We may reject any Claim you make which does not comply with the rule in this Paragraph 6.56.
- 6.57 Where any item of costs is to be claimed on more than one case, this fact must be recorded on each of the relevant files and Claims, together with the proportion of time and costs attributed to each matter. Consecutive attendances on the same Client(s) where continuous are to be treated as a single item of costs for the purposes of this rule in Paragraph 6.57.
- 6.58 Whether or not your Client has a financial interest in the case, in carrying out Contract Work you must endeavour where possible to obtain and pursue a Client's costs order or Client's costs agreement as you would if acting for a privately paying client (including in any detailed assessment proceedings or negotiations in respect of a Client's costs order or Client's costs agreement), and you must seek to protect the interests of public funds on any detailed assessment of costs payable by another party.
- 6.59 If your Client has a financial interest in any Claim or Assessment they are entitled to make representations in relation to your Claim. Before submitting your Claim for assessment, whether by the court or us, you must:
- (a) notify your Client that they have a financial interest and explain why;
  - (b) explain that they have a right to make representations and set out how they can make those representations, explaining such other steps that they may take to safeguard their interest;
  - (c) provide them with a copy of your bill of costs or claim for costs; and

- (d) endorse your bill or Claim indicating that you have complied with the steps in Paragraph 6.59(a) to (c).

6.60 Without prejudice to the generality of Paragraph 6.55, you should note the following provisions regarding costs and disbursements:

- (a) you must not claim for time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting the administrative requirements of your Contract (such as the information return and the Claim for costs), unless expressly provided by this Contract or Costs Assessment Guidance;
- (b) you must not claim for time spent on legal research over and above brief checks on the law, unless the case involves a novel, developing or unusually complex point of law, justifying either legal research by you or the obtaining of an opinion from Counsel;
- (c) you must not claim for any additional costs incurred by you or your Client because you are based in a Location distant from your Client where it would have been reasonable for your Client to have instructed a Provider located nearer to him or her;
- (d) you must not Claim for the fees of Queen's Counsel or more than one Counsel unless you have obtained prior authority to instruct Queen's Counsel or more than one Counsel under Paragraph 5.11. For the avoidance of doubt, prior authority to instruct a Queen's Counsel is required only where Queen's Counsel will act as such but not where Queen's Counsel chooses to act and be paid only at junior Counsel rates; and
- (e) You must not claim for matters that properly fall as your overheads, such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges, telephone charges and the time and costs of photocopying, save as provided for in the Costs Assessment Guidance.

6.61 Where you instruct an expert to deliver services of a type set out in the Remuneration Regulations we will not pay fees in excess of those in Remuneration Regulations unless:

- (a) we consider it reasonable to increase such fixed fees or rates in exceptional circumstances; and
- (b) we have granted prior authority to exceed such fixed fees or rates on such basis.

Subject to such limits where applicable, the amounts claimed for the provision of expert services must be justified on detailed assessment by the court or Assessment by us in the normal way. For the purpose of this Paragraph 6.61, "exceptional circumstances" means that the expert's evidence is key to the Client's case and either the complexity of the material is such that an expert with a high level of seniority is required; or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence.

We will pay expert services of a type not listed in the Remuneration Regulations at such rate as we may from time to time determine and in considering the same we will have regard to the rates set out in the Remuneration Regulations and we may require you to provide us with a number of quotes in respect of the provision of the relevant service.

- 6.62 The list of non-allowable disbursements under Controlled Work at Paragraph 4.24 applies to Licensed Work cases, save in relation to court fees. The maximum rates for experts' travel time and costs set out in Remuneration Regulations also apply to Licensed Work cases.
- 6.63 Any Assessment undertaken by us or by the Assessor on a subsequent appeal, will be subject to any costs or other limitations imposed by us and costs will only be allowed at the appropriate rates as set out in the Remuneration Regulations.
- 6.64 For Licensed Work even if the court undertakes the assessment, we are only bound to pay costs in accordance with Paragraph 6.63.
- 6.65 On any Assessment of your costs, Counsel's fees shall not be reduced by virtue of the Costs Limit in the determination unless Counsel's fees alone exceed the final limitation on the Certificate, in which case Counsel's fees are paid up to that limitation and no further payment is made except in relation to any costs of detailed assessment proceedings. You will then be responsible for the balance of Counsel's fees, unless you had, at all material times, notified Counsel of the relevant Costs Limit.
- 6.66 We may, however, impose a separate Costs Limit in respect of Counsels' and experts' fees.

**Review of decisions under regulation 5 A (1) (b) of the Remuneration Regulations.**

- A. You and/or Counsel must not submit a final claim for assessment to the court or to us until you have lodged any application you and/or Counsel are intending to make under Regulation 5A (1) (b) of the Remuneration Regulations (payment for civil legal services to make an application for judicial review where the court has neither refused nor given permission to bring judicial review proceedings) and received a final decision on that matter from us.
- B. If you or Counsel are dissatisfied with our decision not to exercise discretion pursuant to Regulation 5 A (1) (b) of the Remuneration Regulations you may seek an internal review of that decision
- C. The request for internal review must be made in writing (setting out full reasons) within 28 days of notification of the decision. We will only extend the 28 day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- D. Failure to comply with any of the requirements set out in Paragraph 6.69 means that you accept our decision and lose your right to an internal review

- E. For the avoidance of doubt there is no right of appeal to an Independent Costs Assessor or an Independent Funding Adjudicator where we have decided not to exercise discretion pursuant to Regulation 5 A (1) (b) of the Remuneration Regulations

## **Appeals**

- 6.67 If you or Counsel are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor ("the Assessor"). For the avoidance of doubt, subsequent references in this rule in Paragraph 6.67 and its related Contract Guide shall include "Assessors" in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.
- 6.68 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28 day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 6.69 Failure to comply with any of the requirements set out in Paragraph 6.68 means that you accept our decision and lose your right to dispute it.
- 6.70 Where an appeal is to proceed, we also have the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If we do so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from us then you have the right, within 14 days, to provide a written response to them.
- 6.71 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:
- (a) in your case, you submit your written appeal; and
  - (b) in our case, at the same time as we make any written reply (or, where no written reply is made, during the period allowed for making such reply) .

Either party may challenge such an application for an oral hearing to the Assessor within 7 days of the application being made.

- 6.72 The Assessor will consider the request and notify both parties of his or her decision.
- 6.73 If:
- (a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the

appeal cannot be concluded properly without hearing oral submissions;  
or

- (b) having considered a party's request for an oral hearing, he or she is of the opinion that the request should be granted,

he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.

- 6.74 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone he or she may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.
- 6.75 The Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.
- 6.76 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, the Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 4.39. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.
- 6.77 Where in dealing with an appeal on the papers only the Assessor identifies new issues the Assessor will, as he or she considers appropriate in the circumstances, either:
  - (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
  - (b) refer the matter back to us for a new decision.

### **Final payments to Counsel and experts**

- 6.78 Where you instruct Counsel in relation to Licensed Work, other than work covered by the Family Advocacy Scheme (see Section 7, Part D) or Remuneration Regulations and subject to Category Specific Rules, you are responsible for claiming Counsel's fees as a disbursement, which will be subject to Assessment by us or by the court under this Specification. However, we will pay Counsel directly, save where any Category Specific Rules or individual case contract specifies otherwise and subject to any overall Costs Limit on the Certificate or Counsel specific limitation.
- 6.79 We may, however, introduce or pilot a requirement for:

- (a) Counsel and/or experts to claim their fees directly from us and to provide that no final payments shall be made to you, Counsel or experts until all claims have been received; or
- (b) specific experts to be instructed by you pursuant to changes in legislation or the justice system.

**Exceptional Case**

6.80 You are authorised, under this Contract, to be paid in accordance with the Remuneration Regulations for any Exceptional Case that you undertake under this Section 6.