



Legal Aid
Agency

Exceptional Cases Funding – Provider Pack

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1. Overview

This guidance provides information about the application processes for an exceptional case determination for controlled work or licensed work (either in the form of family help higher or legal representation) or special case work. A separate pack covers applications for funding for inquests.

2. Exceptional case determinations

An exceptional case determination is a determination made under Section 10 (3) (a) or 10 (3) (b) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). The application is for civil legal services for a case that falls outside the scope of legal aid.

In order for an exceptional case to be funded the client must also qualify for legal aid under the financial eligibility criteria set out in The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 and the relevant merits criteria set out in The Civil Legal Aid (Merits Criteria) Regulations 2013, as amended.

3. The Civil Legal Aid (Procedure) Regulations 2012

Part 8 of the Civil Legal Aid (Procedure) Regulations 2012 applies to exceptional cases. Part 8 says that the procedures that apply to the form of legal aid that is applied for also apply to exceptional cases. However, there are exceptions for exceptional cases.

1. The appeal provisions do not apply to exceptional cases
2. There is a review procedure
3. There is no emergency representation
4. A determination may take effect from a date earlier than the date of the determination

Further information on urgent applications, backdating certificates and the review procedure are provided in sections 6 to 8 of this Pack.

4. Delegated functions

You are not authorised to make any decisions under Section 10 of the Act. All applications for exceptional case determinations must be made to the Legal Aid Agency.

You are permitted under the standard civil contract specification to make exceptional applications for the client.

When completing the relevant controlled work application form, you will complete the financial eligibility assessment section in accordance with the relevant provisions of the standard civil contract specification and the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. The application must then be sent to the ECF Team together with a copy of the supporting means evidence that you have obtained for your file or an explanation of why exceptionally the personal circumstances of the client make it impracticable for evidence to be supplied at the outset and/ or at any point in the case.

Guidance on the evidence requirements can be found in the Guide to Determining Financial Eligibility for Controlled Work.

It is important to note that your client will not be granted Legal Aid under Section 10 of the Act until the Legal Aid Agency has made a decision to grant an exceptional case determination and has determined that the financial eligibility and merits criteria are satisfied.

5. Making an application

Applications for licensed work must now be made on CCMS. For Controlled Work or for providers applying for an individual case contract an application may be submitted using application forms.

Form CIV ECF1 must be submitted as a supplement to CIV APP1 (non- family licensed work or special case work) or CIV APP3 (family licensed work cases) and the applicable means form must always be supplied.

For Controlled Work applications CIV ECF1 must be submitted with the relevant controlled work form. Please complete page 2 of CIV ECF1 to indicate the type of case. You will complete the section on the means assessment for the client for Controlled Work in accordance with the usual requirements but your client will not be granted Legal Aid until the Legal Aid Agency has made a decision to grant an exceptional case determination.

All completed applications for an exceptional case determination must be submitted by e-mail to the ECF team e-mail address at ContactECC@legalaidjustice.gov.uk Please refer to guidance on LAA contingency arrangements in respect of digital client signatures which can be located here:

<https://www.gov.uk/guidance/coronavirus-covid-19-legal-aid-agency-contingency-response#making-applications>

There is a separate email box for applications for exceptional case funding for appeals to the Magistrates Court against restrictions and requirements imposed under the Coronavirus Act 2020 at LegalAidCovid19Appeals@justice.gov.uk

Generally, applications to the Legal Aid Agency must be received within 2 months of the date of signature of the relevant means forms. Any applications received where the date of the relevant means form is more than 2 months ago upon receipt by the Legal Aid Agency may be rejected whereupon the client will need to make a fresh application unless an explanation is provided for the delay in submission of the forms. This would apply even if the ECF and/ or merits application form is dated within the 2-month window but the means form is dated longer than 2 months ago on receipt by the Legal Aid Agency.

We will aim to process the application within 25 working days. Because we aim to deal with all aspects of the application within this timeframe we may request additional information or documentation during the process. It is particularly important to note that a request for additional information does not indicate whether or not an exceptional case determination may be granted. Whilst we wait for information the 25-working day timeframe is placed on hold so it is important that you supply information to us as quickly as possible

You may apply for exceptional funding for Legal Help to carry out investigations as to the possibility of a further legal aid application. To make this application you should submit CIV ECF 1 completed on pages 1,2,3 and 7 and submit it with CW1. On page 3 of CIV ECF1 you will complete brief details of the work that you need to do in order to investigate whether or not to make a substantive application for exceptional case funding. We would not expect that there will be a need for significant disbursements to be incurred in this initial investigatory work. Whilst in some cases it may be appropriate to seek funding for counsel's opinion on a legal issue as to merits or interpreter's fees, it is less likely that there would be a need for expert fees including capacity assessments or medical reports.

If an exceptional case determination is made then once the work is completed you will either submit a further application for exceptional case funding or report the matter as concluded on CWA in accordance with the billing instructions in section 13 below. If you are applying for exceptional case funding for the substantive case then you will submit using CCMS or if you cannot then you will complete pages 4 to 6 of the Civ ECF1 and submit it with the relevant merits and means forms. If you are applying for further legal help under exceptional case funding there is no need to complete an additional CW1.

6. Urgency

If you wish the application to be treated as urgent in a CCMS matter you should contact us on 0300 200 2020. For a paper application you should complete page 6 of the CIV ECF1 to provide us with details as to the urgency of the case, for example an imminent date for a hearing or the imminent expiry of a limitation date or reasons why delay would cause risk of harm or prejudice to the client's case. You should also give details of the urgency in the subject heading of the email submission. We will

consider the information that you have provided including information as to how the urgent situation has arisen and why exceptional funding is needed to deal with the emergency situation) and if we agree, then we will deal with your case ahead of non-urgent applications and within 10 working days. We aim to determine all cases within 25 working days from the date of receipt of the fully completed application.

However, we cannot guarantee that the application will be determined before a hearing day or before specified urgent work is needed. We can provide information if you call our telephone enquiry line about the likely timeframe for completion of a pending application.

The Standard Civil Contract Specifications say that 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. 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.

7. The effective date of legal aid

Regulation 68(1) Civil Legal Aid (Procedure) Regulations 2012 says that a determination under Section 10 of the Act may specify that the determination is to be treated as having effect from a date earlier than the date of the determination.

We will generally backdate funding as follows:

- **Controlled Work** – Provided the application is submitted within two months of the date when the client signs the controlled work form we will backdate any successful exceptional case funding application to the date the client signs the legal help form (i.e. CW1 or CW2 (IMM) form). In most cases where the application is successful we will pay the legal help fixed fee for claims for payment in these cases and only if the case costs exceed the escape fee threshold would we pay hourly rates, when we assess the claim, from the date of signature of the form. Where the client has had the benefit of in scope legal help and subsequently seeks an exceptional case determination for an out of scope aspect of the same matter then a completed CIV ECF1 should be submitted together with a copy of the CW1 or CW2 (IMM) and we will generally backdate funding of a successful application to the date of completion of the ECF1 form.

For the avoidance of doubt where legal help was granted for investigative work, backdating of any substantive exceptional case funding application is not possible as this would mean effectively paying twice for the same work

➤ **Legal Representation** – On CCMS we would generally backdate funding to the date that a completed application is submitted on the system. For paper applications where the application is submitted within 2 months from the date recorded in the CIVAPP1 or CIVAPP3 as the date of the client’s first attendance/instruction on the matter at the firm making the application we will backdate the certificate to this date. Any work done prior to a decision on an unsuccessful application will not be remunerated. Where the date of first attendance is recorded as more than 2 months before the application for funding (for example a client who has been helped by the provider in the case for a period before making the application) then we would generally expect to backdate the certificate to the date of completion of the forms in respect of a successful application. We would expect that until you have notification of the outcome of the application only limited urgent work will be carried out for the client because no payment will be made if the application is unsuccessful. An ECF certificate will have costs limitations on it and in the first instance a backdated certificate would generally have a costs limitation of £2500. Costs will be subject to assessment as to whether they are proportionate and reasonably incurred.

If the application for exceptional case funding is successful a certificate will be issued. Where the client is required to make a contribution in respect of the costs of civil legal services the determination will be made subject to a condition that the client pays, or arranges payment of, the required contribution in accordance with regulation 36 of the Civil Legal Aid (Procedure) Regulations 2012. The client will be required to complete and return a form accepting the offer of funding with the condition of contribution payment and to make payment. Income contributions will commence from the date of acceptance of the offer. Failure to comply with this obligation will generally mean that the determination will be withdrawn. You should advise your client that in the event that they are successful in the case and secure payment of damages and /or costs the full costs of the case, from the date to which the determination is backdated, will be taken into account in calculating the statutory charge or refund of total contributions. You should also advise the client that failure to accept an offer with a condition of contribution liability will generally result in revocation of the determination and of the consequences of this.

8. Review process

Within 14 days of a refusal to make an exceptional case determination or of a decision that the applicant does not qualify for the services, the applicant may apply for a review of the decision to refuse the application.

The applicant should submit a legal appeal request task on CCMS or on an email application provide Form APP9E together with grounds for review and any supporting documentation by email to the ECF Team at ContactECC@justice.gov.uk

We will aim to process the application for review within 10 working days and notify the outcome. The application for review will be determined by a separate caseworker and the decision may be confirmed or amended or a new decision may be substituted.

There is no right of appeal or any further review process. Only one application for review may be submitted.

9. Individual case contracts

Where your client's case falls into a defined Category of Law under the Standard Civil Contract, ordinarily we expect that you will hold a contract in the category of law that your client's case falls within. For further guidance on the Category of Law definitions you should refer to the 2018 Standard Civil Contract Category Definitions. For the avoidance of doubt, there is no "miscellaneous" Category of Law; this simply refers to all work falling outside of Contract Categories.

You will tell us in the application that your office has a contract that allows you to do the legal aid work in the category of law that applies to the case. Otherwise if you are not a contract holder in the required category of law for the services applied for then you must explain why it is necessary for the effective administration of justice for you to conduct the matter. You should refer to regulation 31 (5) (a) – (d) Civil Legal Aid (Procedure) Regulations 2012. We may request additional information or documentation to make a determination under the effective administration of justice test and where we do so the application may not proceed until the additional information is provided. To carry out legal aid work under a contract your firm must have the SQM standard or the LEXCEL Practice Management Standard, owned by the Law Society.

If you make a successful application for an exceptional case and you satisfy the effective administration of justice test then you will be offered an individual case contract by the Lord Chancellor for the client's matter. When acting under an Individual Case Contract you are bound to comply with all requirements of the Standard Civil Contract as appropriate and all applicable legal aid regulations and requirements. If you do not meet the effective administration of justice test but otherwise the application for an exceptional case determination is successful and the client's case falls within our category definitions then you should refer the client to a contracted provider or signpost your client to the guidance on how to locate a provider.

If the client's case does not fall within any contract category definition and the application for an exceptional case determination is successful then we can offer an individual case contract for the client's matter without you having to satisfy the effective administration of justice test, even though you do not hold a contract with the Lord Chancellor. However, to provide legally aided services, your firm must have

the SQM standard or the LEXCEL Practice Management Standard owned by the Law Society. Providers who do hold a standard contract will carry out such exceptional cases under the terms of that standard contract in the same way as for any other miscellaneous work, without the need for a separate individual case contract but with an additional schedule authorisation for the individual case.

When you claim payment in a controlled work case if you do not have access to the Contracted Work and Administration (CWA) system to report completed controlled work cases then you should contact us by email at MHU-EC@justice.gov.uk to obtain information on how to obtain payment. Licensed (certificated) work will be claimed and paid for by using the usual claiming forms and processes on our website.

10. Direct Applicant - Client applications

A client may apply direct to the Legal Aid Agency for exceptional funding without the need to specify any Provider in the application. For an exceptional case funding determination to be made, the application must be made on the application forms that are relevant to the services applied for. Direct applicants may use the information on the Gov.uk website to assist them in making an application.

If you are instructed to apply for funding in circumstances where the client has made a direct application you should review the information provided to us in the client's application and complete the provider details and certification and submit it by email to confirm that you are willing to act for the client in the matter. For Licensed Work CCMS does not have to be used. The Legal Aid Agency letter to a Direct Applicant should be supplied. It will be particularly important to describe any change of circumstances or new facts and to identify any additional documents that are being provided to us. It is important to note that exceptional case funding may be withdrawn where the information submitted by the provider is materially different as to the facts, merits, likely benefit or likely costs.

11. On-going management of successful ECF cases

Part 8 of the Civil Legal Aid (Procedure) Regulations 2012 says that the procedures that apply to the form of legal aid that is applied for also apply to exceptional cases except for those processes set out in section 3 of this pack.

The ECF team will continue to manage any case where an exceptional case determination has been awarded unless you are notified that the case has been transferred to another team. Therefore, unless notified otherwise you should submit applications for any amendment to the controlled work determination or ECF certificate to the ECF team. Any certificate for licensed work or special case work will specify the maximum costs that may be incurred in providing the services to which the determination relates or be conditional upon the provider submitting a costed case plan and it will also contain any other limitations and conditions to which the determination is subject.

The ECF team, or any team to which the application has been referred, will continue to monitor that the applicable merits criteria remain satisfied in the usual way. It is important to note that the exceptional case funding criteria will continue to be applied during the lifetime of the case so for example if you apply for an amendment to a certificate to change the form of service from Family Help Higher to Legal Representation the ECF team will consider the issues that remain to be resolved in the case and consider whether the client will be unable to continue to present their case effectively and without obvious unfairness.

Similarly, the same reporting duties apply to exceptional case funding as to “in-scope” cases. These are set out in Regulation 40 Civil Legal Aid (Procedure) Regulations 2012.

In any case that has been transferred from the ECF team to be managed by a separate team in the LAA and where there is a refusal of amendment on merits, other than for lack of information that is then provided, or a decision to withdraw funding on the basis that the ordinary merits criteria are not satisfied no right of appeal arises in an exceptional case. Any application for a review must be submitted to the ECF team.

12. Payments, means re-assessments, statutory charge

The ECF team will assess the client’s financial eligibility in accordance with the financial eligibility criteria set out in The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 when dealing with the initial application for an exceptional case determination for licensed or special case work.

Any application for a re-assessment of means should be submitted to the ECF Team. Any re-assessment of means in a controlled work matter on a change of circumstances will be undertaken by you; further guidance is contained in the Guide to Determining Financial Eligibility for Controlled Work and Family Mediation. If this happens you should send the outcome of the assessment to the ECF Team. You should note that the ECF team does not deal with any claims for payment, either for payments on account of costs or final claims for payment. All claims for payment are made in accordance with the usual claiming processes.

Payment of remuneration for civil legal services for any case where an exceptional determination is in place, including cases where an individual case contract is in place, will be in accordance with The Civil Legal Aid (Remuneration) Regulations 2013. The statutory charge applies in the same way as for an ordinary legal aid case. Costs protection starts from the date of the certificate, whether or not the certificate is backdated to a date earlier than the exceptional case determination. Costs protection is applicable only to that part of the proceedings for which legal aid is made available. Notification to the opponents/ other parties should make this clear, whether under the notice or in a covering letter.

13. Billing Controlled Work (including investigatory work)

ECF Controlled Work is remunerated via the relevant standard or graduated fee scheme set out in Part 1 of Schedule 1 to the Civil Legal Aid (Remuneration) Regulations 2013 in the same way as in scope work for that category of work. These matters are reported on CWA in accordance with the procedure set out in section 13 of the LAA's Guidance for reporting Controlled Work & Controlled Work matters. Where a matter is to be remunerated as an escape fee case an EC1 Claim should be sent to the relevant team for assessment.

The standard and graduated fees cover all work on a case where an initial grant of ECF is made to investigate the possibility of a further legal aid application being submitted to cover the substantive services sought. If Controlled Work ends after this investigatory stage in a category where a graduated fee scheme is applicable the only fees that can be claimed are those for legal help. For example, in an Immigration matter the appropriate fee would be the stage 1 fee. In Family Law Private, it would be the fee for legal help and not the one for family help (lower).

When reporting a Controlled Work matter that ends after the initial investigation work one of the following Outcomes for Client codes should always be reported on CWA:

- Matter stopped on advisor's recommendation
- Matter proceeded under other civil legal aid

If on completion of the investigatory stage you make a successful application to the ECF Team to undertake the substantive case under Controlled Work this additional work will be treated as a continuation of the original matter. On assessment, the LAA will check that all work billed on resolving the substantive issue was properly authorised following submission of a fully completed CIV ECF form. Therefore, it is important to ensure that any authority from us permitting more than just investigatory work is kept on the Controlled Work file along with other documentation.

14. ECF Team Contact Information

The Exceptional Case Funding Team is contacted at ContactECC@justice.gov.uk

For appeals to the Magistrates Court in coronavirus cases please use LegalAidCovid19Appeals@justice.gov.uk

You can telephone us on 0300 200 2020

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