

2013 Standard Civil Contract
Specification
Category Specific Rules

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Section 10 Housing and Debt Specification

This part of the Specification sets out the rules relating to cases undertaken in the Housing and Debt Categories of Law. On 1 April 2013 the provisions of the Act will come into force. The result of this is that some matters which were previously within the scope of funding in the Housing and Debt Categories are now no longer within the scope of this Contract. Providers will therefore need to satisfy themselves before undertaking work in either of these Categories that the work is within scope.

Legal Help in relation to the Debt matters described at paragraph 1(a) to (c) of the Debt section of the Category Definitions 2013 is Gateway Work and, subject to limited exceptions described in the Procedure Regulations, must be referred to the Gateway.

Housing and Debt are separate Categories of Law under this Contract but have a combined Supervisor standard.

Combined Supervisors' Legal Competence Standard for Housing and Debt

10.1 At any time during the Contract the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in the combined Housing and Debt case Categories in Table One below:

Table One		
	Housing and Debt case Categories	Minimum number of case files required
1	Possession/Repossession: <ul style="list-style-type: none"> • Rent arrears • Mortgage arrears • Other possession (including nuisance, returning owner etc.) 	5 case files.
2	<ul style="list-style-type: none"> • Homelessness 	3 case files
3	<ul style="list-style-type: none"> • Private disrepair • Public disrepair • EPA – statutory nuisance 	2 case files from any in the list

10.2 At any time during the Contract the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in each of the 3 case types in Table Two below:

Table Two		
	Housing and Debt case type	Minimum number of case files required

1	Case which required representation	<ul style="list-style-type: none"> • 3 examples in possession cases, and • 1 example of a homelessness case or • 1 example of a housing disrepair case
2	Case which required the ability to recognise the possibility of Judicial Review proceedings (including the purpose and the Client's role)	1 case file
3	Case which required the ability to recognise a possible contravention of the rights and freedoms expressed in the European Convention on Human Rights 1950, as given effect in the Human Rights Act 1998 (as amended)	1 case file

- 10.3 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraphs 10.1 and 10.2. The same case file can be used to demonstrate compliance with Paragraphs 10.1 and 10.2.
- 10.4 Prior to the appointment as Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraphs 10.1 and 10.2.
- 10.5 Where a Supervisor has not conducted a mortgage arrears possession case in the past 12 months they must demonstrate how they have maintained their knowledge of mortgage possession cases.
- 10.6 Where a Supervisor has not conducted representation in a disrepair case in the past 12 months they must demonstrate how they have maintained their knowledge of housing disrepair litigation.
- 10.7 The Supervisor must take account of any changes in legislation and case law and maintain access for the duration of the Contract to the following required texts:
- (a) subscription to at least 1 nationally published specialist journal containing updates on housing case law and statutes;
 - (b) subscription to at least 1 (updated) housing encyclopaedia;
 - (c) access to current edition of the Child Poverty Action Group Debt Handbook;
 - (d) demonstrated access to specialist housing law reports;

- (e) current copy of the Civil Procedure Rules (including practice directions and supplements).

Housing specific rules

Expert reports in housing disrepair cases

10.8 In a disrepair case you must not instruct an expert to prepare a report outside the procedures of the pre-action disrepair protocol (as set out in the Civil Procedure Rules) unless:

- (a) the report is required urgently to seek an injunction or;
- (b) it appears the condition of the property may constitute a statutory nuisance, the landlord has been given notice of the condition and a request for remedial works within a reasonable period of time and that time period has elapsed and the landlord has not made arrangements to take appropriate action.

For the avoidance of doubt this provision does not apply in relation to a disrepair counterclaim to possession proceedings or threatened proceedings based on rent arrears.

10.9 Not used.

Matter Start rules

10.10 A single Matter Start should encompass investigation, where appropriate, of both civil remedies, including where appropriate an application for Licensed Work, and (where relevant) possible proceedings in the magistrates' court under the Environmental Protection Act 1990.

Homelessness cases

10.11 Legal Help given in relation to homelessness must be provided on a specific legal issue or issues and should not cover practical matters such as identifying accommodation agencies or making a referral to them.

10.12 The general rule is that all steps within the course of a homelessness application should be dealt with under a single Matter Start. This is subject to the following detailed provisions:

- (a) A potential interim application for Judicial Review, such as in relation to the failure of the local authority to accept an application, make enquiries, provide interim accommodation or notify a decision, will not justify a separate Matter Start. However, where both:
 - (i) the prospects of success of the proposed challenge appear to satisfy regulation 56 of the Merits Regulations or would justify seeking counsel's opinion under regulation 40(1)(b) of those Merits Regulations; and

- (ii) it is justifiable to dispense with the pre-action protocol for Judicial Review,

then the work relating to the proposed Judicial Review may be carried out under a grant of Emergency Representation.

- (b) Where following a request for a review under section 202 of the Housing Act 1996 ('the Housing Act'), the local authority remits the decision for further consideration or investigation, Legal Help pending the further decision should be provided under the existing Matter Start.
- (c) Where following a request for review under section 202 of the Housing Act the local authority reaches a decision that confirms the original decision on any issue against the interests of your Client or confirms a previous decision in relation to a referral of your Client to another authority, or fails to notify a decision within the period required by regulations under section 203(7) of the Housing Act:
 - (i) A new Matter Start would not be justified in relation to an appeal under section 204 of the Housing Act. If the prospects of success of such an appeal appear to satisfy regulation 56 of the Merits Regulations or justify obtaining Counsel's opinion under regulation 40(1)(b) of those Merits Regulations, you may pursue or grant Emergency Representation.
 - (ii) A separate Matter Start would not be justified in relation to an appeal or potential appeal under section 204A of the Housing Act in relation to interim accommodation.
 - (iii) If, following the issue of an appeal under section 204 of the Housing Act the decision is subsequently remitted for reconsideration by the local authority by order or agreement, a new Matter Start may, subject to this Paragraph, be justified to provide further Legal Help.
 - (iv) Where on appeal under section 204 of the Housing Act the decision of a local authority is varied by order or agreement, Legal Help required in relation to enforcement of any duty arising from the new decision may be provided under a new Matter Start.
 - (v) A new Matter Start will not be justified where an appeal issued pursuant to section 204(1)(b) is compromised on the basis that the local authority completes its review and notifies its review decision.
- (d) Subject to the Legal Aid Legislation, a new Matter Start may be opened to assist the Client in requesting a review, under section 202(f) of the Housing Act, of accommodation offered by a local authority, but not to provide general advice as to the risks of refusing

an offer of accommodation or the Client's rights in relation to requesting a review of such an offer.

- (e) Any issues relating to compliance by a local authority with any duty arising from its decision under section 184 or section 202 of the Housing Act should be addressed under the existing Matter Start. Where the matter is reasonably closed on the basis that it appears that the local authority is complying or has stated how it will comply with such duty or duties, and subsequently further significant legal work is justified as a result of the authority's persistent failure to do so, further Legal Help may be carried out under a new Matter Start.
- (f) A new Matter Start may be opened where a threat of Judicial Review is justified in relation to a failure of the authority to protect the Client's property pursuant to sections 211 and 212 of the Housing Act.

10.13 For the avoidance of doubt:

- (a) Legal Help relating to the terms and conditions (in particular alleged rent arrears) of the Client's occupation of accommodation provided under Part VII of the Act must not be carried out under Matter Starts relating to the Client's homelessness application, other than where this work concerns questions under the Housing Act of the suitability of such accommodation or otherwise to the discharge of an interim duty of the local authority;
- (b) Legal Help in relation to a decision by a local authority that its duty towards the Client has been discharged under section 193(6) or 195(4) of the Housing Act, and/or any subsequent fresh homelessness application, may be provided under a new Matter Start.

10.14 A separate Matter Start should not be opened simply to confirm that your Client wishes to apply for accommodation under Part VI of the Housing Act at the same time as pursuing his or her homelessness application. Separate Matter Starts for concurrent applications under Part VI and Part VII of the Housing Act will only be justified where substantially different issues arise in the two applications and there is sufficient benefit to the Client in carrying out work concurrently in respect of both applications.

Debt specific rules

Applying for criminal Legal Aid in certain Debt proceedings

10.15 If you have Schedule Authorisation for Debt under this Contract, then you may also provide representation under Section 16 of the Act in civil proceedings in the magistrates' court arising out of a breach of a financial order of that court where there is a risk of imprisonment provided that is in the interests of justice to provide representation. Payment for representation under this Paragraph 10.15 will be in accordance with the relevant Standard Fee scheme applicable to such cases under our current contract for criminal Legal Aid services.

Representation under this Paragraph 10.15 is part of criminal Legal Aid services (even though provided for under this Contract) and may also be performed by those with a contract for criminal Legal Aid services. You may apply for criminal Legal Aid by completing the appropriate forms and sending them to the magistrates' court which is dealing with the matter. Criminal Legal Aid in the magistrates' court is subject to the individual passing the applicable means test.

Housing Possession Court Duty Scheme

10.16 You may participate in the Housing Possession Court Duty Scheme only if you are authorised to do so under Exclusive Schedule Arrangements. Unless otherwise stated, in Paragraphs 10.16 to 10.55:

- (a) references to a Schedule (other than a "main" Schedule) refer to your Exclusive Schedule Arrangements for the Housing Possession Court Duty Scheme;
- (b) "the Scheme" means the Housing Possession Court Duty Scheme operating under this Contract; and
- (c) "the Service" means services you provide as part of the Scheme, as more specifically described at Paragraphs 10.18 and 10.38 to 10.39.

The Schedule

10.17 All work carried out under the Scheme is subject to any conditions or restrictions set out in that Schedule. You may only provide services under the Scheme during the period specified in your Schedule. When a Schedule expires but this Contract remains in force, we will issue you with a new Schedule unless you have given us at least one month's notice that you do not wish us to do so.

The Service

10.18 The Service involves the provision at a court of Legal Help and Help at Court to Clients and for cases described at Paragraphs 10.36 to 10.39 below. Subject to the terms of your Schedule, work covered by the Scheme may not be claimed for under any other part of this Contract.

Payment

10.19 The Housing Possession Court Duty Scheme is Controlled Work. The payment provisions for all work under the Scheme are specified in the Remuneration Regulations.

10.20 Payment will be monthly in arrears for work done. Payments will be made separately from your Standard Monthly Payments for other Controlled Work. Periodically we will reconcile your Claims and payments. If, in any Housing Possession Court Duty Scheme session, you have performed no work for Clients

we will pay you on the basis that you have seen one Client during the session and you are entitled to payment on that basis.

- 10.21 For the purpose of the Scheme, "session" means either a morning or afternoon period when the court is in session. Consequently, a court can list a maximum of two sessions per day. However, there must be a clear break between sessions listed on the same day for two payments to be claimed. Where the court lists a full day session, you will only be entitled to Claim one payment for this full day session.
- 10.22 The rate referred to in the Remuneration Regulations is payable per Client and covers all work for a Client under the Scheme so that no additional payments will be made. There are no additional payments for travel or waiting.
- 10.23 You must comply with the requirements to provide information about the Scheme by the specified times and your entitlement to receive payment is conditional on your doing so.

Matter Start rules

- 10.24 If you provide the Service at court and, within six months of doing so, subsequently open a new Housing or Debt Matter Start in relation to the same case then you cannot claim any payment for providing the Service at court. The costs of providing the Service will be included in the Housing or Debt Matter Start Fixed Fee.
- 10.25 The rule at Paragraph 10.24 does not apply if you subsequently open a non-Housing/non-Debt Matter Start after providing the Service at court. The Matter Start rules set out in Section 3 of this Specification will apply in these circumstances.

Reporting

- 10.26 You must report data about the Service to us in such form as we may specify. Monthly monitoring reports showing details of Clients assisted must be completed fully and returned to us by you within 10 days after the end of each month. Payments are triggered by our receipt of fully completed monthly monitoring reports on or before their respective due date. If you fail to provide any report to us by its due date, your payment will be delayed until after we have received it.

Volumes of work

- 10.27 We will allocate a volume of acts of assistance to each Scheme for the year (or such other period as is specified in your Schedule). Schemes will be able to provide 10% more acts of assistance than their allocated volume without prior authorisation from us. If Schemes wish to provide acts of assistance above this level then our prior written approval is required. Provision of the Service does not allow or require you to use up Housing Matter Starts issued to you for services not covered by the Scheme.

Management

- 10.28 You must have a Housing and Debt Supervisor at all times you are delivering the Service.
- 10.29 You must nominate a member of your personnel who is responsible for the overall supervision and management of the Service and provide us with their name. This person must meet the Housing and Debt Supervisor standard.
- 10.30 The nominated member of your personnel must liaise with the court to ensure that the Scheme is in place each time the court lists possession proceedings.
- 10.31 You must demonstrate that the Scheme has effective induction, training, appraisal and supervision procedures for all caseworkers.
- 10.32 You must ensure that you have appropriate adviser(s) present on each day at the court when the Service is required.
- 10.33 For the purposes of Paragraph 10.32 "appropriate adviser" means a caseworker who conducts a minimum of 12 hours casework per week.
- 10.34 You must include your Housing Possession Court Duty Scheme files in any file review process you conduct.

Delegation of the Service

- 10.35 Without prejudice to your management obligations at Paragraphs 10.28 to 10.34, you may delegate provision of the Service to other Providers who will act as your Agents for the purposes of the Scheme. Any such delegation must be authorised under your Schedule. Unless otherwise provided in your Schedule, we will make payments to you for all work covered by the Schedule and you will be responsible for any payments agreed between you and the Agents.

Who can use the Scheme?

- 10.36 The Scheme is available to any person (regardless of means) whose home is at immediate risk because of possession proceedings. You must provide the Service to any such person (the Client) who requires it during one of the specified court sessions. The Client does not pay anything for the Service. If a Client has received the Service and wishes to use it again you may provide it to them if they are in genuine need of it and it is appropriate to do so.
- 10.37 You must provide the Service to all Clients who request to see an adviser under the Scheme.

Scope of the Scheme

- 10.38 The Scheme covers the following types of proceedings at the court set out in your Schedule.
 - (a) private rented possession proceedings;
 - (b) public/registered social landlord rented possession proceedings;

- (c) mortgage possession proceedings;
 - (d) applications to stay/suspend execution of warrants of possession; and
 - (e) Clients with charging orders relating to property whereby the Client is at immediate risk of losing their home through a forced sale.
- 10.39 For Clients within the scope of the Scheme (see Paragraphs 10.36 to 10.37) you must provide the following services:
- (a) face-to-face advice to the Client on the day, prior to the hearing;
 - (b) advocacy for the relevant proceedings on the day of the hearing;
 - (c) face-to-face advice to the Client on the day, post the hearing, explaining the outcome and the options available to the Client;
 - (d) on the day of the hearing, assisting Clients to liaise with third parties;
 - (e) referrals to other Providers to take on follow up work where you are unable to take on this work under your Contract or to other organisations where the Client may not be eligible for Legal Aid;
 - (f) send a letter to each Client setting out your advice.

Clients requesting advice outside the terms of the Scheme

- 10.40 Where a Client seeks your advice outside of the terms of the Housing Possession Court Duty Scheme, then, subject to any means or merits tests you should (if you are permitted by your Contract) consider whether it is appropriate in the circumstances to commence Legal Help, Help at Court or Licensed Work. You will be entitled to payment for assisting that Client in accordance with your Contract but you will not be entitled to claim any fee under the Housing Possession Court Duty Scheme. Gateway Work, as defined in the Procedure Regulations, must be referred to the Gateway.
- 10.41 Further to Paragraph 10.40, when considering whether it is appropriate in the circumstances, you should take account of the Client's location and whether it is feasible to deliver face-to-face advice from your Office or whether it is more appropriate to refer the Client to a Provider located nearer the Client. Matters which are Gateway Work must be referred to the Gateway and you may not commence Legal Help.
- 10.42 If the Client needs further services but you are not able to provide them yourself under your Contract, you must (if it is practicable to do so) refer the Client to an organisation that will be able to provide them. If the Client is likely to be financially eligible this should be an organisation holding a Contract.

Emergency Representation

- 10.43 Exceptionally it may be appropriate for you to grant Emergency Representation to a Client who has contacted you under the Scheme. The fact that advocacy under the Scheme is available is not automatically a ground for refusing Emergency Representation where it would otherwise be justified but is a relevant consideration for the purposes of the Merits Regulations.
- 10.44 Any grant of Emergency Representation by you must be made in accordance with the Procedure Regulations and does not fall within the Housing Possession Court Duty Scheme.

Reporting and Auditing

- 10.45 You must make a record of the Service that you give to each Client (or why you refused to provide the Service).
- 10.46 In addition to the requirements to keep records under the Standard Terms, you must keep a central record (in such form as we may specify) of Clients seen under the Scheme.
- 10.47 Although the Service is available to any person (regardless of means) whose home is at immediate risk because of possession proceedings, we need to know how many Clients would be financially eligible for the Scheme if there were a means test. Therefore, you must ensure that, for each Client, our means assessment questionnaire is completed.
- 10.48 You must report to us such data (in such form as we may reasonably specify) about the Scheme at such intervals (not more often than monthly) as we may require.

Flexibility

- 10.49 Your obligation is to provide the Scheme at the court listed in your Schedule. You must provide the Service at all sessions the court runs and therefore you must have the flexibility to cater for the fluctuations in demand for the Service.
- 10.50 If you are unable to provide the Service at a court session you must inform your Contract Manager immediately.

Providing services at a court where the Scheme is not in place

- 10.51 You are permitted to sign Legal Help forms at court and provide the services detailed in Paragraph 10.39 in the proceedings set out in Paragraph 10.38, but only when:
- (a) we have provided a written authorisation (in your main Schedule or otherwise) under this Paragraph to do so; and
 - (b) there is no current Scheme operating at that court.
- 10.52 Client eligibility for the Scheme under Paragraph 10.51 is equivalent to that defined in Paragraph 10.36 and unless otherwise stated the rules of the Scheme as set out at Paragraphs 10.18 to 10.50 are applicable. For the avoidance of

doubt Clients who do not meet our usual eligibility criteria may only have services provided as detailed at Paragraph 10.38.

- 10.53 Where you provide services under Paragraph 10.51 you may claim only the fixed fee specified for the Scheme under the Remuneration Regulations. You may not claim the normal Legal Help Housing or Debt Standard Fee (but Paragraph 10.24 will still apply). No payment will be made for sessions where you see no Clients and no management fee will be paid.
- 10.54 We will allocate housing possession Matter Starts to you specifically for any services authorised under Paragraph 10.51. These will be set out in your main Schedule. Reporting, reconciliation and payment mechanisms for such work will be in accordance with Section 4.
- 10.55 Work carried out under Paragraphs 10.51 to 10.54 above is to be treated as having been provided under the Housing Possession Court Duty Scheme.

Exceptional Cases

- 10.56 Any application for an Exceptional Case in the Housing or Debt Categories can only be made by a Provider with a Schedule Authorisation in the Housing and Debt Category unless the case satisfies the effective administration of justice test as set out in the Procedure Regulations. Payments for any Exceptional Case Work will be made in accordance with the provisions of this Specification and the Remuneration Regulations. There are no Delegated Functions to make a determination in respect of an Exceptional Case, save for the means test aspect of a Legal Help case.