

## **CATEGORY DEFINITIONS 2014**

### **Introduction**

1. These are the Category Definitions 2014 as referred to in the 2014 Standard Civil Contract. Definitions of terms set out in those Contracts also apply to these Category Definitions.
2. In these Category Definitions:
  - i) References to “Legal Help” include Help at Court and in the Family Category only, Family Help (Lower) and Help with Family Mediation.
  - ii) References to “proceedings in a Category” cover the provision of Legal Representation (including Controlled Legal Representation) in that Category and, in the Family Category only, Family Help (Higher).
3. Services within the Crime Category are automatically excluded from all Civil Categories, except for any overlap between Categories specified in this document.

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

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

### **Overlaps between Categories**

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

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

### **Exceptional Funding**

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

### **Inquests**

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

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

13. Public law challenges to the acts, omissions or decision of public bodies (including under the Human Rights Act 1998), in particular challenges by way of judicial review (as described in paragraph 19 of Part 1 of Schedule 1 to the Act) and habeas corpus (as described in paragraph 20 of Part 1 of Schedule 1 to the Act) are covered by the Category in which the principal matter or proceedings appear or by the Category which relates to the underlying substance of the case (as referenced by the widest Category Definition incorporating excluded work). They are also covered by the Public Law Category.

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

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

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

## **CATEGORY DEFINITIONS**

### **Community Care**

18. Legal Help and related proceedings concerning the provision of community care services, as defined in paragraph 6 of Part 1 of Schedule 1 to the Act, the provision of facilities for disabled persons as set out in Paragraph 7 of Part 1 of Schedule 1 to the Act and the inherent jurisdiction of the high court in relation to vulnerable adults, as set out in paragraph 9 of Part 1 of Schedule 1 to the Act. This includes legal services provided in relation to community care assessments, service provision decisions, and issues around the delivery of services, but excludes any matter falling within the Welfare Benefits Category or Clinical Negligence Category and proceedings before the First-Tier Tribunal (Mental Health).
19. Legal Help on issues arising under the Mental Capacity Act 2005 and advocacy in proceedings to extent set out at paragraph 4 of Part 3 of Schedule 1 to the Act, regarding a person's capacity, their best interests (welfare and/or medical treatment) and deprivation of liberty issues.
20. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act), this category also includes advocacy for matters arising under the Mental Capacity Act 2005 which are not listed at paragraph 4 of Part 3 of Schedule 1 and the public law obligations of other health authorities.

### **Mental Health Category**

21. Legal Help and proceedings under paragraph 5 of Part 1 of Schedule 1 to the Act.
22. The inherent jurisdiction of the High Court in relation to vulnerable adults, as set out Paragraph 9 of Part 1 of Schedule 1 to the Act.
23. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act), this category also includes advocacy for matters arising under the Mental Capacity Act 2005 which are not listed in paragraph 4 of Part 3 of Schedule 1.

### **Miscellaneous Work**

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

#### *Working with children and vulnerable adults*

Legal Help and all proceedings in relation to:

- (a) The inclusion of a person in a barred list or the removal of a person from a barred list (paragraph 4(1)(a) of Part 1 of Schedule 1 to the Act);

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

#### Protection from Harassment

Legal Help and all proceedings in relation to:

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

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

#### Proceeds of Crime

Legal Help and proceedings in relation to:

- (a) Restraint orders under section 41 of the Proceeds of Crime Act 2002 (POCA) including orders under section 41(7) of POCA (orders for ensuring that restraint order is effective) (paragraph 40(1)(a) of Part 1 of Schedule 1 to the Act);
- (b) Orders under section 47M of POCA (detention of property) (paragraph 40(1)(b) of Part 1 of Schedule 1 to the Act);
- (c) Directions under section 54(3) of POCA (distribution of funds in the hands of a receiver) (paragraph 40(1)(c) of Part 1 of Schedule 1 to the Act);
- (d) Directions under section 62 of POCA (action to be taken by receiver) (paragraph 40(1)(d) of Part 1 of Schedule 1 to the Act);
- (e) Orders under section 67A of POCA (realising property), including directions under section 67D of POCA (distribution of proceeds of realisation) (paragraph 40(1)(e) of Part 1 of Schedule 1 to the Act);
- (f) Orders under section 72 or 73 of POCA (compensation) (paragraph 40(1)(f) of Part 1 of Schedule 1 to the Act);

- (g) Applications under section 351 of POCA (discharge or variation of a production order or order to grant entry) (paragraph 40(1)(g) of Part 1 of Schedule 1 to the Act);
- (h) Applications under section 362 of POCA (discharge or variation of disclosure order) (paragraph 40(1)(h) of Part 1 of Schedule 1 to the Act);
- (i) Applications under section 369 of POCA (discharge or variation of customer information order) (paragraph 40(1)(i) of Part 1 of Schedule 1 to the Act);
- (j) Applications under section 375 of POCA (discharge or variation of account monitoring orders) (paragraph 40(1)(j) of Part 1 of Schedule 1 to the Act).

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

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

#### Environmental Pollution

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

#### Sexual offences

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

#### Victims of trafficking in human beings

Legal Help and all proceedings in connection with:

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

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

*Injunction to prevent gang-related violence*

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

*Abuse of child or vulnerable adult*

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

*Anti-social behaviour injunctions*

Legal Help and proceedings in relation to an injunction in respect of alleged anti-social behaviour arising under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 and related parenting orders (paragraph 36(1) of Part 1 of Schedule 1 and paragraph 1(1)(e) of Part 1 of Schedule 1).