

2018 Standard Civil Contract
Specification
Category Specific Rules:
Education

Category Specific Rules

Section 16 Education Specification

This part of the Specification sets out the rules relating to cases undertaken in the Education Category of Law. Education Providers must satisfy themselves before undertaking work in the Education Category that the work is within scope.

The majority of work in the Education Category of Law is classified as "Gateway Work" (as defined by regulation 20 of the Procedure Regulations) and must be referred to the Gateway, subject to limited exceptions described in the Procedure Regulations.

Clients who have been through the Gateway and have been assessed as eligible for face-to-face advice will have been provided a CLA Reference Number, which will act as evidence that this assessment has taken place. This number should be recorded and retained on file whenever you take on a case that has come through the Gateway.

If, during the Contract Period, the Gateway provisions in the Procedure Regulations are removed or amended, such that the requirement to refer work in the Education Category to the Gateway no longer applies, Providers may from that point undertake such work in accordance with this Contract without first having to refer it to the Gateway.

Supervisor Standards

- 16.1 In order to receive or maintain a Schedule Authorisation in the Education Category of Law you must have at least one part time equivalent Supervisor in this Category of Law. For the purpose of this Paragraph "part time equivalent" means the equivalent of an individual working 17.5 hours a week during business hours excluding breaks.
- 16.2 An individual may qualify as a Supervisor in this Category by meeting the requirements of either:
- (a) the Education Supervisor Standard; or
 - (b) the Transitional Education Supervisor Standard.

Education Supervisor Standard

- 16.3 In order to meet the Education Supervisor Standard, an individual must:
- (a) comply with the Case Involvement Standard set out at Paragraphs 2.14 to 2.17 of the Specification; and
 - (b) comply with the Supervision Standards set out at Paragraphs 2.18 to 2.23 of the Specification; and
 - (c) comply with the Legal Competence Standard for the Education Supervisor Standard set out at Paragraphs 16.5 to 16.8 below; 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)..

Transitional Education Supervisor Standard

16.4 In order to meet the Transitional Education Supervisor Standard, an individual must:

- (a) comply with the Legal Competence Standard set out at Paragraphs 16.9 to 16.11 below; and
- (b) comply with the reduced Case Involvement Standard set out at Paragraphs 16.12 to 16.15 below; and
- (c) comply with the Supervision Standards set out at Paragraphs 2.18 to 2.23 of the Specification with the exception of the supervisory skills requirements in paragraph 2.19; and,
- (d) comply with the supervisory skills standards set out at Paragraph 16.16; and,
- (e) 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).

Legal Competence Standard - Education Supervisor Standard

16.5 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in the Education case categories in Table One below:

Table One		
	Education case type	Minimum number of case files required
1	<p>Special Educational Needs:</p> <ol style="list-style-type: none"> 1. Preparation of an appeal to the tribunal (including appeals that are prepared but not issued); 2. General advice/assistance pre-assessment; 3. Advice/assistance on an Assessment or Statement/Education, Health and Care Plan 	4 case files from 1 required, plus 4 case files drawn from the rest of the list

	(ECH Plan); 4. Advice on appealing/reviewing a tribunal decision; or 5. Advice on enforcement of a Statement of Provision/ECH Plan.	
2	Disability Discrimination: 1. Advice/assistance on disability discrimination issues in educational establishments; 2. Advice/assistance on an appeal to the First-tier Tribunal; or 3. Advice/assistance on appealing/reviewing a tribunal or appeal panel decision.	2 case files from any in the list
3	Discrimination (other): 1. Admission; 2. Exclusion; or 3. Provision of Services	2 case files from any in the list

16.6 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in each of the 4 case types in Table Two below:

Table Two		
	Education case type	Minimum number of case files required
1	Advice and assistance on proceedings in the First-tier (Special Educational Needs and Disability) Tribunal or Special Educational Needs Tribunal for Wales;	4 case files
2	Identification of social care or health care needs in an EHC Plan or proposed EHC Plan	2 case files
3	Explaining Administrative Court	2 case files

	remedies; or	
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16.7 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraphs 16.5 and 16.6. The same case file can be used to demonstrate compliance with Paragraphs 16.5 and 16.6.

16.8 Prior to their appointment as Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraphs 16.5 and 16.6. For the avoidance of doubt, the case files required for the purposes of Paragraph 16.7 and this Paragraph 16.8 do not need to be have been funded by Legal Aid.

Legal Competence Standard – Transitional Education Supervisor Standard

16.9 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in the 2 case types in the table below:

Table One		
	Education case type	Minimum number of case files required
1	<p>Special Educational Needs:</p> <ol style="list-style-type: none"> 1. Preparation of an appeal to the tribunal (including appeals that are prepared but not issued); 2. General advice/assistance pre-assessment; 3. Advice/assistance on an Assessment or Statement/Education, Health and Care Plan (ECH Plan); 4. Advice on appealing/reviewing a tribunal decision; or 5. Advice on enforcement of a Statement of Provision/ECH Plan. 	2 case files from 1 required, plus 2 case files drawn from the rest of the list
2	<p>Disability Discrimination:</p> <p>Advice/assistance on disability discrimination issues in educational establishments;</p>	1 case file

- 16.10 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraph 16.9.
- 16.11 Prior to the appointment as Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraph 16.9. For the avoidance of doubt, the case files required for the purposes of Paragraph 16.10 and this Paragraph 16.11 do not need to be have been funded by Legal Aid.

Case Involvement Standard – Transitional Education Supervisor Standard

- 16.12 Supervisors must meet, in the Education Category of Law, a minimum Case Involvement Standard of 56 hours over defined periods. There are minimum and maximum allowances by which Supervisors can meet the 56 hours and they are as follows:
- (a) direct (personal) casework (this may include direct (documented) supervision) – minimum of 37 hours (of which direct (documented) supervision cannot make up more than 19 hours);
 - (b) file review (including face-to-face) – maximum 19 hours (i.e. approximately 50% of 37 hours);
 - (c) external training delivery (meeting any professional development requirements of your Relevant Professional Body) - maximum 19 hours;
 - (d) documented research and the production of publications - maximum 19 hours; and/or
 - (e) other supervision - maximum 19 hours.
- 16.13 If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 168 hours over the last five years (measured from the Contract Start Date). This requirement is subject to the same minimum and maximum allowances set out in Paragraph 16.12, adjusted pro-rata.
- 16.14 The Case Involvement Standard will be measured:
- (a) at the Contract Start Date where the 56 hour requirement will measured across each of the previous 3 years; and
 - (b) on a rolling basis during the Contract Period where the Supervisor must be able to meet the 56 hour requirement in the previous 12 months.
- 16.15 For the avoidance of doubt, compliance with the Case Involvement Standard in Paragraphs 16.12 to 16.14 can be demonstrated using work that was not funded by Legal Aid.

Supervisory Skills – Transitional Education Supervisor Standard

16.16 Supervisors must as a minimum meet one of the following supervisory skills standards:

- (a) the Supervisor has supervised at least one Caseworker who regularly undertook work in the Education Category of Law for at least one year in the previous eight-year period;
- (b) the Supervisor has completed the Level 3 or higher National Vocational Qualification (NVQ) standard in supervising in the previous eight-year period;
- (c) the Supervisor has completed training covering key supervisory skills in the previous 12-month period; or
- (d) the provider nominates another individual in the firm to assist the Supervisor in carrying out the functions of a Supervisor. This fee earner must:
 - (i) 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);
 - (ii) have completed the Level 3 or higher National Vocational Qualification (NVQ) standard in supervising in the previous five year period; and
 - (iii) actively assist the Supervisor in carrying out the functions of a Supervisor in the Contract Specification.

16.17 The individual nominated under Paragraph 16.16 (d) must be in addition to the Supervisor who meets the Legal Competence Standard and Case Involvement Standard for the purposes Transitional Education Supervisor Standard. For the avoidance of doubt, the nominated individual is not required to have experience of carrying out Contract Work in the Education Category of Law or meet either of the Legal Competence Standards or Case Involvement Standards.

Delivering the Service

16.18 Subject to Paragraph 16.19 below, when you undertake Contract Work you must comply with the provisions of Sections 2 and 3, including Paragraph 3.15 to 3.17, of the Specification.

16.19 From 1 June 2020, subject to Paragraphs 16.23 to 16.25 below, you must in relation to each case provide Clients with a choice of service delivery method from either:

- (a) provision of advice in person; or
- (b) Remote Advice (as defined at Paragraph 16.21 below)

and you must place a written record on the file of the service delivery method selected by the Client.

16.20 From 1 June 2020, the requirements at Paragraph 3.17 of the Specification will be disapplied to Contract Work undertaken in this Category and instead we will monitor the number of Claims where your Client does not attend you in person. Where these Claims exceed 50% of your total Claims in any Schedule period we may request to review the case files for the Clients who have been provided with Remote Advice and or raise any other enquiries concerning the way you operate the service delivery methods set out in Paragraphs 16.21 to 16.32 and take such action as we deem appropriate in the circumstances.

Remote Advice

16.21 For the purposes of this part of the Specification relating to the Education Category, "Remote Advice" is advice delivered other than in person and shall include advice delivered:

- (a) via email;
- (b) telephone;
- (c) Web-cam;
- (d) post; or
- (e) such other method of delivery as may be agreed between the parties from time to time.

16.22 Remote Advice will include the supply and performance of all activities and services that form part of an end to end legal advice service, including the services set out in this Specification.

16.23 Subject to Paragraphs 16.24, 16.25 and 16.28 you may provide Remote Advice to Clients under this Contract where the Client requests it and it is in the Client's best interests.

16.24 You may only provide Remote Advice if you have an appropriate procedure in place to assess whether, taking into account all Service Adaptations and Reasonable Adjustments that are reasonably available to be implemented in respect of the relevant Client, the provision of Remote Advice can reasonably be expected to enable:

- (a) you to understand and act on the Client's instructions; and
- (b) the Client to understand and act on your advice.

16.25 If, following assessment you consider that the provision of Remote Advice referred to in Paragraph 16.6 cannot reasonably be expected to satisfy the requirements set out in Paragraphs 16.24(a) and 16.24(b), then you must provide the Client with Face-to-Face Advice under the Contract.

Means Assessment

- 16.26 Where a Client asks to receive Remote Advice and there has been no face to face contact with the Client you must assess the Client's eligibility to receive services under this Contract including means eligibility in accordance with Section 3 of the General Specification. Subject to the exceptions in Section 3 of the General Specification you must obtain the Client's signature on a Legal Help Form and obtain proof of financial eligibility before you Claim a Standard Fee.
- 16.27 The fact that the Client was receiving Remote Advice shall not meet the criterion in Paragraph 3.24(c) regarding assessment of means.

Remote Advice via telephone

- 16.28 You must ensure that any Caseworker who delivers Remote Advice receives training on the following matters before delivering Remote Advice via telephone:
- (a) Remote Advice skills (e.g. building rapport and empathy with Clients when communicating remotely, listening and responding, beginning and ending communication and structuring an interview.
 - (b) how to deal with difficult calls, including distressed callers, silent calls and abusive callers; and
 - (c) understanding the needs of your Clients, particularly those with a Relevant Characteristic, when using your Remote Advice service and how you seek to support them via the available Service Adaptations and Reasonable Adjustments that your service provides.
- 16.29 Where a third party is calling on behalf of a Client you must assess and satisfy yourself that the third party is authorised to act for the Client and record the steps taken and evidence provided in this regard.
- 16.30 Where any potential conflict or concerns are identified in relation to any third party you must act in accordance with the Legal Aid Legislation and relevant guidance (including the Lord Chancellor's Guidance), and if necessary either refuse an application or, where the application has been accepted, decline to carry out or continue to carry out work. For the avoidance of doubt, the provisions of Paragraphs 16.29 and 16.30 apply at all stages during your involvement in the Matter or Case. You must agree a process with the Client for returning Client calls and agree (and maintain a record of) whether the Client authorises you to:
- (a) reveal who you are to anyone who might answer your call; and
 - (b) leave a message on the Client's answer phone.
- 16.31 You must offer to make outgoing calls:
- (a) if requested by a Client, or by a Client who has previously requested that you make outgoing calls to them;
 - (b) where a Client expresses concern about the cost of making a call; or

(c) where a Client is calling from a mobile phone.

16.32 Telephone numbers provided to Clients to access Remote Advice via telephone must not be Premium Rate Numbers.

Declining Controlled Work

16.33 The only circumstances in which you can decline to take on a Matter where the Client is resident in a Procurement Area for which you have Schedule Authorisation are the reasons expressly set out at Paragraphs 3.50 and 3.51 of the Specification.

16.34 Where you do decline to take on a Matter for a Client who resides in a Procurement Area in which you have Schedule Authorisation, you must make and retain a record of the reasons for the decision for audit purposes.

Authorised Litigator

16.35 During the Contract Period, unless your Contract for Signature specifies an employed Authorised Litigator, you must have access to an Authorised Litigator with experience of carrying out cases within the Education Category of Law to enable you to perform your obligations under this Contract.

Identifying Community Care Cases

16.36 You must ensure that all individuals carrying out Contract Work in relation to matters under Part III of the Children and Families Act 2014 are able to identify situations where a Client may require legal advice that falls under the Community Care Category of Law. In particular, you must always consider whether the Client may require such assistance when advising on the Client's rights in relation to the content, or proposed content, of an Education, Health and Care Plan under section 37 of the 2014 Act.

16.37 You are permitted to provide brief advice and assistance on a legal issue that falls within the Community Care Category of Law where this arises in the context of an Education, Health and Care Plan. However, where the Client requires substantive advice in the Community Care Category you must refer them to a Provider with Schedule Authorisation in the Community Care Category unless you hold Schedule Authorisation in that Category, in which case a new Matter can be opened where permitted by the provisions in Section 3 of this Contract.

Unacceptable Behaviour

16.38 You must at all times when undertaking Contract Work have regard to the Unacceptable Behaviour Guidance document published on our website from time to time.