

## **CATEGORY DEFINITIONS**

### **Introduction**

1. These are the Category Definitions as referred to in the 2017 Standard Crime Contract. Definitions of terms set out in that Contract also apply to these Category Definitions.
2. In these Category Definitions:
  - a. References to “Legal Help” include Help at Court;
  - b. References to “proceedings in a Category” cover the provision of Legal Representation (including Controlled Legal Representation) in that Category.
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 and criminal legal services may be provided.
5. In some cases advice and assistance may only be provided to certain clients e.g. Clinical Negligence cases. 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.
6. 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.

### **Crime**

7. Representation in all proceedings defined as criminal proceedings under section 14 of the Legal Aid, Sentencing Punishment of Offenders Act 2012 and regulations made under that section.
8. All criminal Advice and Assistance as defined in section 13 and 15 of the Legal Aid, Sentencing Punishment of Offenders Act 2012 and regulations made under those sections.
9. All appeals in relation to criminal proceedings including applications for case stated arising out of criminal proceedings.

10. The Crime Category also includes Advice and Assistance and Representation in the following areas (as defined in the 2017 Standard Crime Contract):

- (a) Prison Law;
- (b) Associated Civil Work.

11. The undertaking of civil proceedings is excluded from the Crime Category unless falling within the definitions given above. Proceedings brought under the Environmental Protection Act 1990 for a statutory nuisance where the client is the complainant are excluded from the Crime Category as are proceedings under the Animal Welfare Act 2006 for the destruction of animals.

### **Overlaps between Categories**

12. The Categories are drafted to ensure that the majority of cases clearly fall within one Category or another. 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.

13. 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**

14. 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).

15. 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 the Miscellaneous Category.

### **Inquests**

16. 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 included in the Miscellaneous Category.

17. 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 in the Miscellaneous Category.

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

18. 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.
19. If arising in respect of matters or proceedings within the Crime Category, these cases will also fall within the Crime Category.
20. 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**

21. Work falling within the Crime Category is generally excluded from any other Category, but there is one minor exception under the Standard Civil Contracts: Associated Civil Work as defined in the 2017 Standard Crime Contract, which includes judicial review proceedings or proceedings for habeas corpus, provided those proceedings arise from a Matter or Case within the Crime Category, proceedings under the Proceeds of Crime Act 2002, and Civil Legal Services in proceedings for injunctions sought in respect of alleged Anti-Social Behaviour arising under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.
22. The exception in paragraph 22 can be carried out under the Standard Civil Contracts as well as by criminal practitioners under the 2017 Standard Crime Contract.
23. Specific guidance on Civil Categories can be found on the appropriate Civil Category Definition document which can be found on the Contracts page at: <https://www.gov.uk/government/organisations/legal-aid-agency>

### ***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.

### ***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).

### ***Anti-social behaviour injunctions***

Legal representation in relation to proceedings for an injunction sought in respect of alleged anti-social behaviour arising under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014.