

## **Draft Annex 1 Discrimination Specification (1 January 2021)**

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## **SECTION 1: INTRODUCTION TO CONTRACT WORK**

### **1 DEFINITIONS**

1.1 Unless otherwise stated, definitions which are set out in Legal Aid Legislation, the Standard Terms and Category Definitions 2018 apply to this Specification and the other Annexes to the Contract and are not repeated here. The following terms have the following meanings unless the context requires otherwise:

*"Action Plan"* means a plan agreed between the parties in accordance with the process set out at Paragraph 2.5 of the Specification, which details the actions to be taken and timescales to be met for increasing your service capacity;

*"Adviser"* means any of your personnel who carry out Contract Work;

*"Application Form"* means the form (the content and format of which is stipulated by us) to be used to apply for Legal Aid.

*"Authorised Litigator"* means an individual who conducts litigation services as an authorised person in accordance with the Legal Services Act 2007;

*"Backdoor Calls"* means a call made by a Client to your Backdoor Telephone Number;

*"Backdoor Telephone Number"* means your direct 0845 number which Clients use to contact Advisers directly;

*"Business Hours"* means 9.00am to 6.00pm Monday to Friday (in each case excluding any day which is a public or bank holiday in England and Wales) provided that *"24 Business Hours"* means the same time on the next such day such that 24 Business Hours from 3.00pm on Friday is 3.00pm on Monday and 24 Business Hours from 9.00am on Saturday is 9.00am on Monday;

*"Case Handling System"* or *"CHS"* means the electronic Case handling system used by the Operator Service to manage allocation of initial contact made from potential Clients to CLA;

*"Case Involvement Standard"* means the standard for Supervisors set out at Paragraphs 4.12 to 4.14;

*"Case Management System"* or *"CMS"* means the Case management system used by you to record Contract Work;

*"Caseworker"* has the meaning given at Paragraph 4.24;

*"Category"*, *"Categories"*, *"Category of Law"* or *"Category of Work"* means the definitions of each category of law that apply to this Specification, which are set out in the Category Definitions 2018;

*"Category Definitions 2018"* means the document published on our website that outlines the Categories of Work that apply to this Specification, which is incorporated into this Contract. This document may be amended by us provided that had it been a Contract Document such amendments would not have been prohibited by Clause 13.1 of the Standard Terms;

"*Category Specific Rules*" means Sections 9 of this Specification, and all other provisions of this Specification which are expressed to apply only to a particular Category or Categories;

"*CCMS*" means our on-line client and cost management system for managing electronic transmission of information between us and Providers (including any counsellor other third parties you appoint in accordance with Clause 3 of the Standard Terms) in connection with Civil Contract Work that is part of the online service.

"*Child*" has the meaning given to the term in the Procedure Regulations;

"*CLA Reference Number*" means the unique reference number allocated to each Case by the Operator Service";

"*Contract Guide*" means a guide issued by us specifically in relation to the Contract and published on our website;

"*Controlled Work*" has the meaning given in regulation 21(2) of the Procedure Regulations;

"*Core Hours*" means 9am to 6pm Monday to Friday excluding bank and/or public holidays in England and Wales;

"*Costs Limit*" means as described in regulation 35(1)(a) of the Procedure Regulations;

"*Cross-Border Case*" means a case in respect of which civil legal services are required to be provided under Council Directive 2003/8/EC and as further set out in paragraph 41 of Part 1 of Schedule 1 to Legal Aid, Sentencing and Punishing of Offenders Act 2012 or a case transmitted to the Legal Aid Agency in accordance with the European Agreement on the Transmission of Applications for Legal Aid (the "Strasbourg Agreement") as ratified by the United Kingdom on 17 January 1978;

"*DDI*" means the full direct line telephone number of the Adviser, including the area code;

"*Delegated Functions*" means a function of the Director or the Lord Chancellor delegated to you;

"*Determination*" means an assessment to establish whether a Case is to be accepted as in scope for the purposes of delivering Contract Work as specified in accordance with the requirements of Paragraphs 2.12 to 2.22 including whether such Case has sufficient merits, satisfies applicable means criteria, and is suitable for the provision of Remote Advice.

"*Determination Fee*" means the applicable fixed fee for undertaking a Determination as referred to at Paragraph 2.12 and as specified in Table 1 of Annex 2 (Cases, Fixed Fees and Hourly Rates (Controlled Work));

"*Easy Read*" means an accessible format designed for people with a learning disability including the use of simple jargon, free language, shorter sentences and supporting images;

"*Exempted Person*" means an individual who:

(a) has been deprived of their liberty;

(b) is a Child;

;

"Extended *Hours*" has the meaning given to the term in Paragraph 2.7;

"*Face-to-Face Advice*" means Contract Work provided (in whole or in part) in the presence of the Client;

"*Financial Regulations*" means regulations made under section 21 of the Act;

"*Findings*" include not only findings on particular practices (such as failing to assess financial eligibility or charging for administrative work that is not allowable) but in relation to more general matters, such as:

(a) claiming excessive time for preparation or attendances;

(b) or the average percentage reduction on Assessment of a sample of your files;

(c) claiming for more than one Fixed Fee where we consider that only one such fee should be payable; or

(d) where we consider the wrong Fixed Fee has been claimed.

"*Fixed Fee*" means a fixed fee as specified in Annex 2 (Cases, Fixed Fees and Hourly Rates (Controlled Work));

"*Form of Civil Legal Aid*" has the meaning given in regulation 3 of the Procedure Regulations and regulation 12(3) of the Merits Regulations;

"*Frontdoor Calls*" means calls made to CLA transferred directly from the Operator Service to you;

"*Hourly Rates*" means payment on the basis of time reasonably spent on a Case where payment is based on the rates set out in Annex 2 (Cases, Fixed Fees and Hourly Rates (Controlled Work));

"*Interpreter Service*" means the interpreter service that we direct you to use from time to time or, if cheaper, an alternative interpreter service that you may engage;

"*Legal Competence Standard*" means the standard for Supervisors as described in the Category Specific Rules;

"*Legal Help*" has the meaning given in regulation 4 of the Procedure Regulations and regulation 13 of the Merits Regulations;

"*Legal Representation*" has the meaning given in regulation 18 of the Merits Regulations;

"*Licensed Work*" has the meaning given in regulation 2 of the Procedure Regulations;

"*Merits Regulations*" means The Civil Legal Aid (Merits Criteria) Regulations 2013;

"*Miscellaneous Work*" has the meaning given to it in the Category Definitions;

"*Mis-Claiming*" means claiming in a manner that is contrary to the Contract and but not limited to where no discretion arises as to payment. For instance, claiming using the wrong rate or incorrectly claiming VAT;

"*Operator Service*" has the meaning given to it in the Standard Terms;

"*Over-Claiming*" means claiming more than we determine to be reasonable on Assessment, but where discretion arises as to the amount allowable. For instance, claiming one hour for an attendance where on Assessment we consider that only 30 minutes would have been reasonable or claiming a Disbursement where we consider that it was not reasonably incurred;

"*Paragraph*" means unless otherwise specified, one of the Paragraphs of this Specification;

"*Prescribed Rate*" means an Hourly Rate prescribed in the Legal Aid Legislation;

"*Procedure Regulations*" means The Civil Legal Aid (Procedure) Regulations 2012;

"*Protected Party*" has the meaning given to it in regulation 2 of the Procedure Regulations;

"*Reasonable Adjustments*" means an adjustment to the means by which you undertake Contract Work to enable a Client who has a disability or other barrier to receiving or understanding advice, to explain their problem and to understand and act on your advice, and is in compliance with the requirements of the Equality Act 2010, such adjustment may include providing a call back service, electronic communication, postal communication, BSL Interpretation Service, mini-com and text relay, Web-cam service, advice via a third party, Translation Service or alternative formats and a free postal service;

"*Referral*" means assisting the relevant person to identify an appropriate organisation who will assist such person with the relevant matter and you make contact with relevant organisation, on such person's behalf and transfer them to such organisation;

"*Remote Advice*" means Contract Work provided in the manner specified in Paragraph 2.36 of the Specification or by such other means as we may specify pursuant to Paragraphs 2.50 to 2.51 of the Specification;

"*Remuneration Regulations*" means regulations made under section 2(3) of the Act;

"*Review*" is where a Client or potential Client has requested you to review a Determination or Withdrawal of a Determination as described in the Procedure Regulations;

"Section" means, unless otherwise specified, one of the 12 sections of this Specification;

"Service Adaptations" means an adaptation to the means by which you undertake Contract Work to enable a Client to understand and act on your advice, such adaptation may include but will not be limited to providing a call back service, electronic communication, postal communication, Interpreter Service, Web-cam service, advice via a third party, Translation Service or alternative formats and a free postal service;

"Service Standards" means the service standards set out in Section 4 together with any other requirements so designated in Category Specific Rules;

"Signpost" or "Signposting" means supporting the caller or Client (as applicable) in identifying suitable sources of alternative advice or information provided that such caller or Client (as applicable) will retain responsibility for making contact themselves;

"Supervision Standard" means the standard for Supervisors set out at Paragraphs 4.15 to 4.20;

"Translation Service" means the translation service that we direct you to use from time to time, or if cheaper, an alternative translation service that you may engage;

"Upper Tribunal" means the Upper Tribunal established under the Tribunals, Courts and Enforcement Act 2007 (as amended);

"User Satisfaction" means the degree of satisfaction expressed by Clients in relation to their experience of the CLA service you deliver via the user satisfaction surveys conducted in accordance with Paragraph 2.60;

"Vulnerable Persons Policy" means the vulnerable persons policy set out in the CLA Operations Manual; and

"Web-cam" means a video camera that feeds its images in real time to a computer or computer network for transmission over the internet.

## **RECEIVING NEW CASES**

- 1.2 You will provide legal advice to Clients referred to you from the Operator Service. The Operator Service is the initial stage of CLA where individuals will have their problems diagnosed, financial eligibility assessed and a series of options presented to them about how the problem should be dealt with. Individuals who are deemed eligible by the Operator Service will be directly transferred from the Operator Service to you.
- 1.3 Not used
- 1.4 You will only provide Remote Advice under this Contract.
- 1.5 You may only provide Remote Advice in the:  
Discrimination

Categories of Law as are specified in your Contract for Signature. Remote Advice will include the supply and performance of all activities and services that form part of an end to end, non face-to-face legal advice service, including the services set out in this Specification.

- 1.6 Not used.
- 1.7 Not used.
- 1.8 Contract Work will cover all work undertaken for the Client following your acceptance of a Case from the Operator Service. Contract Work includes carrying out the necessary means testing and application of the Legal Aid Legislation and undertaking and/or considering the matters referred to in Paragraphs 2.12 to 2.22 and after which, subject to eligibility, the giving of Remote Advice.
- 1.9 You must 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 the 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.
- 1.9A From 1 September 2019, you must also have an appropriate procedure in place to enable a Client to make an informed preference for either Remote Advice or Face-to-Face Advice. This preference should be given particular emphasis when you determine how services are to be delivered. To assist the Client to compare the two methods of delivery you should:
- (a) briefly set out the service that you will be able to offer the Client through the provision of Remote Advice, including any Service Adaptations and Reasonable Adjustments you can provide; and,
  - (b) identify the three closest Face-to-Face Advice Providers to the Client and outline the referral and application process they will need to go through if they are referred to such a Provider.
- 1.10 If after carrying out the procedures set out in Paragraphs 1.9 and (from 1 September 2019) 1.9A you determine that the Client should receive Face-to-Face Advice, then:
- (a) where the determination is made before 1 September 2019, you must provide the Client with Face-to-Face Advice under the Contract to the extent specified in your Contract for Signature (subject to instances where a Discrimination Case forms part of a wider matter and is referred out to an alternative Face-to-Face Provider); and
  - (b) where the determination is made on or after 1 September 2019, you must refer the Client to a Face to Face Provider in line with Paragraphs 4.34 to 4.43 below. You must ensure the client is given the CLA reference number allocated to the Case (until such time that we advise you in writing that you no longer need to comply with this requirement).

1.11 If, during the Contact Period, the Procedure Regulations are amended to disapply or remove the Gateway Work provisions then you will no longer need to follow the procedure in Paragraph 1.9A. You must instead inform the Client they have the choice of Face-to-Face Advice even if Remote Advice is deemed appropriate. Where a Client requests Face to Face Advice then the Client must be signposted or transferred to a Face-to-Face Provider in line with Paragraphs 4.34 to 4.43 below.

**LEGAL AID LEGISLATION**

1.12 This Contract is one of a number of types of contracts, which we procure to deliver publicly funded civil work to eligible Clients. When providing any Contract Work you must comply with the Legal Aid Legislation which details the services we may fund, scope of funding, and the way different services are funded.

**CONTROLLED WORK –DISCRIMINATION CATEGORY OF LAW: FORM OF CIVIL LEGAL AID**

1.13 Controlled Work is sub-divided into various Forms of Civil Legal Aid. In respect of Controlled Work, this Contract permits you to undertake the following in relation to the Discrimination Category of Law (provided that you are entitled to undertake Contract Work in the relevant Category of Law pursuant to this Contract):

<b>Form of Civil Legal Aid</b>	<b>Discrimination</b>
<b>Legal Help</b>	Yes
<b>Help with Family Mediation</b>	No
<b>Help at Court</b>	No
<b>Family Help (Lower)</b>	No

**LICENSED WORK - DISCRIMINATION CATEGORY OF LAW**

1.14 Not used

**STRUCTURE OF THE SPECIFICATION**

1.15 Sections 1 to 4 of this Specification are of general application to all Categories of Law. Sections 5 and 6 apply only to Contract Work which is Controlled Work. Section 9 applies to the specific Category of Law ("Category Specific"). Where there is any conflict between the general provisions, the Controlled Work provisions, the Licensed Work provisions and the Category Specific Rules, the Category Specific Rules shall have precedence over the other provisions.



## **CATEGORY DEFINITIONS**

- 1.16 You acknowledge and agree that the Category Definitions 2018 (as amended from time to time), which apply to the 2018 Standard Civil Contract and which are used in Sections 9 of this Specification shall be incorporated into this Contract and shall be deemed to be amended as necessary to give effect to the intended meaning of the 2018 Standard Civil Contract in the context of this Contract rather than the 2018 Standard Civil Contract.

## **SECTION 2: DELIVERING THE SERVICE**

### **2. CASE ALLOCATION AND HOURS OF SERVICE**

2.1 You must ensure that at all times during:

- (a) the Core Hours, your Advisers are available to receive new Cases from the Operator Service from the Office and any alternative locations agreed with us as appropriate to carry out the delivery of Contract Work under Paragraph 4.28 to 4.31; and
- (b) the Business Hours, your Advisers are available to deal with Clients who contact you through the Backdoor Telephone Number.
- (c) the Core Hours, your Advisers undertake Controlled Work on all Cases allocated to you where the Client qualifies for Controlled Work in accordance with Paragraphs 2.14, 5.18-5.36 and relevant Category Specific Rules unless Paragraph 5.37 applies.
- (d) the Extended Hours, your Advisers are available to offer telephone advice appointments in accordance with the provisions of this Contract.

#### **Case Transfer**

2.2 During the Core Hours the Operator Service will endeavour to ensure that Cases are equally allocated between you and any other CLA Provider who is contracted to deliver Contract Work under the terms of this 2018 Contract in the Discrimination Category of Law. There are no guaranteed volumes of Contract Work and you must be capable of responding to fluctuations in demands for Contract Work during the Contract Period.

2.3 At our discretion, we may amend the proportion of Cases that are allocated to you from time to time. This may be done in circumstances where another Provider is unable to meet all or some of its obligations to deliver the relevant services, in the event of a short-term incident or over a longer period.

2.4 Where it is necessary to allocate a significant increase in the volume of Cases to you we will act reasonably, provide as much notice as possible, consider waiving or amending certain KPIs for a set period, and work with you to scale up your service capacity in accordance with the terms of this Contract and as required by the circumstances.

2.5 Where it is necessary to allocate a significant increase in the volume or proportion of Cases for a longer period (e.g. the remainder of the Contract Period) we may take the following steps:

- (a) require you to submit a proposed Action Plan detailing how you intend to increase service capacity, together with anticipated timescales, within 5 Business Days of any request from us; and
- (b) discuss your proposal and agree an Action Plan with you within 10 Business Days.

2.6 Once an Action Plan is agreed, you will be required to provide the increased volume of Cases in accordance with the terms of the Contract.

## **Extended Hours - Evenings and Weekends**

- 2.7 In addition to Core Hours, you must be able to offer Clients telephone advice appointments between 6:00pm and 8:00pm from Monday to Friday (excluding bank and/or public holidays) and Saturday mornings, from 9.00am to 12.30pm - your "**Extended Hours**") where requested by the Client.
- 2.8 You will be required to offer telephone advice appointments during Extended Hours within 2 Business Days of a request where there is an urgent need for an appointment or within 5 Business Days of a request where there is no urgent need.
- 2.9 This will form part of Service Adaptation in order to meet the needs of Clients.

## **Advisers**

- 2.10 You must ensure you:
- (a) have sufficient Advisers available in each Category of Law specified in your Contract for Signature such that you are able to receive and action all new Cases in such Categories during the Core Hours in accordance with the Contract;
  - (b) have sufficient Advisers available in each Category of Law specified in your Contract for Signature to deal with Clients during the Business Hours in accordance with the Contract; and
  - (c) use all reasonable endeavours to resource the Core Hours, and resulting Contract Work with the intention of providing the Core Hours in each Category of Law evenly throughout the Contract Year.
  - (d) have sufficient Advisers available in each Category of Law specified in your Contract for Signature such that you are able to provide telephone advice appointments during Extended Hours.

## **RESPONSE TIMES**

- 2.11 Annex 5 (KPIs) sets out details of the response times applying to various aspects of the provision of Contract Work.

## **RECEIVING NEW CASES**

### **Determinations**

- 2.12 Upon receiving a new Case from the Operator Service you will undertake a Determination detailed in Paragraphs 2.13 to 2.21. If, following completion of the Determination, a new Case is not accepted by you for the provision of Contract Work under the Contract, you will only be remunerated the Determination Fee.
- 2.13 Your Advisers must as a minimum deliver the following information to the potential Client upon speaking or otherwise communicating with the potential Client for the first time:
- (a) the name of their organisation;
  - (b) the Category of Law they offer advice in;
  - (c) that such advice is given as part of the Civil Legal Advice Service; and

- (d) the Adviser's name.
- 2.14 Your Advisers will make the following Determination in accordance with the applicable requirements of the Merits Regulations, the Procedure Regulations and the Financial Regulations:
- (a) assess and confirm if the new Case is within the scope of the Contract Work;
  - (b) assess and confirm the merits of the new Case;
  - (c) assess and confirm the means assessment of the individual provided by the Operator Service
- 2.15 If your Advisers determine that a new Case does not satisfy all of the criteria detailed in Paragraph 2.14, the individual must be signposted to an appropriate and suitable, alternative source of help. If your Advisers determine that the criteria detailed in Paragraph 2.14 are satisfied, they must undertake the following further steps as part of the Determination:
- (a) inform the Client of the requirements regarding the provision of evidence required under the Procedure Regulations and the Financial Regulations, as applicable, and the process for supplying such evidence, as well as the implications of the Client making any misrepresentation with regard to eligibility, including the fact that the Client would be required to repay to us any costs we pay out to you in the matter, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work. Where an individual does not provide evidence required by this Paragraph 2.15(a) you may only claim a maximum of 132 minutes (as specified in Table 2 of Annex 2 (Cases, Fixed Fees and Hourly Rates (Controlled Work)));
  - (b) assess in accordance with Paragraphs 1.9 and 1.9A above whether the new Case should proceed via the provision of Remote Advice, and if not take appropriate action in accordance with Paragraphs 1.10 to 1.11. Full reasons for this decision must be recorded on the Case file and Case Handling System;
  - (c) consider whether the case forms part of a wider matter and it would be appropriate to refer the case out to a Face-to-Face Provider authorised to conduct work in the appropriate Category of Law;
  - (d) assess whether any Service Adaptations or Reasonable Adjustments are required, and if so, record such requirements on the Case file and Case Handling System.
- 2.16 Where a third party is calling on behalf of a Client your Advisers must assess and satisfy themselves that the third party is authorised to act for the Client and record on the Case file and the Case Handling System the steps taken and evidence provided in this regard.
- 2.17 Where any potential conflict or concerns are identified in relation to a third party you must act in accordance with Legal Aid Legislation and relevant guidance (including the Lord Chancellor's Guidance), and if necessary either refuse an application or, where an application has been accepted, decline to carry out or continue to carry out work. For the avoidance of doubt, the provisions of Paragraphs 2.12 to 2.22 apply when undertaking the Determination and throughout your involvement on a Case.

- 2.18 Not used.
- 2.19 Your Advisers must check if there is any conflict of interest between Clients, or whether you are required to make a referral under the professional conduct rules of your Relevant Professional Body.
- 2.20 Upon receiving a new Case and following initial contact with the Client your Advisers must update the CHS with the appropriate outcome code within 1 Business Day, confirming whether or not the Case has been accepted for the provision of Contract Work by you, rejected or transferred or is pending further assessment in accordance with Paragraph 2.14.
- 2.21 Your Advisers, must use separate DDI(s) for receiving Frontdoor Calls from the DDI(s) you use to receive Backdoor Calls.
- 2.22 On receiving a Frontdoor Call from the Operator Service and when returning an answer phone message you must confirm the Client's name and date of birth (or other appropriate details such as postcode or first line of address) and then use this information to bring up the appropriate record on the Case Handling System.

### **BACKDOOR CALLS AND/OR COMMUNICATIONS FROM EXISTING CLIENTS**

- 2.23 You must ensure that your Backdoor Telephone Number is operational at all times.
- 2.24 We will assign you a Backdoor Telephone Number against each Category of Law that you are authorised to undertake unless you provide the necessary "backdoor" telephony infrastructure yourself. You will provide Clients with your Backdoor Telephone Number in order that they may contact your Advisers directly without going through the Operator Service. You must provide the Backdoor Telephone Number to the Client during the initial call and also in the initial letter sent to the Client. You may also (if you choose to) send the number via SMS text or email.
- 2.25 Your Backdoor Telephone Number must connect to DDI(s), which are separate DDI(s) from the DDI(s) you use to receive Frontdoor Calls.
- 2.26 Where the relevant member of your personnel takes the Backdoor Call directly, or a Backdoor Call message is retrieved from the answer phone service then you must ensure that an appropriate Adviser responds to the Client as required depending on the circumstances, but in any event within the timescale set out in Annex 5 (KPIs).
- 2.27 If you are unable to contact the Client during such period, you must try to contact the Client as a minimum on 2 occasions within 1 Business Day of the time the message was left.
- 2.28 Where you provide the necessary "backdoor" telephony infrastructure you will be responsible for providing the management information needed to demonstrate compliance with KPI1, KPI2 and KPI3 in relation to the volume of calls answered and call backs made within the time parameters required.
- 2.29 Where you provide the "backdoor telephony" we reserve the right to require you to revert to using the Operator Service telephony infrastructure where you fail to deliver this in accordance with the requirements of KPI 3.

2.30 Not used.

### **TEXT PHONE AND TEXT RELAY**

2.31 You are required to operate (at your cost) a text phone or other similar service for individuals who are deaf or hard of hearing or who cannot speak on the phone, for example, Text Relay. Text Relay connects such people with other people using a telephone, by providing a text-to-voice and voice-to-text relay service. Text Relay provides an automatic connection to Text Relay, when someone using a textphone communicates with someone using a standard telephone. This service also supports textphone to textphone calls.

2.32 Once an individual has been in contact with an Adviser, they can continue to be advised directly by text phone, through Text Relay or a similar service, by post, email or fax.

### **INTERPRETER SERVICE**

2.33 Your Advisers must be trained to identify and respond to an individual's need for an interpreter and/or sign language when this will assist individual, and must offer individuals access to an interpreter through the approved Interpreter Service and/or British Sign Language (as applicable).

2.34 You must provide conference call facilities to allow for three way calls for example where an interpreter or British Sign Language is required via telephone and/or web-cam. Before any call your Adviser must brief the interpreter and/or British Sign Language as to the matter.

### **CORRESPONDENCE AND BRANDING**

#### **General Requirements**

2.35 All correspondence must be in plain English and in a format that the Client confirms is accessible to the Client, e.g. use of Easy Read, correspondence may be in larger font size, translated, electronic form, audio or Braille etc. Where you are requesting supporting documents or evidence from the Client you must set out the forms of evidence as prescribed by the Regulations in plain English in order to assist the Client to understand what information is required.

2.36 From the Service Commencement Date, you must be able to provide Remote Advice via web-cam, telephone, email, post, and upon prior notification, through any other alternative method that we may introduce.

#### **Written Correspondence to Clients**

2.37 All correspondence must comply with branding guidance issued by us from time to time and must include the following at the bottom of each page:

"Advice given by [specify name of organisation] as part of Civil Legal Advice, a national advice line for England & Wales, paid for by Legal Aid."

2.38 Correspondence addresses must contain the name "Civil Legal Advice", e.g. Mr John Smith, Civil Legal Advice, London Specialist Telephone Advice Centre, London, WI.

- 2.39 You must also include any other information the Client is required to know about your organisation e.g. regulated by the Solicitors Regulation Authority, complaints procedure and review process, registered charity number etc.

### **Standard CLA Client Care Letters**

- 2.40 You must send or email your standard Client engagement letter, evidence of means and/or scope request(s) and Legal Help form to the Client or potential Client within 1 Business Day of the Client's initial contact with an Adviser.

### **Written Correspondence from Clients**

- 2.41 You must provide individuals with the use of a free-post service for the posting of the evidence of means request, Legal Help Application Form and any other documents required in relation to the conduct of a Case.

### **Telephone Correspondence**

- 2.42 You must offer to make outgoing calls:
- (a) if requested by a Client, or to 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.
- 2.43 When making outgoing calls you must block your number.
- 2.44 When making outgoing calls you must only provide information relating to the Case once you have confirmed that you are speaking to the Client or an authorised third party assessed in accordance in Paragraph 2.16.
- 2.45 You must agree with the Client the process for returning Client calls, and determine and document on the Client's file, whether:
- (a) you can reveal who you are to anyone who might answer your call; and
  - (b) you can leave a message on the Client's answer phone.

### **E-mail Correspondence**

- 2.46 Advisers' email addresses must be standardised so that Clients and other organisations realise that the person is sending the e-mail as part of the Civil Legal Advice Service even though they work for a different organisation.
- 2.47 You should set up a sub-domain for Advisers' e-mail addresses. This sub-domain will be called Civil Legal Advice and will mean that Advisers e-mail addresses are: [name@cla.\[usual provider domain name\]](mailto:name@cla.[usual provider domain name])
- 2.48 The following must be included at the bottom of every email:

"Advice given by [*Name of organisation*] as part of Civil Legal Advice, a national advice line for England & Wales, paid for by Legal Aid".

## **TRAINING OF ADVISERS**

2.49 You must ensure, and upon request, provide us with evidence, that all Advisers receive training on the following matters before undertaking any Contract Work, and that they continue to receive regular ongoing training on the same matters throughout the course of the Contract:

- (a) how to identify when it is appropriate for a Client to be signposted or referred to a Face-to-Face Provider;
- (b) 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);
- (c) the signposting and referral processes;
- (d) how to deal with difficult calls, including distressed callers, silent calls and abusive callers;
- (e) the application of the Vulnerable Persons Policy;
- (f) Client care policies, including your policy on complaints, client confidentiality, data protection and conflict of interest, the application of the Vulnerable Persons Policy, (including with regard to child and vulnerable adult protection) as well as domestic abuse awareness;
- (g) your Equality and Diversity Policy and the Equality and Diversity Guidance;
- (h) how to carry out Reviews in accordance with your procedure for Reviews required pursuant to Paragraph 2.53;
- (i) understanding the needs of your Clients, particularly those with Relevant Protected Characteristics, when using your Remote Advice service and how you can seek to support them via the available Service Adaptations and Reasonable Adjustments that your service provides; and
- (j) understanding the provisions of this Contract.

## **Alternative means of Communications**

2.50 To the extent not already required by this Contract, you must where we require you to, be able to communicate with Clients via alternative means of communication, for example, SMS messaging services or Internet Protocol based video services

2.51 Where we require you to advise Clients using alternative communication methods under Paragraph 2.50, we may remove this requirement at any point on reasonable notice to you following our evaluation of the method of delivery.

## **GENERAL**

### **Maintaining up to date Contact Information**

2.52 You must ensure at all times that you have and keep at all times, and provide to us upon request, an up to date list of the following contact information:

- (a) name of all Advisers;



- (b) Category(s) of Law each Adviser can advise on;
- (c) telephone Number of the DDI(s) used to receive Frontdoor Calls; and
- (d) your Backdoor Telephone Number for each Category of Law.

## **ALTERNATIVE MEANS OF COMMUNICATION AND METHODS OF DELIVERY**

2.53 You must, acting in good faith, work with us to explore alternative and innovative means of communication with Clients and the delivery of Contract Work.

## **REVIEWS**

2.54 You must have a written procedure for dealing with Reviews.

## **CALLS TO THE BACKDOOR NUMBER**

2.55 Where a Client or prospective Client contacts you via a Backdoor Number in respect of a new matter you must put them through to the Operator Service.

## **OPERATOR SERVICE TRAINING**

2.56 From time to time we may require you to deliver training. This may consist of:

- a) training the CLA Operator Service on areas of law as appropriate. This will be up to a maximum of two days per Contract Year with preparation time of a further two days and the training must take place within two months of you receiving LAA instruction unless agreed otherwise, and;
- b) carrying out quality exercises on the CLA service such as call listening. You will be required to complete up to two such exercises per Contract Year. It is anticipated each exercise will take two days to undertake and must be completed within one month of you receiving instruction unless agreed otherwise

or any other training that may become appropriate.

2.57 Any training must be delivered by a recognised Supervisor unless we have given express permission for specific training to be delivered by another member of your staff.

2.58 Subject to the requirements of this Contract any training you deliver will be remunerated in accordance with Paragraph 37 of Annex 3 (Payments and Disbursements).

## **CROSS BORDER CASES**

2.59 As part of your obligation to deliver Contract Work and subject to compliance with the professional conduct rules of your Relevant Professional Body, you must provide such legal services as may be required in relation to Cross-Border Cases as and when they arise during the Contract Period provided that any such Cross Border Case falls within the Category of Discrimination. For the avoidance of

doubt, in the event that a Cross-Border Case does not fall within such Category of Law then provided you have the necessary expertise to conduct the Case then such matter shall be treated as Miscellaneous Work.

## **USER SATISFACTION**

2.60 You must carry out a rolling programme of User Satisfaction surveys at the conclusion of all Cases where you provide legal advice. For the avoidance of doubt, this excludes those matters that don't proceed past the Determination stage. You will be required to maintain an average User Satisfaction rating of 85% for the delivery of legal advice in accordance with KPI 8.

The User Satisfaction survey will include consideration of:

- (a) whether the service was approachable and friendly;
- (b) whether the Client was kept appropriately informed in relation to their case;
- (c) whether information and advice was explained satisfactorily to the Client; and
- (d) whether matters were managed in a competent and timely manner.

We reserve the right to conduct independent User Satisfaction surveys of a Client experience of receiving legal advice through the service as and when required either directly or through third parties such as the CLA Operator Service.

## **SECTION 3      GENERAL PROVISIONS**

### **General powers – Controlled Work**

- 3.1 For Controlled Work, the decisions to provide services are taken by you on behalf of the Director. You must report all Controlled Work Case outcomes promptly, fairly and accurately in accordance with Annex 3 (Payments and Disbursements) and the CLA Operations Manual.
- 3.2 Not used.

### **Provision of Information**

- 3.4 If you have provided Contract Work to a Client and that Client chooses to instruct another CLA Provider (due to a complaint being upheld in accordance with Annex 6 (Complaints)) or a Face-to Face Provider (due to representation becoming necessary or because Paragraph 1.9 can no longer be met) in relation to the same matter or issue, you are required, on request from the new CLA Provider or Face-to-Face Provider and only with the consent of the Client, to give to the new CLA Provider or Face-to-Face Provider the Client's file, or a copy, and reasons for the termination of the retainer, as soon as practicable.

### **Misrepresentation**

- 3.5 If you know or suspect that a Client has:
- (a) failed without good reason to provide information or documents relevant to either your decision to carry out Controlled Work or the Director's determination that the Client qualifies for civil legal aid provided as Licensed Work; or
  - (b) in providing required information or documents in relation to Contract Work has made a statement or representation knowing or believing it to be false,
- then you must immediately cease work and report the relevant circumstances to your Contract Manager.
- 3.6. The Application Form signed by the Client will incorporate an agreement by the Client to repay to us any costs we pay out to you in the Case, in the event of the Client having withheld or misrepresented information with the intention of appearing to qualify for Contract Work.

### **Payment Other than Through the Contract**

- 3.7. Except as otherwise provided by us you must not charge a fee to the Client or any person for the services provided under this Contract or seek reimbursement from the Client or any other person for any disbursements incurred as part of the provision of such services.

- 3.8. Where you have been carrying out Contract Work on behalf of a Client, you must not accept instructions to act privately in the same matter from a Client unless you have advised the Client in writing of:
- (a) the consequences of ceasing to be in receipt of Legal Aid; and
  - (b) any further Legal Aid services which may be available, whether from you or another CLA Provider or Provider.
- 3.9. You must not ask your Client to instruct you on a private basis simply because your costs exceed the amount we will pay you under this Contract for the relevant Case.
- 3.10. Where a Client elects to instruct you privately in relation to a Case in which you have been providing Contract Work, a copy of the letter dealing with the matters required by Paragraphs 3.8 and 3.9 must be kept on the file.
- 3.11. Subject to Paragraph 3.15 you cannot be retained to act for the Client in the same Case under this Contract and on a privately paying basis at the same time.
- 3.12. 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. For the avoidance of doubt, 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.
- 3.13. Subject to Paragraph 3.14, all payments for Contract Work must come through us, except:
- (a) where the statutory charge in your favour arises; or
  - (b) where you are responsible for collecting a contribution that is payable.
- 3.14. This Paragraph represents our authority pursuant to section 28(2)(b) of the Act, for you to receive payment from another party under a Client's costs order or Client's costs agreement (as defined in Legal Aid Legislation) and to recover those costs at rates in excess of those provided for in this Contract or any other contract with us. This applies in respect of Controlled Work and applies also to costs recovered in respect of Counsel's fees.
- 3.15. Paragraph 3.14 does not entitle you to take any form of enforcement action. This must be specifically authorised under Legal Aid Legislation.
- 3.16. Where an order or agreement for a sum of money is payable to the Client, in which the proportion of the sum that represents the damages and the costs are not specified, we do not authorise you to retain any part of the sum, and you must claim the costs of any relevant work from us under the provisions of this Contract.

### **Transitional Provisions**

- 3.17. In relation to fees and remuneration rates, the terms of this Specification apply to all Cases commenced by you on or after the Service Commencement Date. For the purposes of this rule you “commence” a Case when you accept a Case on the Case Handling System after referral of the relevant Case from the Operator Service in each case following completion of the initial steps detailed in Paragraphs 2.12 to 2.22.
- 3.18. Subject to Paragraph 3.17 and any Category Specific Rules the provisions of this Specification (including any procedures for assessing remuneration) will apply to all work on Cases undertaken on or after the Service Commencement Date.

## **SECTION 4 SERVICE STANDARDS**

### **4. General**

- 4.1. This part of the Specification sets out Service Standards which must be met when carrying out Contract Work, in addition to those set out in Category Specific Rules. Compliance with these Service Standards may also be taken into account in future invitations to tender for contracts for Legal Aid.
- 4.2. Service Standards must be complied with by you as a whole organisation and by each of your Offices, unless we agree otherwise.

### **The Right to do Contract Work**

- 4.3. Your right to undertake Contract Work under this Contract is dependent on:
  - (a) you holding the Quality Standard set out in your Contract for Signature throughout the Contract Period; and
  - (b) the appropriate Category of Work being specified in your Contract for Signature;
  - (c) you not being prevented from carrying out such work under any other provision of this Contract.

### **Use of Agents, Counsel and Approved Third Parties**

- 4.4. You may instruct Counsel from time to time to carry out or assist with your delivery of Contract Work where you are satisfied that it is in the interests of your Client to do so and, subject to your compliance with the rules on working with third parties in Clause 3 of the Standard Terms. You must not entrust an entire Matter or case to Counsel or an Approved Third Party and must always retain ownership and responsibility for all Cases worked on by Counsel or an Approved Third Party.:
- 4.5. Not used.
- 4.6. Not used
- 4.7. Not used.

### **Supervisor Standards**

- 4.8. You must (unless Category Specific Rules specify otherwise):
  - (a) have at least one full time equivalent Supervisor in each Category. For the purpose of this Paragraph 4.8 "full time equivalent" means the equivalent of one individual working 5 days a week and 7 hours on each such day (excluding breaks); and
  - (b) such person (or such persons) must be either 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) and must at all times during their working hours (except as required for the proper

performance of their role such as attending court and/or Clients) work from the Office specified in your Contract for Signature.

- (c) Subject to Paragraphs 4.21 to 4.22, if you cease to meet the requirements of this Paragraph 4.8 your right to undertake work in the relevant Category will cease. Any breach of this Paragraph 4.8 shall be a Fundamental Breach.
- 4.9. To qualify as a Supervisor for the purposes of any Category of Law under this Contract a person must for the duration of this Contract:
- (a) comply with the Case Involvement Standard in that Category as set out at Paragraphs 4.12 to 4.14;
  - (b) comply with the Supervision Standards set out at Paragraphs 4.15 to 4.20;
  - (c) comply with the Legal Competence Standard for that Category as set out in the Category Specific Rules. The Legal Competence Standard will be measured as at the time a person makes the application as a Supervisor and at any point during the Contract when we request confirmation of compliance with the Supervision Standard. The Supervision Standard is also set out fully in the Supervisor self-declaration forms for each Category; and
  - (d) be either 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).
- 4.10. If any Supervisor ceases to comply with the requirements of Paragraph 4.8, or fails to perform their duties as a Supervisor in a timely manner and with all reasonable skill, care and diligence, you will notify us and such member of your personnel must immediately cease acting as a Supervisor.
- 4.11. A Supervisor may delegate some functions to one of your employees who does not meet all the requirements in Paragraph 4.8(a) to (c) to act as their deputy supervisor. However, the Supervisor must continue to supervise the deputy supervisor who must have a training and development plan to provide the necessary skills and experience to become a Supervisor in future.

### **Case Involvement Standard**

- 4.12. Subject to Paragraph 4.13 below, all Supervisors must meet, in the relevant Category of Law, a minimum Case Involvement Standard of 350 hours in each of the last three years. There are minimum and maximum allowances by which Supervisors can meet the 350 hours and they are as follows:
- (a) direct (personal) casework (this may include direct (documented) supervision) – minimum of 235 hours (of which direct (documented) supervision cannot make up more than 120 hours);
  - (e) file review (including face-to-face) – maximum 60 hours (i.e. approximately 50% of 115 hours);
  - (f) external training delivery (meeting any professional development requirements of your Relevant Professional Body) – maximum 115 hours;

- (g) documented research and the production of publications - maximum 115 hours; and/or
  - (h) other supervision - maximum 115 hours.
- 4.13. If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 1050 hours over the last five years. This requirement is subject to the same minimum and maximum allowances set out in Paragraph 4.12, adjusted pro-rata.
- 4.14. The Case Involvement Standard will be measured as at the time you appoint a person as a Supervisor and at any point during the Contract when we request confirmation of the Case Involvement Standard.

### **Supervision Standards**

- 4.15. All Contract Work must be supervised by a Supervisor in the relevant Category of Law.
- 4.16. All Supervisors must have experience of at least one case where they have demonstrated their ability to recognise the possibility of a contravention of convention rights under the Human Rights Act 1998 (as amended) and meet one of the following supervisory skills standards:
- (a) has supervised in the relevant Category of Law at least one full-time Caseworker (or equivalent) for at least one year in the previous five year period;
  - (b) completed such training covering key supervisory skills that we approve from time to time in the previous 12 months period;
  - (c) completed the Level 3 or higher National Vocational Qualification (NVQ) standard (or any replacement from time to time) in supervising in the previous five-year period.
  - (d) the skills and standards stipulated in section 10.

The Supervisor Standard in this Paragraph 4.16 will be measured as at the time a person becomes a Supervisor and at any point during the Contract Period when we request confirmation of the Supervisor Standard.

- 4.17. A Supervisor must ensure that all persons performing Contract Work have a professional legal qualification or, where a professional legal qualification is not required in respect of Contract Work, such persons must perform a minimum of 12 hours' work each week in the relevant Category of Law.
- 4.18. Arrangements must be in place to ensure that each Supervisor is able to conduct their role effectively including but not limited to:
- (a) designating time to conduct supervision of each Caseworker, either face to face or via remote methods, e.g. email or telephone;
  - (b) without limiting Paragraph 4.8, designating time to be in each Office where Contract Work is being conducted; and



- (c) ensuring that the level of supervision provided reflects the skills, knowledge and experience of each Caseworker.
- 4.19. Each Supervisor must conduct file reviews for each Caseworker they supervise. The number of file reviews must reflect the skills, knowledge and experience of the individual. The Supervisor must record the outcome of files reviews, together with the details of corrective action taken (if any).
- 4.20. Without limiting Paragraph 4.8, where a Caseworker undertakes Contract Work in the same location as their Supervisor, the Supervisor must conduct, as a minimum, face-to-face supervision at least once per calendar month.

### **Temporary Supervisor Absence**

- 4.21. If a Supervisor is for any reason temporarily unable to act you may for a period of up to 6 weeks either:
- (a) nominate a Caseworker who does not meet all the Supervisor requirements (as defined in Paragraph 4.16) to supervise; or
  - (b) nominate an external Supervisor to supervise.
- 4.22. If you estimate that your Supervisor may be unable to supervise for more than 6 weeks, or following completion of the 6-week temporary period described in Paragraph 4.21 above the Supervisor is not able to resume supervision, you must immediately inform your Contract Manager who will decide at their reasonable discretion what you must do to comply with the Contract. This may include:
- (a) extending the use of an employed Caseworker as Supervisor for a limited period;
  - (b) formalising the external supervision arrangement for a limited period;
  - (c) by written notice specifying that you must put in place another employed Supervisor by such period as the notice specifies; or
  - (d) applying a Sanction.

### **Minimum Supervisor Ratios**

- 4.23. A Supervisor must not supervise more than four Caseworkers across a maximum of two Offices. For the avoidance of doubt a Supervisor may only be employed on a full-time basis by one Provider. In each Category specified in your Contract for Signature you must, without limiting Paragraph 4.8, maintain a ratio of having at least one full time equivalent Supervisor for every four full time equivalent Caseworkers at each Office from which you are carrying out work in that Category. Such Supervisors must actively supervise such Caseworkers. For the purpose of this Paragraph 4.23 "full time equivalent" has the meaning as in Paragraph 4.8(a).
- 4.24. For the purpose of Paragraph 4.21 and subject to Category Specific Rules, a 'Caseworker' means a person other than a Supervisor who:
- (a) is either an employee or is an Approved Third Party or Agent who complies with all the conditions set out at Paragraph 4.4;

- (b) regularly undertakes civil legal advice work in the relevant Category (unless the Caseworker holds a professional legal qualification he or she must undertake a minimum of 12 hours advice work each week in the relevant Category); and
  - (c) is a fee-earner to whom a specific caseload of Contract Work in the relevant Category is allocated and who is responsible for the progression of those cases (under supervision).
- 4.25. Individuals who only undertake administrative tasks (which you may not claim for under this Contract) or only conduct triage (early diagnosis of an individual's overall legal problems prior to a matter being opened), are not Caseworkers for the purpose of this definition.

### **Exclusive Categories of Work**

- 4.26. All Categories of Work are exclusive under this Contract. Your Contract for Signature must permit you to undertake work in the Discrimination Category.

### **Overlapping Categories**

- 4.27. Certain Cases may fall within more than one Category, in which case you can choose which Category to carry the Case out in, in accordance with the Category Definitions 2018.

### **Presence Requirements**

#### Offices

- 4.28. For the purposes of carrying out Remote Advice, an Office must be a building which is suitable to cater for the needs of your personnel, enabling you to satisfy all relevant Health and Safety and equality legislation, the Quality Standards and Service Standards of this Contract and to protect Client confidentiality and comply with the requirements of Good Industry Practice. An Office must be a secure location suitable for the storage of Client files, have the appropriate equipment to deliver services and be suitable to undertake work to progress a Client's Case. Hotels, vehicles and other temporary or movable locations do not count as Offices or satisfactory premises referred to in 4.32 below for these purposes.
- 4.29. We may during the Contract Period permit you to carry out Remote Advice from alternative locations other than your Office(s) in exceptional circumstances if you can demonstrate to our satisfaction that you can continue to comply with Paragraph 4.28 and Annex 4 (IT Requirements, the CMS and Business Continuity) as well as any additional requirements we may specify to ensure appropriate levels of security are maintained.
- 4.30. Where we provide written approval for you to carry out Remote Advice from locations other than your Office(s), we reserve the right to revoke such approval with immediate effect where we have concerns in relation to your compliance any term of this Contract or any condition imposed as a condition of us granting approval for remote working etc.
- 4.31. Not used.

4.32. Not used.

4.33. Not used

### **Referral and Signposting Arrangements**

4.34. You must have appropriate arrangements in operation so that you can refer or signpost a Client or potential Client to another Provider where:

- (a) you do not provide the services the Client requires;
- (b) there is a conflict of interest between two or more Clients or potential Clients wishing to access your services;
- (c) you are required to make a referral under the professional conduct rules of your Relevant Professional Body; or
- (d) you have made an assessment under paragraph 1.9 that services should not be provided by Remote Advice or the Client has requested face-to-face advice in a category which is not covered by this Contract and is not Gateway Work; or
- (e) you consider the Case forms part of a wider matter and should be transferred to a Face-to-Face provider authorised in the relevant Category of Law; or,
- (f) you have made an assessment that Remote Advice is appropriate under Paragraph 1.9 but the Client decides to receive Face-to-Face-Advice as part of the Determination. The expectation is that where a CLA Legal Help new matter start is opened the Client should continue to receive Remote Advice until Paragraph 4.35(b) applies; the Client is or becomes an Exempted Person; or the circumstances of the Client change meaning Remote Advice is no longer appropriate in order to satisfy the requirements of Paragraph 1.9. Unless the reasons in this Paragraph 4.34(f) apply, a Client cannot change their mind and request Controlled Work through a Face to Face provider. If this occurs you must advise the Client that they can't receive Controlled Work from a different Provider in relation to the same matter until 6 months has elapsed unless there has been a material development or change in the Client's instructions or a legitimate complaint has been upheld in accordance with Annex 6 (Complaints).

4.35. Where there is any conflict of interest between Clients or potential Client, or where you are required to make a referral under the professional conduct rules of your Relevant Professional Body we would expect that such a referral should be made to one of the other CLA Providers before signposting or referring externally. You must always make a Referral (as opposed to Signposting) where:

- (a) you have assessed that the Client should be provided with Face-to-Face Advice under Paragraph 1.9;
- (b) the Client requires Legal Representation . You must work on the principle that where representation is necessary Referral is made as early on as possible;

- (c) you already have an established relationship with the Client and have undertaken work on a current Case or hold relevant Case information or documents and you can no longer help them under this Contract; or
  - (d) a Referral is needed as a Reasonable Adjustment to meet the needs of a Client or potential Client (as applicable) and you cannot meet such needs.
- 4.36. If you need to refer a Client after you already have an established Client relationship, have undertaken work on a current Case or hold Case information or documents, you must inform the Client of the cost implications of referral (if any). Information about advice and assistance already given and any relevant documentation and details of any Reasonable Adjustments required by the Client must be forwarded to the new CLA Provider or new Provider (as applicable).
- 4.37. Where you make a referral to another CLA Provider or other Provider (as applicable) you must ensure, so far as practicable, that such provider is authorised by us to provide services in the Category of Law most relevant to the Client's problem.
- 4.38. Where you refer a Client, such referral should be undertaken in a manner which does not prejudice the Client. You must also keep the Client informed in respect of the progress of such referral. If you are unable (or cease to be able) to perform Contract Work for Clients and you are unable to make any referral to another CLA Provider or Provider, your procedures must ensure that you make reasonable endeavours to ensure that your Clients' rights are protected, that they suffer no damage and they are provided with all relevant information.
- 4.39. When identifying a suitable provider for a Referral wherever possible you must use the LAA approved search facility detailed in the signposting and referral guidance issued by us from time to time. Where there is no suitable provider within the approved search facility you may use your own list of legal service providers that you have produced by area of law, or provide your own recommendation (as long as, in both cases, preference is given to, legal services providers that hold an SQM or LEXCEL and offer a free or low-cost service). Where there is more than one suitable provider any selection between them must be based first on the Client's choice and failing that, on the closest provider to the Client. Your preference for a particular provider should not be taken into consideration.
- 4.40. If a Case is required to be referred to a face-to-face provider, you may refer such Case to yourself provided that:
  - (a) if the Contract Work is provided in respect of a Controlled Work Case, you hold a 2018 Standard Civil Contract which authorises you to perform such Case in the relevant Category of Law; or
  - (b) if the Contract Work is provided in respect of a Licensed Work Case, you hold a 2018 Standard Civil Contract which authorises you to carry out Licensed Work in the relevant Category of Law; and
  - (c) you have the Client's written consent to act; and
  - (d) you:

- (i) have the closest Office to the Client from which Face-to-Face Advice will be delivered; or
  - (ii) your Office from which Face-to-Face Advice will be delivered is within 45 minutes travel time from the Client, and you have informed the Client of any other CLA Providers or Providers (as applicable) with a 2018 Standard Civil Contract in the relevant Category of Law with offices that are closer to the Client than your Office and they have confirmed that they do not want to go to one of the closer Providers
- 4.41. For the avoidance of doubt, if your Office from which Face-to-Face Advice will be delivered is more than 45 minutes travel time from a Client, and there are other CLA Providers or Provider (as applicable) with a 2018 Standard Civil Contract in the relevant Category of Law with offices that are closer to the Client than your Office, the Client must be referred to the closer adviser(s) in accordance with Paragraphs 4.34 to 4.39 unless 4.42 applies.
- 4.42. You may only refer a Case to yourself if you are more than 45 minutes travel time from the Client where all of the following exceptional circumstances apply:
  - (a) substantive Remote Advice has been provided to the Client (i.e. extensive negotiations with the other side or detailed investigative work) and a relationship has developed; and
  - (b) it can be demonstrated that it is clearly in the Client's best interests for them to receive continuity of advice due to their specific circumstances; and
  - (c) the Client has been offered closer Face-to-Face Advice and has declined such advice.
- 4.43. We may monitor the number of Cases that fall into this category. If we consider it appropriate we may carry out further investigations. If, as a result of such further investigation, it appears that you have breached the requirements of this Paragraph we may take such further action as we deem appropriate, including Assessing a sample of your Claims or applying a Sanction under Clause 24 of the Standard Terms.
- 4.44. In circumstances where you are required to make a Referral under Paragraph 4.35 as part of a new Determination, if two separate Face-to-Face Providers refuse to accept the Referral then you may instead provide the Client with contact details for all of the current Face-to-Face Providers in the Discrimination Category of Law or support them to use the LAA approved search facility to find such a Provider. You should document the steps you have taken to refer the Client and the reasons why each of the two Face-to-Face Providers refused to accept the Referral.

## **SECTION 5 CARRYING OUT CONTROLLED WORK**

### **5. Scope of Controlled Work**

- 5.1. You may undertake Controlled Work for Clients provided it falls within the scope of the Discrimination Category of Law, subject to:
  - (a) the Act and any secondary legislation made under it (including the Merits Regulations and the Financial Regulations);
  - (b) any limitations set out in your Contract for Signature; and
  - (c) the provisions of this Contract.
- 5.2. Decisions relating to the making and withdrawal of determinations about Controlled Work are delegated to you by the Director in accordance with an Authorisation.
- 5.3. Subject to the terms of your Authorisation you should exercise the Delegated Functions in every appropriate case and these decisions should not be referred to the Director or anyone else to whom he has delegated his determination making function in accordance with an Authorisation. Advice may be sought in cases of difficulty or doubt. These Delegated Functions must in all circumstances be exercised in accordance with the terms of your Authorisation and this Contract.

### **Application Procedures**

- 5.4. We may prescribe different forms for different Categories of Law or types of case or Client and for different forms of Civil Legal Aid. We may amend the form or forms from time to time upon giving at least 28 days' notice to you. Completed Application Forms must be kept on file.

#### *Application on behalf of a Child or Protected Party*

- 5.5. You may only accept an application from an "other person" as specified in regulations 22(5) and 22(6) of the Procedure Regulations if:
  - (a) there is sufficient connection between the Child or Protected Party and the other person to ensure that the other person is likely to act responsibly in the interests of the Child or Protected Party; and
  - (b) the other person has sufficient knowledge of the Child or Protected Party, the problem and the Child's or Protected Party's financial circumstances to give proper instructions to you.
- 5.6. Where Controlled Work is carried out under the regulations specified in Paragraph 5.5, the application will be in the name of the Child/Protected Party but signed on his/her behalf. The Application Form should be completed in the name of the Child/Protected Party but signed by the person who is applying on behalf of the Child/Protected Party with an annotation to that effect.

#### *Acceptance of Applications*

- 5.7. Subject to Paragraph 5.8, an Application Form for Controlled Work may be accepted by post, fax, email or other such method of communication as we may agree from time to time.
- 5.8. Applications by post may not be accepted where the Client is resident outside the U.K. and:
- (a) such residence is purely temporary and the Client can without serious disadvantage delay the application until they have returned to the U.K., or
  - (b) the services could be applied for on the same matter by a person resident in the U.K., or
  - (c) it is otherwise unreasonable to accept the application.

### **Financial Eligibility**

- 5.9. The thresholds for financial eligibility are those set out in the Financial Regulations.

#### *Means assessment process by you*

- 5.10. When you first receive a case from the Operator Service you must assess the prospective Client's means without the accompanying evidence.
- 5.11. You must send the Legal Help Application Form with the request for evidence to the Client to sign and return at the earliest possible opportunity after undertaking the Determination with the Client. This should be sent out to the client via email or post. Where relying on post a stamped addressed envelope or freepost address should be used. The Adviser must inform the Client that if the signed Application Form for Legal Help and requested evidence is not returned the advice will be limited.
- 5.12. You may continue with a Case without the accompanying evidence where, exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the Case. Where you continue with a Case in these circumstances, you must ensure that the Supervisor records on the Case file the exceptional personal circumstances of the Client. For the avoidance of doubt, you may claim for Contract Work spent in connection with this Case (in accordance with Annex 3 (Payments and Disbursements), however we may exercise our rights to Assess your Claim in accordance with this Contract.
- 5.13. You may continue a Case without the accompanying signed Legal Help Application Form where the Client is homeless. In these circumstances a verbal declaration must be given by the Client over the telephone. Where you continue with a Case in these circumstances, you must ensure that the Supervisor records on the Case file the exceptional personal circumstances of the Client. For the avoidance of doubt, you may claim for Contract Work spent in connection with this Case (in accordance with Annex 3 (Payments and Disbursements), however we may exercise our rights to Assess your Claim in accordance with this Contract.
- 5.14. If the signed Legal Help Application Form and satisfactory evidence of the Client's financial eligibility is not subsequently supplied, or if the evidence does not show

that the Client is financially eligible, you may only claim a maximum of 132 minutes (which includes a maximum of 12 minutes to conclude any advice and if necessary to refer and signpost the Client) for the Contract Work carried out as a Case provided that:

- (a) you have acted reasonably in undertaking work before receiving satisfactory evidence of the Client's means; and
- (b) you have acted reasonably in initially assessing financial eligibility on the information available; and
- (c) the unsigned Legal Help Application Form is on the Case file; and
- (d) you do not claim any Disbursement beyond those incurred in the period before it is practicable to obtain satisfactory evidence of the Client's means.

We may monitor the number of your Cases that fall into this category. If we consider it appropriate we may carry out further investigations. If, as a result of further investigation, it appears that you have breached this provision we may take appropriate action, including Assessing a sample of your Claims or applying a Sanction under Clause 24 of the Standard Terms.

#### *Computation period for assessing means*

- 5.15. The computation period is the calendar month up to and including the date on which the Client was first assessed by the Operator Service as being eligible (as noted on the Case Handling System). You must attempt to obtain evidence relating to that period.

#### *Assessing the means of a child*

- 5.16. When assessing the means of a Child or Protected Party, the appropriate means which you must take into account are:

- (a) those of the Child or Protected Party: and
- (b) those persons who are liable to maintain the Child or Protected Party or usually contribute substantially to the Child's or Protected Party's maintenance, subject to the exception provided for by the Financial Regulations.

- 5.17. When assessing means where you accept an application for Controlled Work directly from a Child you must consider whether it is just and equitable not to aggregate the Child's means with those of the person liable to maintain the Child. The presumption is that there should be aggregation but you can decide not to aggregate (and assess only the Child's means) if, having regard to all the circumstances, including the age and resources of the Child (and any conflict of interest), you reasonably consider it just and equitable to do so. Non-aggregation is more likely to be justified where there is a conflict between the Child and the person liable to maintain the Child.

### **Case Start Rules**

#### *General rules*

- 5.18. Paragraphs 5.19 to 5.34 and relevant Category Specific Rules in Sections 9 of this Specification set out the rules for when a Legal Help Case may be



commenced. You cannot claim for a Case which does not comply with these rules and if we discover a breach of these rules, on Audit or otherwise, any payments we have made may be re-claimed.

5.19. The following rules are of general application:

- (a) a Case should be commenced only where all applicable criteria in the Merits Regulations and Financial Regulations are met in respect of opening the new Case. In particular, each separate Legal Help Case must satisfy the sufficient benefit criteria set out in regulation 32(b) of the Merits Regulations;
- (b) a Case cannot be in more than one Category of Law;
- (c) each separate Case must be the subject of a separate Application Form. You must identify, and record on the file, any point at which the work that you are performing for any Client becomes two separate Cases and you open a separate Case; and
- (d) each Case is unique to the CLA Provider that commences it. Where, pursuant to Paragraph 5.25, you provide Controlled Work to a Client in relation to which Controlled Work has been undertaken by a previous CLA Provider or Provider, you must commence a new Case.

*When can more than one Case be opened for a single Client?*

5.20. You must not open more than one Case for a Client unless the Client has more than one separate and distinct legal problem. Legal problems will only satisfy this test if they are genuinely separate and distinct, typically because they arise out of different causes or events, and where either:

- (a) they necessarily fall under different Categories; or
- (b) if they fall within the same Category, both
  - (i) if legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and
  - (ii) each problem requires substantial legal work which does not address the other problem(s).

5.21. For the purpose of Paragraph 5.20(b)(ii) 'substantial legal work' must consist of at least:

- (a) an additional 30 minutes of preparation or advice; or
- (b) separate communication with other parties on legal issues.

5.22. Where the Client raises several issues at the first contact, a single Case should be commenced to identify the legal problems and provide general, preliminary advice. If one legal problem is identified then the original, single Case should be used for the provision of further Controlled Work. However, more than one Case may be opened at the initial contact where this is justified under Paragraph 5.20.

- 5.23. Whether a further Case is justified depends on the nature of the Client's problems and does not depend on whether you purport to limit your retainer to any particular part of the Client's problem.

*When can subsequent Case be opened?*

- 5.24. Once a Case has commenced, whether under this Contract or any Previous Contract, a new Case can only be opened for the same Client if the Client has a new legal problem which is separate and distinct, as defined in Paragraph 5.20. Any work which does not relate to such a separate and distinct problem must be carried out under the original Case, whether or not circumstances have changed or developments have occurred as the Client's case has progressed.
- 5.25. As an exception to Paragraph 5.24, you may commence a Case in relation to the same legal problem for which you have previously opened a Controlled Work Matter if:
- (a) a period of at least 6 months has elapsed since the Claim for that Controlled Work Matter was submitted; or
  - (b) both:
    - (i) there has been a material development or change in the Client's instructions; and
    - (ii) save where the Case was concluded under Paragraph 5.47(b), a period of at least 3 months has elapsed since the Claim for that Controlled Work Case was submitted.
- 5.26. For the purposes of Paragraph 5.25(b):
- (a) the fact that the Client has failed to give instructions shall not constitute or give rise to a change in the Client's instructions;
  - (b) a decision or other response from another party to any correspondence, application, appeal or review or other request that was made in the course of the original Controlled Work Case shall not constitute a material development in the Case; and
  - (c) a change in the law that is anticipated within the original Case cannot constitute a material development in the Case.
- 5.27. Where a Case has been closed and claimed for but further work is necessary and a separate Case is not justified:
- (a) the work already undertaken and the further work should be taken into account in determining whether the Case exceeds 900 minutes and is subject to an Assessment.
  - (b) you may claim further Disbursements as part of the Case where appropriate; and

*Multiple Clients*

- 5.28. Where you act for more than one Client in relation to the same general legal problem a single Case should generally be used. Cases in respect of more than one Client may be commenced only where the following are satisfied:
- (a) if proceedings were issued each Client would need to be a party to those proceedings; and
  - (b) each Client has a separate and distinct legal interest in the problem or issue;
  - (c) in considering whether there is sufficient benefit for the second or any subsequent Client to receive Legal Help, you take into account the fact the Legal Help that is already being provided in relation to the same general problem.

*Previous Controlled Work carried out by a different Provider*

- 5.29 You are required to establish whether previous Controlled Work has been provided to the Client in respect of the same Case by making reasonable enquiries including (but not limited to):
- (a) asking the Client;
  - (b) examining any documentation provided by the Client; and
  - (c) considering the length of time that the legal problem has been in existence and any developments during that time.

If you fail to make reasonable enquiries in this situation any Claim for Controlled Work in relation to the Case may be disallowed where the Client has already received Controlled Work in relation to the same legal problem.

- 5.30 Where Controlled Work has been given for the same Case from another Provider within the six months preceding the application, you must obtain the consent of the Client to contact the previous CLA Provider or Provider (as applicable) on as soon as practicable in writing to:
- (a) confirm the reasons for the termination of the retainer; and
  - (b) request a transfer or copy of the file.

Where the Client refuses to give you consent to contact the previous CLA Provider or Provider (as applicable), then you may not provide Controlled Work for that Client and may not make any Claim for payment in respect of any such work under this Contract.

- 5.31 When you have made a request for a Client's file under Paragraph 5.32, you may not start work for that Client until you have received the file and considered its contents unless it is absolutely necessary to take steps immediately to protect the Client's position or meet a court deadline. If you undertake Controlled Work in a situation of urgency and then, having received the file, conclude that the requirements of the Merits Regulations, Financial Regulations and the Procedure Regulations were not satisfied, you must cease acting for that Client immediately, but may still make a Claim for the work you have undertaken under Section 6 of this Specification.

- 5.32 When providing Controlled Work in the circumstances outlined in Paragraphs 5.29 to 5.33 you must record the justification for doing so on the file. Changes to a subsequent Provider on the grounds of dissatisfaction with the service provided or a breakdown in relationship with a previous Provider will require greater justification. You must have regard to any Contract Work already carried out on the Case by the previous Provider and ensure that the Contract Work you carry out does not involve unnecessary duplication.
- 5.33 Where Controlled Work is provided in contravention of Paragraphs 5.29 to 5.33, the work provided cannot be claimed as Contract Work except under Paragraph 5.33.

*Specific situations*

- 5.34 A Legal Help Case is not justified in the following circumstances:
- (a) providing information to Clients or to other persons contacting your organisation;
  - (b) supplying a new CLA Provider or Provider (as applicable) with a former Client's file or a copy, or information about the circumstances of termination of the retainer, under Paragraph 5.32.
- 5.35 Where Controlled Work has already been carried out for a Client then, subject to Category Specific Rules, a separate Case would not be justified in the following circumstances:
- (a) Controlled Work in relation to an interim remedy in a Case on which Controlled Work has already been provided;
  - (b) Controlled Work in relation to enforcement, a review or an appeal (including an application for a determination that the Client qualifies for Licensed Work) in a Case on which Controlled Work has already been provided;
  - (c) Controlled Work in relation to making a complaint in relation to a Case where Controlled Work is at any time provided in relation to a substantive legal remedy in the same Case;
  - (d) if a Client seeks advice as to whether he or she must change CLA Provider from a CLA Provider already providing Controlled Work. The provisions in Paragraphs 5.29 to 5.33 should be applied before any work is provided under a new Case;
  - (e) Not used
  - (f) any work undertaken on a Case by an Agent on your behalf will form part of the same Case.
- 5.36 Notwithstanding Paragraph 5.35(b), where the Client faces enforcement proceedings because he or she is alleged to have breached the terms of a suspended or postponed order, or is alleged to have breached the terms on which proceedings were adjourned, further Legal Help may be provided under a new Case.

**Declining Controlled Work**

### *Decline for good cause*

- 5.37 In addition to making a determination that an individual does not qualify for Controlled Work, you may for another good cause decline to receive an application.
- 5.38 Good cause for declining to receive an application under Paragraph 5.37 includes:
- (a) where you do not have the necessary skill or expertise to take on the Case; or
  - (b) other professional conduct reasons such as actual or potential conflict of interest.
- 5.39 You must give us such information about declining to receive an application under Paragraph 5.37 as we may require.
- 5.40 You must not decline to receive an application under Paragraph 5.37:
- (a) which is within the scope of your Contract and which you have the appropriate skills to carry out, on any grounds which directly or indirectly discriminate on the grounds of a protected characteristic (as defined in section 4 of the Equality Act 2010); or
  - (b) because a potential Client's protected characteristic (as defined in section 4 of the Equality Act 2010) may result in additional costs or disbursements being incurred compared with a Client without them.

### *Declining on the basis of likely cost*

- 5.41 "Good cause" in Paragraph 5.37 does not include any considerations regarding the level of any Fixed Fee or Hourly Rate you may be entitled to receive under this Contract. You may not decline to receive an application under Paragraph 5.37 on the grounds (however stated) that the Fixed Fee or Hourly Rate you would be entitled to claim for that work does not represent what you consider to be appropriate remuneration in the circumstances of the individual Case.

### **Use of Counsel**

- 5.42 Where you instruct Counsel under Legal Help in a Case, Counsel's fees count as a Disbursement and may not be taken into account in determining whether the Case meets the 900 minutes threshold whereby it will be subject to Assessment.
- 5.43 Where you claim Counsel's fees under Paragraph 5.42:
- (a) you must record the justification for the instruction of Counsel in terms of the complexity or other exceptional circumstances of the Case and the relevant expertise of Counsel;
  - (b) Counsel must set out details of the time spent in his/her invoice; and
  - (c) you must pay Counsel the full fee stated by the Counsel's invoice and claimed from us, irrespective of any reduction in respect of Counsel's fees on assessment.

5.44 Not used.

### **Clients with a Financial Interest in your Costs**

5.45 If your Client has or is likely to have a financial interest in any Claim or assessment (because the statutory charge applies, they are obliged to make a contribution to their legal costs, or otherwise) they are entitled to be made aware of the costs you are incurring. You must on a regular basis:

- (a) notify your Client that they have a financial interest and explain why;
- (b) explain that when you make your Claim for costs they have a right to make representations (see Paragraph 8.63); and
- (c) provide them with an update of your costs, including information in relation to the fees of counsel, experts and other disbursements.

### **Ending Controlled Work**

5.46 You may make a Claim for a Controlled Work Case when any of the following events occurs:

- (a) the Client decides not to proceed;
- (b) the Client fails to give instructions for three months (unless the Case is on hold);
- (c) a determination is made that the Client qualifies for civil legal aid provided as Licensed Work (unless further Controlled Work is required on Cases not covered by the determination) or the Case begins to be funded outside this Contract;
- (d) you consider that the Case (having regard to any Category Specific Rules on commencing Cases) is completed;
- (e) the determination that an individual qualifies for Controlled Work has been withdrawn under the Procedure Regulations;
- (f) you can no longer act through a conflict of interest or other reason of professional conduct.

### **Exceptional Case**

5.47 You are authorised, under this Contract, to apply for an Exceptional Case in respect of Controlled Work in accordance with the procedures set out in the Procedure Regulations.

## **SECTION 6      PAYMENT FOR CONTROLLED WORK**

### **6. General Regime**

#### *Levels of payment for Controlled Work*

6.1. We will pay you for Controlled Work carried out in accordance with this Contract and properly claimed on the basis set out in Annex 2 (Cases, Fixed and Hourly Rates (Controlled Work)) subject to Cases being:

- (a) properly conducted; and
- (b) claimed in accordance with the terms of this Contract.

By taking on the Client to undertake Controlled Work covered in Annex 2 (Cases, Fixed Fee and Hourly Rates (Controlled Work)), you are accepting payment based upon the appropriate Fixed Fee or Hourly Rates as full payment for all work reasonably required for the Client in that Case at the Controlled Work level.

6.2. Fixed Fees and Hourly Rates are inclusive of profit costs, travel and waiting time (subject to the Category Specific Rules at Section 9 of this Specification) but are exclusive of other disbursements and VAT.

#### **Assessment**

6.3. Subject to the relevant Claim being in respect of a Case within the Discrimination Category and subject to the Discrimination Category Specific Rules or a Cross Border Case, where the Case exceeds 900 minutes you must apply to us for the Case to be Assessed (on a form to be specified by us) in accordance with Annex 2 (Cases, Fixed Fees and Hourly Rates (Controlled Work)).

#### **Assessment Procedures**

6.4. We have the right to assess all your Claims in accordance with the provisions of the Contract. However, we will not amend any Fixed Fee/Hourly Rates Claim payable to you as a result of an Assessment except as set out in this rule:

- (a) we will not pay for work that is outside the terms of the Contract;
- (b) where your Contract is terminated and you do not (or are not permitted to) complete your Cases then:
  - (i) if the Contract terminates under Clause 25.2 of the Standard Terms, subject to the other provisions of this Paragraph and to any Category Specific Rules, we will pay you in accordance with Annex 3 (Payments and Disbursements); or
  - (ii) otherwise, we may pay the lower of the Assessed amount or the Fixed Fee Claim;
- (c) where more than one Claim has been made for a Case that should, in our reasonable view, have been treated as one Case then we may Assess the Costs of any additional Claims as nil, so that only one Claim is payable.

- (d) where you have failed to evidence on file that the relevant criteria in the Merits Regulations and Financial Regulations have been met;
  - (e) where you have failed to retain on file evidence required under the Procedure Regulations;
  - (f) where work is not within the scope of Legal Aid; or
  - (g) where you have claimed the wrong Fixed Fee.
- 6.5. We may also take into account the results of any Assessment under Paragraph 6.7 in:
- (a) assessing your performance under this Contract; and
  - (b) deciding whether your work should be subject to quality assessment or another form of Audit.

*Controlled Work Cost Audits*

- 6.6. Reference to "Sample" below means a sample of no fewer than 20 Claims made by you (or all Claims if you have submitted less than 20 since the last Assessment was undertaken). When we Assess a Sample of Claims, we may apply any Findings to your other Claims for payment for Controlled Work.
- 6.7. When we apply Findings in this way, we may do so for all Cases commenced under this Contract (or any previous Contract it has replaced) where costs have been claimed from us either:
- (a) In the case of Mis-Claiming, at any time within the two years following its submission to us or within six years if (i) an Official Investigation is underway or (ii) we have received a report that we can reasonably consider requires us to Assess such Claims;
  - (b) In the case of Over-Claiming or other claiming issues:
    - (i) Since the date of the last Contract Compliance Audit; or
    - (ii) From a date 12 months immediately preceding the date the file sample was requested for assessment.

Whichever is the most recent.

- 6.8. If the sample relate only to a specific group of your files or Category of Law, then we will only apply the Findings to that specific group.
- 6.9. When Finding are applied to a Claim under these provisions, then we have assessed that Claim.
- 6.10. You must comply with the provisions on claiming and assessment in respect of Contract Work set out in the terms of this Contract, Legal Aid Legislation and the Civil Procedure Rules.



## **General Provisions on Claiming and Assessment**

- 6.11 You may only claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment.
- 6.12 You must submit your Claims in accordance with the terms of any limitations placed upon that Case. We may reject any Claim you make which does not comply with the rule in this Paragraph 6.12.
- 6.13 Where any item of costs is to be claimed on more than one Case, this fact must be recorded on each of the relevant files and Claims, together with the proportion of time and costs attributed to each matter. Consecutive attendances on the same Client(s) where continuous are to be treated as a single item of costs for the purposes of this rule in Paragraph 6.13.
- 6.14 Whether or not your Client has a financial interest in the Case, in carrying out Contract Work you must endeavour where possible to obtain and pursue a Client's costs order or Client's costs agreement as you would if acting for a privately paying client (including in any detailed Assessment proceedings or negotiations in respect of a Client's costs order or Client's costs agreement), and you must seek to protect the interests of public funds on any detailed Assessment of costs payable by another party.
- 6.15 If your Client has a financial interest in any Claim or Assessment they are entitled to make representations in relation to your Claim. Before submitting your Claim for Assessment, whether by the court or us, you must:
- (a) notify your Client that they have a financial interest and explain why;
  - (b) explain that they have a right to make representations and set out how they can make those representations, explaining such other steps that they may take to safeguard their interest;
  - (c) provide them with a copy of your bill of costs or Claim for costs; and
  - (d) endorse your bill or Claim indicating that you have complied with the steps in Paragraph 6.15(a) to (c).
- 6.16 Without prejudice to the generality of Paragraph 6.11, you should note the following provisions regarding costs and disbursements:
- (a) you must not claim for time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting the administrative requirements of your Contract (such as the information return and the Claim for costs), unless expressly provided by this Contract or Costs Assessment Manuals;
  - (b) you must not claim for time spent on legal research over and above brief checks on the law, unless the Case involves a novel, developing or unusually complex point of law, justifying either legal research by you or the obtaining of an opinion from Counsel;

- (c) you must not claim for any additional costs incurred by you or your Client because you are based in a Location distant from your Client where it would have been reasonable for your Client to have instructed a Provider located nearer to him or her;
  - (d) You must not claim for matters that properly fall as your overheads, such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges, telephone charges and the time and costs of photocopying, save as provided for in the Costs Assessment Manuals.
- 6.17 Where you instruct an expert to deliver services of a type set out in the Remuneration Regulations we will not pay fees in excess of those in Remuneration Regulations unless we consider it reasonable to increase such fixed fees or rates in exceptional circumstances. Subject to such limits where applicable, the amounts claimed for the provision of expert services must be justified on the Claim. For the purpose of this Paragraph 6.17, "exceptional circumstances" means that the expert's evidence is key to the Client's Case and either the complexity of the material is such that an expert with a high level of seniority is required; or the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence. We will pay expert services of a type not listed in the Remuneration Regulations at such rate as we may from time to time determine and in considering the same we will have regard to the rates set out in the Remuneration Regulations and we may require you to provide us with a number of quotes in respect of the provision of the relevant service.
- 6.18 Any Assessment undertaken by us or by the Assessor on a subsequent appeal, will be subject to any costs or other limitations imposed by us and costs will only be allowed at the appropriate rates as set out in the Remuneration Regulations.

## **Appeals**

- 6.19 If you are dissatisfied with any decision of ours as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor ("the Assessor"). For the avoidance of doubt, subsequent references in this rule in Paragraph 6.19 and its related Contract Guide shall include "Assessors" in Cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.
- 6.20 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. We will only extend the 28 day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.
- 6.21 Failure to comply with any of the requirements set out in Paragraph 6.20 means that you accept our decision and lose your right to dispute it.
- 6.22 Where an appeal is to proceed, we also have the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If we do so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations

from us then you have the right, within 14 days, to provide a written response to them.

6.23 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:

- (e) in your case, you submit your written appeal; and
- (f) in our case, at the same time as we make any written reply (or, where no written reply is made, during the period allowed for making such reply).

Either party may challenge such an application for an oral hearing to the Assessor within 7 days of the application being made.

6.24 The Assessor will consider the request and notify both parties of his or her decision.

6.25 If:

- (g) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or
- (h) having considered a party's request for an oral hearing, he or she is of the opinion that the request should be granted,

he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.

6.26 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone he or she may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

6.27 The Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.

6.28 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. In a Controlled Work Assessment, the Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 6.7. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.

6.29 Where in dealing with an appeal on the papers only the Assessor identifies new issues the Assessor will, as he or she considers appropriate in the circumstances, either:

- (a) adjourn the appeal and seek representations from the parties before making his or her final decision; or
- (b) refer the matter back to us for a new decision.

**Exceptional Case**

6.30 You are authorised, under this Contract, to be paid in accordance with Annex 2 (Cases, Fixed Fee and Hourly Rates (Controlled Work)) for any Exceptional Case that you undertake under this Section 6.

**SECTION 7 Not used.**

**SECTION 8 Not used.**

**Section 9 - Discrimination**

**Supervisors’ Legal Competence Standard**

9.1 At any time during the Contract, the Supervisor must, in the previous twelve months, have undertaken work on the minimum number of cases in the Discrimination Categories in Table One below:

<b>Table One</b>		
<b>Legal Competence Standard for Supervisors</b>		
	<b>Discrimination Case category</b>	<b>Minimum number of case files required</b>
1	<b>Discrimination</b>	7 case files (of which 4 must relate to Discrimination at work)
2	Cases involving arguments about reasonable adjustments.	7 case files

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

<b>Table Two</b>		
<b>Skills/Procedure/Knowledge</b>		
	<b>Discrimination Case type</b>	<b>Minimum number of case files required</b>
1	Advice and assistance on preparing an appeal/claim, or advice on a potential appeal/claim, to an employment tribunal (ET) or the County Court	2 case files

**Table Two**

**Skills/Procedure/Knowledge**

	<b>Discrimination Case type</b>	<b>Minimum number of case files required</b>
2	Advice to Client about the merits of a review/appeal to the EAT or review of an ET decision.	1 case file
3	Consideration of procedural points, for example:  1. Application for discovery; 2. Representation at a preliminary hearing; or 3. Request for further and better particulars or written answers to questions.	1 case file
4	Advice to the Client about enforcing an award.	1 case file

**Authorised Litigator**

9.3 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 Discrimination Category of Law to enable you to perform your obligations under this Contract.

**Exceptional Cases in the Discrimination Category**

9.4 Note that any applications for an Exceptional Case in the Discrimination Category can only be made by CLA Providers whose Contract for Signature permits them to provide Contract Work in the Discrimination Category unless the Case satisfies the effective administration of justice test as set out in the Procedure Regulations. In the Discrimination Category, payment for Exceptional Case work carried out under this Contract will be in accordance with the provisions at Paragraph 6.30. (Controlled Work).