

2018 Standard Civil Contract

Specification

Category Specific Rules:

Housing and Debt

Category Specific Rules

Section 10 Housing and Debt Specification

This part of the Specification sets out the rules relating to cases undertaken in the Housing and Debt Categories of Law. Providers must satisfy themselves before undertaking work in either of these two Categories that the work is within Scope.

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

References in the Contract Specification to Part 7 of the Housing Act 1996 (or to provisions within Part 7 of the Housing Act 1996) include reference to Part 2 of the Housing (Wales) Act 2014 (or equivalent provisions within Part 2 of the Housing (Wales) Act 2014).

Combined Supervisors’ Legal Competence Standard for Housing and Debt

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

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

10.2 At any time during the Contract the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in each of the 3 case types in Table 2 below:

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

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

- (c) access to the current edition of the Child Poverty Action Group Debt Handbook;
- (d) demonstrated access to specialist housing law reports;
- (e) current copy of the Civil Procedure Rules (including practice directions and supplements).

Supervisor Standard

- 10.8 Where you have a Schedule Authorisation to provide services in the Welfare Benefits Category, subject to the other provisions of this Contract, an individual who is a Supervisor in this Category may also be a Supervisor in the Welfare Benefits Category of Law.

Authorised Litigator

- 10.9 Depending on the volume of Matter Starts you are awarded under this Category, we may specify additional requirements in relation to the Office(s) from which your Authorised Litigator(s) shall be required to work (in addition to those set out in Paragraph 2.8 of the Specification). Any such requirements shall be specified in your Schedule.

Housing specific rules

Expert reports in housing disrepair cases

- 10.10 In a disrepair case you must not instruct an expert to prepare a report outside the procedures of the pre-action disrepair protocol (as set out in the Civil Procedure Rules) unless:
- (a) the report is required urgently to seek an injunction or;
 - (b) it appears the condition of the property may constitute a statutory nuisance, the landlord has been given notice of the condition and a request for remedial works within a reasonable period of time and that time period has elapsed and the landlord has not made arrangements to take appropriate action.

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

Matter Start Rules

- 10.11 A single Matter Start should encompass investigation of both:
- (a) any appropriate civil remedies, including where appropriate an application for Licensed Work; and
 - (b) any appropriate proceedings in the magistrates' court under the Environmental Protection Act 1990.

Homelessness cases

- 10.12 Legal Help given in relation to homelessness must be provided on a specific legal issue or issues and should cover practical matters such as identifying accommodation agencies or making a referral to them.
- 10.13 The general rule is that all steps within the course of a homelessness application should be dealt with under a single Matter Start. This is subject to the following detailed provisions:
- (a) A potential interim application for Judicial Review, such as in relation to the failure of the local authority to accept an application, make enquiries, provide interim accommodation or notify a decision, will not justify a separate Matter Start. However, where both:
 - (i) the prospects of success of the proposed challenge appear to satisfy regulation 56 of the Merits Regulations or would seeking counsel's opinion under regulation 40(1)(b) of those Merits Regulations; and
 - (ii) it is justifiable to dispense with the pre-action protocol for Judicial Review,then work relating to the proposed Judicial Review may be carried out under a grant of Emergency Representation.
 - (b) Where following a request for review under section 202 of the Housing Act 1996 ("the Housing Act"), the local authority remits the decision for further consideration or investigation, Legal Help pending the further decision should be provided under the existing Matter Start.
 - (c) Where following a request for review under section 202 of the Housing Act the local authority reaches a decision that confirms the original decision on any issue against the interests of your Client or confirms a previous decision in relation to a referral of your Client to another authority, or fails to notify a decision within the period required by regulations under section 203(7) of the Housing Act:
 - (i) A new Matter Start would not be justified in relation to an appeal under section 204 of the Housing Act. If the prospects of success of such an appeal appear to satisfy regulation 56 of the Merits Regulations or justify obtaining Counsel's opinion under regulation 40(1)(b) of those Merits Regulations, you may pursue or grant Emergency Representation.
 - (ii) A separate Matter Start would not be justifiable in relation to an appeal or potential appeal under section 204A of the Housing Act in relation to interim accommodation.
 - (iii) If, following the issue of an appeal under Section 204 of the Housing Act the decision is subsequently remitted for reconsideration by the local authority by order or agreement, a new Matter Start may, subject to this Paragraph, be justified to provide further Legal Help.

- (iv) Where on appeal under section 204 of the Housing Act the decision of a local authority is varied by order or agreement, Legal Help required in relation to enforcement of any duty arising from the new decision may be provided under a new Matter Start.
- (v) A new Matter Start will not be justified where an appeal issued pursuant to section 204(1)(b) is compromised on the basis that the local authority completes its review and notified its review decision.
- (d) Subject to the Legal Aid Legislation, a new Matter Start may be opened to assist the Client in requesting a review, under section 202(f) of the Housing Act, of accommodation offered by a local authority, but not to provide general advice as to the risks of refusing an offer of accommodation or the Client's rights in relation to requesting a review of such an offer.
- (e) Any issues relating to compliance by the local authority with any duty arising from its decision under section 184 or section 202 of the Housing Act should be addressed under an existing Matter Start. Where the matter is reasonably closed on the basis that it appears the local authority is complying or has stated how it will comply with such duty or duties, and subsequently further significant legal work is justified as a result of the authority's persistent failure to do so, further Legal Help may be carried out under a new Matter Start.
- (f) A new Matter Start may be opened where a threat of Judicial Review is justified in relation to a failure of the authority to protect the Client's property pursuant to sections 211 and 212 of the Housing Act.

10.14 For the avoidance of doubt:

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

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

Debt specific rules

Applying for criminal Legal Aid in certain Debt proceedings

- 10.16 If you have Schedule Authorisation for Debt under this Contract, then you may also provide representation under Section 16 of the Act in civil proceedings in the magistrates' court arising out of a breach of a financial order of that court where there is a risk of imprisonment provided that is in the interests of justice to provide representation. Payment for representation under this Paragraph 10.16 will be in accordance with the relevant Standard Fee scheme applicable to such cases under our current contract for criminal legal aid services.

Representation under this Paragraph 10.16 is part of criminal legal aid services (even though provided for under this Contract) and may also be performed by those with a contract for criminal legal aid services. You may apply for criminal legal aid by completing the appropriate forms and sending them to the magistrates' court which is dealing with the matter. Criminal legal aid in the magistrates' court is subject to the individual passing the applicable means test.

Exceptional Cases

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

Housing Loss Prevention Advice Service (HLPAS)

10.18 Unless otherwise stated in Paragraphs 10.18 to 10.78 the following expressions have the following meanings:

"Early Legal Advice" means as described in Paragraph 10.34;

"HLPAS" means the Housing Loss Prevention Advice Service;

"HLPAS Manager" means as described in Paragraph 10.31;

"HLPAS Schedule" means the contract document issued by us which authorises you to undertake HLPAS Contract Work and lists the court(s) at which you will provide the In-Court Duty Scheme and the specified number of Matter Starts allocated in respect of Early Legal Advice;

"HLPAS Stage 1 Payment" means as described in Remuneration Regulations;

"HLPAS Stage 2 Payment" means as described in the Remuneration Regulations;

"In-Court Duty Scheme" means Legal Help and Help at Court at a Session (in person at court or some other off-site location) to Clients with a listed possession hearing (which will be either a review or substantive hearing); and

"Session" means a period in which the relevant court is in session hearing possession cases.

10.19 HLPAS Contract Work may only be undertaken under an Exclusive Schedule Arrangement.

10.20 Paragraphs 10.18 to 10.78 set out the additional rules that apply if you hold an Exclusive Schedule permitting you to deliver HLPAS Contract Work.

10.21 All HLPAS Contract Work is subject to any conditions or restrictions set out in your HLPAS Schedule.

10.22 Clause 25.1 shall not apply to your HLPAS Schedule and is expressly overridden by Paragraph 10.23. In all other respects Clause 25.1 shall apply to the HLPAS.

10.23 You may, at any time, serve not less than three months' notice on us to cease providing the HLPAS in whole but not in part. During this notice period you are obliged to continue to deliver the In-Court Duty Scheme as set out in your HLPAS Schedule and comply with the requirements of Paragraphs 10.30 to 10.31 and 10.48 to 10.75.

Scope of HLPAS

10.24 Contract Work under Paragraphs 10.18 to 10.78 consists of:

- (a) Early Legal Advice and/or;
- (b) In-Court Duty Scheme services.

- 10.25 All HLPAS Contract Work is Controlled Work.
- 10.26 Payment provisions for HLPAS Contract Work are specified in the Remuneration Regulations.
- 10.27 If you provide Early Legal Advice to a Client and subsequently represent that Client under the In-Court Duty Scheme you may claim the:
- (a) HLPAS Stage 1 Payment;
- and
- (b) HLPAS Stage 2 Payment.
- 10.28 Contract Work provided under Paragraphs 10.1 to 10.17 of the Specification is not affected by the provisions in Paragraphs 10.18 to 10.78 and may be undertaken in addition to work under the HLPAS Schedule.
- 10.29 Where you open a new Housing or Debt Matter Start under Paragraphs 10.1 to 10.17 in relation to the same case, you can claim payment for the Matter Start in addition to payment for providing the Early Legal Advice and/or the In-Court Duty Scheme.

Management of the HLPAS service

- 10.30 At all times throughout the Contract Period you must:
- (a) have a Housing and Debt Supervisor who is actively engaged in supervising your delivery of the service in accordance with the requirements of this Contract; and
 - (b) employ an Authorised Litigator
- and such individual(s) must be reasonably accessible to support your advisers as required in order to ensure the efficient and effective delivery of the service.
- 10.31 You must nominate an individual member of your personnel as your HLPAS Manager who is responsible for the overall management of the HLPAS and provide us with their name and up to date contact details. Such person must be suitably experienced in order to effectively manage your overall delivery of the service and must be based at an Office to which your HLPAS Schedule applies. For the avoidance of doubt where you are authorised under your HLPAS Schedule to deliver the services in multiple courts you may nominate a single individual to manage your delivery of the service across all such courts.
- 10.32 You must include HLPAS work in any file review process you conducted under your Quality Standard.

Delegation of the HLPAS service

- 10.33 Without prejudice to your management obligations at Paragraphs 10.30 to 10.31, you may delegate provision of the service to other Providers who will act

as your Agents in accordance with the provisions set out in Paragraph 2.5 to 2.7 of the Specification.

Early Legal Advice

- 10.34 Early Legal Advice involves the provision of legal advice to individuals at risk of possession proceedings and loss of their home in relation to:
- (a) all Housing Matters set out in Paragraph 37 of the Category Definitions and additionally:
 - i the possession, status, terms of occupation, repair, improvement, eviction from, quiet enjoyment of, or payment of rent or other charges for, an individual's home;
 - ii the rights of leaseholders under the terms of their lease or under any statutory provision (including in relation to leasehold enfranchisement); and
 - iii allocation and transfer of housing and the provision of sites for occupation.but does not include disputes relating to any boundary of a property;
 - (b) all Debt matters set out in paragraph 27 of the Category Definitions and includes rent, mortgage, council tax, utilities and court fines and additionally matters which concern non-priority debts including bank loans, credit card/HP/other regulated credit debts; and
 - (c) all Welfare Benefits matters set out in paragraph 46 of the 2018 Standard Civil Contract Category Definitions and additionally matters which relate to a benefit, allowance, payment, credit or pension under:
 - i a social security enactment;
 - ii the Vaccine Damage Payments Act 1979;
 - iii Part 4 of the Child Maintenance and Other Payments Act 2008;and
 - iv A council tax reduction scheme.

10.35 Early Legal Advice may be provided in person or remotely.

Financial Eligibility

10.36 Early Legal Advice may be provided without a determination on an individual's financial resources.

Volumes of work

10.37 Your HLPAS Schedule will contain a number of Matter Starts which may only be used for Early Legal Advice.

10.38 Matter Starts issued under a HLPAS Schedule are subject to the general provisions in Paragraphs 1.15 to 1.19.

Matter Start Rules

- 10.39 You may open an Early Legal Advice Matter where a potential Client seeks advice in relation to those matters described in Paragraph 10.34 and provides written evidence of risk of possession proceedings and loss of their home which may include:
- (a) letter or notice from a landlord (which may include a family member) where an informal licence exists;
 - (b) notice to quit from a landlord where a renting arrangement lacks security of tenure;
 - (c) letter before action as required by the Rent Arrears Pre-Action Protocol For Possession Claims by Social Landlords or the Pre-Action Protocol For Possession Claims based on Home Purchase Plan Arrears in Respect of Residential Property;
 - (d) notice seeking possession served by a landlord under section 83, 83Z or 107D of the Housing Act 1985 or sections 8 or 21 of the Housing Act 1988;
 - (e) notice seeking possession served by a landlord under section 128 of the Housing Act 1996; or
 - (f) letter from the court notifying the Client that possession proceedings have been issued.
- 10.40 Evidence referred to in Paragraph 10.39 is not exhaustive and other written evidence may be appropriate.
- 10.41 A copy of the written evidence referred to in Paragraphs 10.39 and 10.40 must be retained on the Client's file.
- 10.42 Where a Client qualifies for Early Legal Advice you may open a single Legal Help Matter which shall cover all Contract Work covered under this element of the HLPAS.
- 10.43 Early Legal Advice may continue following a review hearing but is not available following the first substantive possession hearing and you must not provide further Early Legal Advice beyond this point.
- 10.44 Where a Client has received Early Legal Advice and that Matter has concluded pursuant to Paragraph 10.43 and qualifies for Controlled Work under the provisions of Paragraphs 10.1 to 10.17 you may open a Matter Start to provide Contract Work outside of the HLPAS specific provisions.
- 10.45 Where an Early Legal Advice Matter does not conclude pursuant to Paragraph 10.43 it shall end in accordance with the provision set out in Paragraph 3.64.

Remuneration for Early Legal Advice

- 10.46 Early Legal Advice is paid by way of Standard Fees (the HLPAS Stage 1 Payment) in accordance with the provisions set out in Section 4 of the Specification.
- 10.47 All fees are exclusive of VAT and disbursements which may be incurred in accordance with Paragraphs 4.24 to 4.31 of the Specification.
- 10.48 Where the amount of any Claim in respect of Early Legal Advice as calculated in the basis of Hourly Rates exceeds the Escape Fee threshold as specified in the Remuneration Regulations you may apply for the Claim to be treated as an Escape Fee Case pursuant to Paragraphs 4.13 to 4.20.

In-Court Duty Scheme

- 10.49 The In-Court Duty Scheme provides 'on the day' emergency face-to-face advice and advocacy to anyone facing possession proceedings in court.
- 10.50 The In-Court Duty Scheme is available to individuals whose home is at immediate risk of possession because possession proceedings have been listed for a review or substantive hearing.
- 10.51 If you represent a Client at a review hearing there is no automatic entitlement under this Contract for you to represent them at any subsequent substantive hearing. Representation at any subsequent hearing is subject to eligibility under this Contract and Client choice.

Financial Eligibility

- 10.52 The In-Court Duty Scheme may be provided without a determination on an individual's financial resources.

Service Requirements

- 10.53 You must provide the In-Court Duty Scheme to any individual who requests advice at a Session and meets the eligibility criteria at Paragraphs 10.50 and 10.52.
- 10.54 The In-Court Duty Scheme covers the types of possession proceedings within the scope of the Act and heard by the court(s) set out in your HLPAS Schedule.
- (a) private rented possession proceedings;
 - (b) public/registered social landlord rented possession proceedings;
 - (c) mortgage possession proceedings;
 - (d) applications to stay/suspend execution of warrants of possession; and
 - (e) Clients with charging orders relating to property whereby the Client is at immediate risk of losing their home through a forced sale.

- 10.55 You must provide the following services to Clients within the scope of the InCourt Duty Scheme:
- (a) advice (whether in person or remotely) to the Client on the day of the listed hearing;
 - (b) advocacy for the relevant proceedings on the day of the listed hearing (whether in person or remotely);
 - (c) advice (whether in person or remotely) to the Client on the day post the listed hearing, explaining the outcome and the options available to the Client;
 - (d) assisting Clients to liaise with third parties on the day of the listed hearing;
 - (e) referrals to other Providers to take on follow up work where you are unable to take on this work under your Contract or to other organisations where the Client may not be eligible for Legal Aid; and
 - (f) send a letter to each Client explaining the outcome and the options available to the Client.

Management of the In-Court Duty Scheme

- 10.56 Your HLPAS Manager must liaise with the court to ensure that the In-Court Duty Scheme is in place each time the court lists possession proceedings.

Volumes of work

- 10.57 We will allocate a volume of acts of assistance to each specific In Court Duty scheme for the year (or such other period as is specified in your HLPAS Schedule). You are authorised to provide 10% more acts of assistance than your allocated volume without prior authorisation from us. If you wish to provide acts of assistance above this level you must obtain our prior written approval.
- 10.58 You may not use Matter Starts issued in respect of Early Legal Advice to provide the In-Court Duty Scheme.

In-Court Duty Scheme obligations

- 10.59 Your obligation is to provide the In-Court Duty Scheme at the court(s) listed in your HLPAS Schedule at all Sessions and using the method required by the court which may be either in person or remotely.
- 10.60 You must ensure that you have appropriate adviser(s) available to provide advice and representation at each Session.
- 10.61 For the purposes of Paragraph 10.60 "appropriate adviser" means a Supervisor in Housing and Debt Category of Law or an individual meeting the definition of Caseworker in Paragraph 2.27 of the Specification.

- 10.62 You must ensure that you have the flexibility to manage fluctuations in demand to comply with your obligations under Paragraph 10.56 and 10.59.
- 10.63 If you are unable to provide the In-Court Duty Scheme at any Session you must use your best endeavours to appoint a suitably qualified agent pursuant to Paragraph 10.33 and in the event that this is not possible inform your Contract Manager immediately.

Remuneration for In-Court Duty Scheme services

- 10.64 The HLPAS Stage 2 Payment covers all Contract Work for a Client represented at an In-Court Duty Scheme Session.
- 10.65 The court will determine the number of Sessions per day and as long as there is a clear break between Sessions listed on the same day payments can be claimed for each session.
- 10.66 If you represent a Client at more than one hearing, including a review hearing, separate HLPAS Stage 2 Payment may be claimed.
- 10.67 There are no additional payments for travel or waiting or similar. No additional payments will be made other than for disbursements incurred in representing a Client at a remote hearing.
- 10.68 Where you are available to represent Clients at a Session and you represent no or one Clients you may submit a Claim equivalent to representing two Clients.
- 10.69 Payment will be monthly in arrears for work done. Payments will be made separately from your Standard Monthly Payments for other Controlled Work.

Providing services at a court where there is no In-Court Duty Scheme in operation

- 10.70 You are only permitted to provide the In-Court Duty Scheme at a court where there is no In-Court Duty Scheme where you have our written authorisation to do so.
- 10.71 Where you are authorised to provide Contract Work under Paragraph 10.70 Client eligibility is as specified in Paragraphs 10.50 and 10.52.
- 10.72 Where you are authorised to provide Contract Work under Paragraph 10.70 you may provide Early Legal Advice.
- 10.73 Where you are authorised to provide Contract Work under Paragraph 10.70 the provisions in Paragraph 10.68 shall apply.

Reporting and auditing

- 10.74 You must report data about the Early Legal Advice and In-Court Duty Schemes in such form as we may specify by the specified times and your entitlement to receive payment is conditional on your doing so.

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

Requests for advice outside the scope of the HLPAS

- 10.76 Where a Client seeks your advice outside the scope of the HLPAS, then, subject to any means or merits tests you should (if you are permitted by this Contract) consider whether it is appropriate in the circumstances to commence Legal Help, Help at Court or Licensed Work under any other provisions of this Contract.

Emergency Representation

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