

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 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 Two below:

Table Two		
	Housing and Debt case type	Minimum number of case files required
1	Case which required	<ul style="list-style-type: none"> • 3 examples in possession

	representation	<p>cases, and</p> <ul style="list-style-type: none"> • 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 name and reference) of cases to demonstrate compliance with Paragraphs 10.1 and 10.2. The same case file can be used 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 case 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 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 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 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 in 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 not 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 justify 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 the work relating to the proposed Judicial Review may be carried out under a grant of Emergency Representation.

(b) Where following a request for a 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 justified 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 notifies 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 a local authority with any duty arising from its decision under section 184 or section 202 of the Housing Act should be addressed under the existing Matter Start. Where the matter is reasonably closed on the basis that it appears that 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.