

### **3. Qualifying Criteria**

#### **General Criteria**

- 3.1 Each Unit of Work may be subject to Qualifying Criteria as set out below. When a Unit of Work is subject to Qualifying Criteria, you must apply it in the following circumstances:
- (a) when the application from the prospective Client is made to you; and
  - (b) (except in relation to the Financial Eligibility Tests) when further Contract Work is provided throughout the Matter or Case.
- 3.2 You must refuse to act in respect of any work that does not meet the relevant Qualifying Criteria.
- 3.3 In applying the Qualifying Criteria, you must have regard to any Contract Guide.
- 3.4 The Qualifying Criteria are:
- (a) Financial Eligibility Test; and/or
  - (b) the "Sufficient Benefit Test"; and/or
  - (c) the "Interests of Justice Test"; and/or
  - (d) additional eligibility criteria as set out for each Unit of Work in Sections 9 to 13.

#### **Financial Eligibility**

- 3.5 Where Financial Eligibility Tests apply to the provision of Advice and Assistance or Advocacy Assistance in this Specification, satisfactory evidence as described in the Contract Guide must be provided to you by the Client before you assess their financial eligibility, subject to Paragraph 3.6. The evidence (or a copy of it) must be retained on the file.
- 3.6 You may assess the prospective Client's means without the accompanying evidence only where:
- (a) it is not practicable to obtain it before commencing the Contract Work; or
  - (b) pre-signature telephone advice is given; or
  - (c) exceptionally, the personal circumstances of the Client make it impracticable for the evidence to be supplied at any point during the Matter or Case.
- 3.7 Unless Paragraph 3.6(c) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence as described in the Contract Guide of the Client's financial circumstances is not subsequently supplied, then work which is payable by Fixed Fee or Standard Fee may not be claimed. Where work is payable on an Hourly Rates basis, any work carried out by you above two hours cannot be claimed by you as Contract Work. In such circumstances, a note must be made on file.

- 3.8 You may accept clean copies of any evidence described in the Contract Guide as satisfactory evidence. The evidence (including electronic evidence) must be supplied in relation to both the Client and his or her partner if their means are aggregated.
- 3.9 Time spent applying Financial Eligibility Tests and completing the appropriate application form(s) is not remunerated under this Contract unless this Specification provides otherwise, or a fee is claimable under Criminal Remuneration Regulations.

### **The Sufficient Benefit Test**

#### *Advice and Assistance*

- 3.10 The Sufficient Benefit Test for Advice and Assistance is set out below and must be satisfied in order to provide Advice and Assistance under this Contract.

**Advice and Assistance may only be provided on legal issues concerning English (or Welsh) law and where there is sufficient benefit to the Client, having regard to the circumstances of the matter, including the personal circumstances of the Client, to justify work or further work being carried out.**

- 3.11 This test applies both when the application is granted by you and when further Advice and Assistance is provided throughout the Matter. It must therefore be considered whenever work is carried out on the Matter. Prison Law has a more detailed Sufficient Benefit Test which is set out in Section 12 and which must be applied when undertaking work in the Prison Law Class.
- 3.12 If it becomes apparent that the Sufficient Benefit Test is no longer satisfied then the Advice and Assistance must cease and the Client must be so advised.
- 3.13 You must not claim for Advice and Assistance where the Client is seeking advice on non-legal issues. In such cases, you should generally refuse to provide Advice and Assistance at all or, if necessary, cease to provide Advice and Assistance once the issue becomes clear, which would often be at the first interview.
- 3.14 You must also apply the Sufficient Benefit Test to determine the extent of the advice that is required (including whether an attendance is necessary and the length of time which should be spent).
- 3.15 In relation to Police Station Advice and Assistance the Sufficient Benefit Test is satisfied automatically where a Client has a right to legal advice or is a Volunteer under PACE or the equivalent legislation applying to the armed forces in the case of military investigations. This only applies to initial advice at the Police Station and you must still apply the test to determine the extent of the advice, which is required.

#### *Advocacy Assistance*

- 3.16 Before commencing Advocacy Assistance on an Own Client Matter, you must apply one of the following tests (where appropriate):
- (a) you must refuse to make a determination that an individual qualifies for Advocacy Assistance if it appears unreasonable that a determination should be made in the particular circumstances of the case. When determining whether an individual qualifies for Advocacy

Assistance, the interests of justice, prospects of success and merits of making a determination should be taken into account as well as whether the Client has reasonable grounds for contesting the proceedings; or

- (b) if the relevant Qualifying Criteria are not met, then you must not make a determination that an individual qualifies for Advocacy Assistance.

### **Independent Funding Adjudicator**

- 3.17 You must notify the Client of the right to apply to the Independent Funding Adjudicator for a review of your decision not to make a determination that the Client qualifies for, or to withdraw Advocacy Assistance, or our decision not to extend the relevant Upper Limit (see Section 5). If your Client decides to do this, you must inform him or her of the time limit and the approved form required and must keep a record of this on file. In relation to an appeal against a decision not to extend the Upper Limit, an Independent Funding Adjudicator's powers are to grant the extension, part grant the extension or refuse the extension.
- 3.18 Where Associated Civil Work is undertaken, the applicable rights of review are those set out in the current civil legal aid contract specification, the Civil Procedure Regulations and not under this Contract. Applications to the Independent Funding Adjudicator are subject to the rules set out in the Civil Procedure Regulations.