



The Northern Ireland Funding Code
Consultation Paper on the Proposed Procedures

NORTHERN IRELAND
**Legal Services
Commission**



Should you require any further information about the Northern Ireland Legal Services Commission please visit our website at **www.nilsc.org.uk** or alternatively contact us at the below address.

Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road, Mays Meadow
Belfast BT1 3BN

Telephone 028 9040 8888
Facsimile 028 9040 8995
www.nilsc.org.uk

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Contents

Foreword by Chairman	Page 2
About the Consultation Exercise	4
How to Respond	5
Closing Date	5
Miscellaneous	5
Confidentiality and Complaints	5
Executive Summary	7
Chapter 1 General Introduction to the Procedures	8
Chapter 2 Part A Procedures	9
Chapter 3 Part B Authorised Work	10
Chapter 4 Part C Certificated Work	11
Chapter 5 Part D Special Procedures	17
Chapter 6 Contracting Under the Funding Code	18
Chapter 7 Conclusion	20
Key Question for Consultation	21
Annex 1 NI Funding Code Procedures	22
Annex 2 Consultation Criteria	56

Foreword by Chairman

The Northern Ireland Legal Services Commission is publishing two consultation documents on the proposed criteria and procedures for the Northern Ireland Funding Code, together with Regulatory and Equality Impact Assessments. We think it useful to begin by providing some background on these documents.

When the Northern Ireland Legal Services Commission (the Commission) was established under Article 3 of the Access to Justice (Northern Ireland) Order 2003 in October 2003, the Commission was required by the Lord Chancellor to prepare a Northern Ireland Funding Code (the Code) in accordance with Article 15 of the Order.

The purpose of the Code is to set out the Criteria according to which decisions will be taken to fund civil legal services for an individual and identify what services should be funded. In earlier Exposure and Consultation papers on the Code the Commission consulted on the Lord Chancellor's priorities set out in the Funding Code of the Legal Services Commission in England and Wales and sought comment from consultees on the applicability of these priority areas for legally aided services in Northern Ireland. In addition to this consultation the Commission informed itself about priority funding areas by conducting a survey on legal need to ensure the priorities matched identified need and conducted an investigation of financial eligibility that

cross checked the alignment between existing provision of legal aid with Targeting Social Need groups. A paper detailing the Commission's rationale for priority areas for funding can be found on our website at (www.nilsc.org.uk).

On the basis of the evidence presented to it and of research into legal need, the Commission believes that the Lord Chancellor's priorities for funding legally aided services in England and Wales (www.legalservices.gov.uk) are equally applicable to NI and therefore propose to adopt the following priorities;

- 1) special children order proceedings (defined on p36 of the Code Criteria);
- 2) civil proceedings where the client is at real and immediate risk of loss of life or liberty;

After that the Commission would intend to give the following categories higher priority than others:

- 3) help with social welfare issues that will enable people to avoid or climb out of social exclusion, including help with housing proceedings (as defined within the Funding Code) and advice relating to debt, employment rights, and entitlement to social security;

- 4) domestic violence proceedings;
- 5) proceedings concerning the welfare of children (including proceedings under Part IV and Part V of the Children Order (Northern Ireland) 1995 not included above, adoption proceedings, and proceedings concerning residence); and
- 6) proceedings against public authorities alleging serious wrong doing, abuse of position or power or significant breach of human rights.

As required for legislative change of this importance, an Equality Impact Assessment (EQIA) and a Regulatory Impact Assessment (RIA) have been completed. The Commission will monitor and assess the actual impact of the Funding Code after implementation to ensure that no unintended differential impacts arise between different Section 75 groups. An RIA has also been completed which sets out the impact assessment of the proposals for change as set out in the Funding Code. The most notable impact identified is in the funding of money damages cases. The Commission is aware of the importance of this area of work to members of the legal profession and while it is not among the Lord Chancellor's Priority funding areas, the Commission will keep this area of funding under review after implementation of the Code.

The Commission considers the development and introduction of the Code to be an important step in the process of reform of publicly funded legal services in Northern Ireland. It is a further step towards full implementation of the 2003 Order and can be seen in the context of the other reforms currently being undertaken by the Commission. Parallel strands of work are ongoing to develop new Financial Eligibility Regulations; new Regulations governing the application of the Statutory Charge; a Registration Scheme and an Order governing remuneration in legally aided cases.

I should like to thank all who contributed to the work that has brought us to this point, including existing and former Commissioners, staff of the Commission, and colleagues in the Northern Ireland Court Service and from the Legal Services Commission of England and Wales.

The public consultation on the proposals for the NI Funding Code is being formally launched on the 29th June 2009 and lasts for 16 weeks.

About the Consultation Exercise

The Procedures have been closely modelled on the England and Wales Funding Code with appropriate amendments to fit the legal and social context in Northern Ireland. This paper sets out for public consultation the proposed Procedures under the Northern Ireland Funding Code. Please read this document in conjunction with the other supporting documentation which is also available on our website www.nilsc.org.uk

How to Respond

When responding to this consultation document, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear whom the organisation represents and, where appropriate, how the views of the members were assembled.

Please submit your response to this consultation by post, fax or email to:

Jill Herron
Consultation Co-ordinator
Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road, Mays Meadow
Belfast BT1 3BN

Email jillherron@nilsc.org.uk
Facsimile 028 9040 8995

Closing date

Responses must be received by Friday 16th October 2009. We have extended the normal 12 week period to 16 weeks to allow for the summer holiday period.

Miscellaneous

Additional copies of this consultation document may be made without seeking permission from the Northern Ireland Legal Services Commission. Printed copies may be obtained by post by contacting the Consultation Co-ordinator. An electronic version is available on the Northern Ireland

Legal Services Commission's website www.nilsc.org.uk. This document will also be made available in a wide range of alternative formats. Requests for alternative formats should again be made to the Consultation Co-ordinator.

Please tell us if you know of others who would be interested in receiving this consultation document.

Confidentiality and complaints

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Information access legislation (that is, the Freedom of Information Act 2000 [FOI] and the Data Protection Act 1998 [DPA]). If you want information that you provide to be treated as confidential, it would be helpful if you would explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system, or included as a general statement in your fax cover sheet will not, of itself, be regarded as binding on the Northern Ireland Legal Services Commission and will be taken to apply, therefore, only to information in your response for which confidentiality has been requested.

The Northern Ireland Legal Services Commission will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Laura Davison

Business Manager, Policy and Service Development.

Post Northern Ireland Legal
Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road, Mays Meadow
Belfast BT1 3BN

Email luradavison@nilsc.org.uk

Telephone 028 9040 8888

Facsimile 028 9040 8990

A copy of the consultation criteria being used in this consultation is set out in Annex 1 of this document.

Executive Summary

This paper sets out, for public consultation, the proposals relating to the draft Procedures for the Northern Ireland Funding Code. The Code will be made up of two parts; Code Criteria ('the criteria') and Code Procedures ('the procedures'). In addition the Code will be underpinned by detailed decision-making guidance.

The following are the key features of the consultation document's chapters:

- Chapter 1 is a general introduction to the Funding Code Procedures.
- Chapter 2 provides information on Part A of the Procedures.
- Chapter 3 provides information on Part B of the Procedures.
- Chapter 4 provides information on Part C of the Procedures.
- Chapter 5 provides information on Part D of the Procedures.
- Chapter 6 sets out the Commission's current thinking in regard to contracting under the Funding Code.
- Chapter 7 deals with the conclusion to this paper. A general question on the Procedures is also set out here.
- Annex 1 NI Funding Code Procedures
- Annex 2 Consultation Criteria

Chapter 1: General Introduction to the Procedures

- 1.1 The Commission is required under the Access to Justice (Northern Ireland) Order 2003 to develop a Funding Code. Article 15 (4) of the Order also requires the Funding Code to specify procedures for the making of decisions about the Funding of Civil Legal Services by the Commission and identifies the broad scope of the Funding Code Procedures.
- 1.2 These may include provisions about the form and content of applications for funding, about conditions which must be satisfied by an individual applying for funding, provision requiring applicants to be informed of the reasons for any decision to refuse an application and provision for the establishment of procedures for reviews of decisions about funding.
- 1.3 The Funding Code Procedures will introduce a more flexible legal framework which will enable the Commission to target priority cases and promote methods of Alternative Dispute Resolution as this area develops.
- 1.4 The Funding Code Procedures are important in that failure to comply with them may have a range of consequences. Any application for funding, for example, may be refused if Code Procedures are not complied with (Criterion 4.8 of the Funding Code Criteria). The draft Criteria can be viewed on our website www.nilsc.org.uk.
- 1.5 The procedures themselves are divided into four parts:
 - a) Part A is of general application to all services funded under the Funding Code. It specifies the varieties of funded work that may be funded as part of Civil Legal Services and specifies also the way in which each Level of Service under the Funding Code will be provided. Part A also deals with definitions and certain general rules.
 - b) Part B deals with the Code Procedures relevant to Authorised work. This comprises all Legal Help. The existing Legal Aid scheme of Legal Advice and Assistance (Green Form) forms the basis for Legal Help.
 - c) Part C contains the Procedures for Certificated work. This is defined at Rule A2 (ii) of the draft Procedures as work which is carried out under a certificate. The Civil Legal Aid and ABWOR schemes will make up this variety of work.
 - d) Part D of the Procedures deals with a number of miscellaneous subjects to include Exceptional Grant Funding (SEGP cases) and general Committee Procedures.
- 1.6 The following chapters identify the Procedures which are significantly different to equivalent Procedures under existing legislation and highlight any areas of particular importance.

Chapter 2: Part A Procedures

- 2.1 As previously stated Part A of the Code Procedures is of general application, however the following points should be noted in particular:
- 2.2 Rule A2 sets out the varieties of work that may be funded as part of Civil Legal Services. These are Authorised Work, Certificated Work and Other Grant Work.
- 2.3 Rule A3 describes how each of the new levels of service available under Civil Legal Services will be categorised under the available varieties of funded work. The levels of service settled upon are Legal Help, Family Help (lower and higher) and Legal Representation (including Investigative Help and Full Representation).
- 2.4 Rule A6 provides that the Commission is responsible for applying the Funding Code and exercising its judgement and discretion under the Criteria or Procedures.
- 2.5 Rules A8 and A9 contain standard provisions allowing the Commission to extend time limits under the Code and deals also with service of documents. The Commission has a general power to specify the form of service for particular purposes.

Chapter 3: Part B Authorised Work

- 3.1 Part B of the draft Procedures contains the procedures for Authorised work. This category of funded work comprises all Legal Help.
- 3.2 The existing legal aid scheme of Legal Advice and Assistance will become part of Legal Help. It should be noted that whilst the Procedures for Authorised Work closely reflect provisions governing Legal Advice and Assistance under our current legislation¹ it is intended that a project will be established to bring forward proposals for the reform of Green Form. Green Form in its reformed state will be one of the key vehicles for the development of a mixed model of service delivery with the potential for advice and information services to be provided by suppliers working in private practice and the 'not for profit' sector.
- 3.3 The Rules set out at B1 and B2 of the draft Procedures deal with the scope of Legal Help. It should be noted that paragraph 1 of Schedule 2 of the Order provides that Civil Legal Services may not fund services consisting of the provision of advice (beyond the provision of general information about the law and the legal system and the availability of legal services) or assistance in relation to -
- a) conveyancing,
 - b) boundary disputes,
 - c) the making of wills,
 - d) matters of trust law,
 - e) defamation or malicious falsehood,
 - f) matters of company or partnership law,
 - g) other matters arising out of the carrying on of a business
- 3.4 It is important to note that these exclusions relate to all levels of service, and not only Legal Help, unless brought back into scope by way of the Lord Chancellor's Direction under Article 12(A) 1 of the Order. Where an individual case is excluded by Schedule 2 and not brought back into scope by way of direction, it will be possible for it to be the subject of an application for exceptional funding under Article 12 A of the Order. In England and Wales the Lord Chancellor's Authorisation brings certain categories of law back into scope that would otherwise be excluded under the Access to Justice Act 1999. This Direction authorises, for example, the Legal Services Commission in England and Wales to fund in certain circumstances, as part of Legal Help, conveyancing services, the making of wills and applications to the Criminal Injuries Compensation Authority. We are currently considering whether a similar Direction should be sought from the Minister. The draft rules relating to the scope of Legal Help may therefore change to reflect the impact of any direction from the Lord Chancellor.

¹ Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

Chapter 4: Part C Certificated Work

- 4.1 The procedures for Certificated work cover all applications for Family Help and Legal Representation. Applications that are currently made under the legal aid schemes of Assistance By Way of Representation or Civil Legal Aid² will, under the Funding Code, be made and considered under this section.
- 4.2 The Procedures in Part C are based around the issue and administration of certificates granted by the Commission. In most respects the Procedures are self explanatory and follow closely the equivalent procedures for legal aid under the Legal Aid (General) Regulations (Northern Ireland) 1965 (the 1965 Regulations.)
- 4.3 Section 2 of Part C (Rules C3 – C9) deals with applications. Applications for certificates must be on the prescribed forms. It should be noted that the Commission’s existing legal aid forms will be reviewed and revised to reflect the reformed environment that will be in place post Funding Code implementation.
- 4.4 Section 3 covers applications for Emergency Representations and urgent cases which would have previously been dealt with under the ABWOR scheme. Rule C10.2 outlines the procedure for submitting emergency/urgent applications when a telephone emergency authorisation is unavailable. The circumstances in which this procedure will be applied will be elaborated upon further in the Guidance but it is intended to apply on Saturdays, Sundays or Public holidays when the Commission would be closed and unable therefore to provide telephone emergency cover.
- 4.5 In England and Wales the decision making power in the majority of cases previously dealt with under the ABWOR scheme are delegated to the solicitor through contracts. This enables solicitors to grant urgent legal representation in cases such as Non-Molestation Order applications and to attend court to obtain an Order that may be required. **At this stage the Commission would not intend to delegate this power however consultees are asked to comment on whether they think that the Procedures for emergency representation as drafted contain sufficient flexibility to deal with urgent cases of this nature.**
- 4.6 Rule C10.3 confirms that while Emergency Representation may be granted prior to the client being assessed as financially eligible, it is incumbent upon the solicitor to ensure that sufficient information has been provided to the Commission to demonstrate that the client is likely to qualify for legal aid if a full financial assessment was carried out.

² Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and the Legal Aid (General) Regulations (Northern Ireland) 1965.

- 4.7 Section C11 establishes that when a substantive certificate is issued it will replace the emergency certificate and shall state the date of issue of the emergency certificate and confirm that the emergency certificate has been continuously in force from that date to the date of replacement by the substantive certificate.
- 4.8 Emergency certificates are currently subject to a time limit of six months, however, this is not strictly enforced. The Commission is considering reducing this time period from 6 months to 8 weeks. Historically the Legal Aid Assessment Office completes approximately 90% of financial assessments in 4 weeks; therefore it is proposed that 8 weeks would provide a suitable timescale to allow for any delays that may occur. This reduction will be facilitated by the reform of the financial eligibility means test (subject to separate consultation) into a simpler test that can be applied much more quickly. Further information will be contained in the Guidance relating to Emergency certificates. This time limit could be extended by the Commission in individual cases as appropriate.
- 4.9 Section 5 covers the Procedures for Refusal of Applications. These draft Procedures reflect the intention of the Commission to streamline and focus the Appeals process. It is important to note that Rule 17.1 provides that the Commission will notify the solicitor and client of the refusal together with a brief statement of the reasons for such refusal. This transparency in the process will enable the client to be fully aware of why their application has been refused and also enable the solicitor to target their comments in support of the application should they wish to have the matter reconsidered or sent to appeal.
- 4.10 Rule C18 outlines Reconsideration by the Commission, which is a new procedure allowing the client or solicitor to make representations in writing to the Commission in support of the application and within 14 days of receiving the notice of refusal. The Commission will then consider any representations received and may, if it thinks fit, affirm, amend or reverse the earlier decision.
- 4.11 If the matter is not resolved by the Reconsideration process the client can apply to have the matter listed before the Appeals Panel.
- 4.12 Rules C18.7 and C19.2 refer to the fact that no reconsideration or appeal may be carried out by the Commission when the refusal is on the grounds of financial eligibility of the client under Regulations or any contribution due

from the client under Regulations in respect of the client’s financial resources. If the client disagrees with their financial assessment or wishes to have the matter reviewed the Legal Aid Assessment Office will be responsible for carrying out the review.

4.13 Section 6 of the draft Procedures deals with new procedures put in place for high cost civil cases and Multi Party Actions (MPAs). Further information is available in the accompanying Criteria Consultation document which is available on the Commission’s website (www.nilsc.org.uk). The Procedures in this section are very similar to the England and Wales Procedures. They set out the rules governing cases which fall into the expensive case category (the actual or likely costs of the case exceed £25,000 or if the case were to proceed to a contested trial or final hearing the likely costs of the case might exceed £75,000) and require that a costed case plan be submitted in such cases.

4.14 Rules C22 and C23 also set out the Procedures governing MPAs. All applications for Legal Representation in an MPA or potential MPA will be subject to these Procedures in Section 6. Under the Funding Code an MPA is defined as:

‘any action or actions in which a number of clients have causes of action which involve common issues of fact or law arising out of the same cause or event.’³

4.15 MPAs cover a wide variety of different circumstances but most can be divided into either:

- a) instant disasters – that is where a large number of people have been affected, usually suffering from personal injury, by a sudden event such as a major traffic disaster;
- b) creeping disasters – where a large number of people have been harmed by a common cause such as an allegedly harmful product or form of treatment.⁴

4.16 The Commission’s starting point will usually be to fund a ‘test’ case, except where individual circumstances justify funding a wider group. Work in progressing an MPA is divided into generic work and work on individual claims. In the NI Funding Code ‘generic work’ means work in an MPA in pursuing the generic issues and includes the selection, preparation and trial of lead issues and lead cases, the co-ordination of the action on behalf of clients and any work deemed to be generic by the Commission. Detailed Guidance will also be provided for this area of cases.

³ Northern Ireland Funding Code Draft Criterion 2.4

⁴ MPA Guidance England and Wales 3C-130

- 4.17 Section 8 of Part C deals with the Form of Certificates. This outlines what will be contained on the face of certificates issued and mirrors closely the current position. Rule C28 highlights the instances where a certificate will authorise more than one level of service.
- 4.18 The Rules contained under C29 also mirror the present position on what proceedings will be covered. Any applications for taking or defending an appeal must be made by way of a separate application and cannot be covered under the certificate relating to the substantive case. Although, if a certificate has been granted for Legal Representation in the substantive case this will cover the lodgement of the notice of appeal.
- 4.19 A new application is also required to bring or defend a removal application. However, a certificate for Legal Representation will cover any application to court to bring or defend the remittal of proceedings (as is current practice).
- 4.20 Rule C34 deals with the Procedure for Making Representations; this is drafted to reflect current arrangements. However it is intended to draft Disclosure of Information Regulations, which are likely to be similar in content to those that the Legal Services Commission in England and Wales operate under. These Regulations can be viewed on their website at www.legalservices.gov.uk.
- 4.21 Section 11 covers Reporting Obligations. Rule C35 confirms the obligation on the client to ensure the Commission is informed of any change in their financial position which would be likely to affect their continued eligibility for legal aid. Rule C36 sets out the circumstances where the solicitor is under an obligation to contact the Commission for example where a client has died or the proceedings have concluded. Rule C37 covers the general duties of a legal representative which includes solicitors, solicitor advocates and barristers.
- 4.22 Decisions of Principle are dealt with under Section 12. Rule C39.1 establishes the power to require a client to agree not to settle proceedings with a wider public interest without the consent of the Commission. The rationale behind this procedure is the potential of a case to produce real benefits for a section of the public other than the individual and covers a wide variety of different types of benefit and may include for example, cases concerning intangible benefits such as health, safety and quality of life such as a judicial review application in respect of education policy or health care provision. The concept would also include a case involving the protection of life or other basic human rights. Rule C39.2 also establishes the Commission's power to make decisions of principle which will take effect in relation to all cases affected by them.

- 4.23 Rule C40 deals with the Commission’s power to refer public interest issues to Counsel or to the Public Interest Advisory Panel in England and Wales for advice. The Panel in England and Wales is chaired by a member of the Legal Services Commission’s Board and Panel representatives include members from the LSC Board, Law Society, Bar Council, Liberty and the Public Law Project. The Commission takes the Panel’s reports into account when making decisions under the Funding Code but is not bound by them.
- 4.24 As outlined in our earlier consultation papers on the Funding Code⁵ the introduction of public interest considerations into funding decisions by the Commission is a new development. There was strong support from consultees for the establishment of an advisory panel modelled on the England and Wales system. However in light of further research in this matter we have noted that between 2000 and 2004 the Panel in England and Wales considered a total of 219 appropriate cases. A similar panel in Northern Ireland would deal with a smaller number of cases and therefore lack the critical mass to make the establishment of a separate panel cost effective. It has been decided to avail of the expertise of the Panel in England and Wales and refer matters to them where it is appropriate to do so.
- 4.25 It is accepted that there may be some issues which by virtue of our different jurisdictions will not be appropriate to refer to the panel in England and Wales. In these circumstances the Commission may seek advice from counsel on the public interest aspects of the case. The Commission will monitor its arrangements for the consideration of cases that have a public interest element after implementation of these arrangements. Consideration can then be given as to whether the establishment of the Commission’s own panel of lay and expert members is warranted.
- 4.26 The procedures governing the Withdrawal of Funding are outlined in Section 13. These Rules describe the procedures that allow for legal aid funding to be withdrawn. Depending on the circumstances funding can be withdrawn either by discharge or revocation.
- 4.27 The Procedures also establish the ‘show cause’ procedure at C45. A ‘show cause’ letter will state that the Commission is considering the withdrawal of the certificate and an embargo stating that no further work should be carried out under the certificate without the prior approval of the Commission. The client may respond to this letter ‘showing cause’ as to why the Commission should not revoke or discharge the certificate.

⁵ Available at www.nilsc.org.uk

This is similar to the 'warning discharge' letter that is currently used by the Commission in these circumstances.

- 4.28 It is also important to note that as outlined at Rule 46.2 the Commission shall give a brief statement of reasons with any notice of discharge or revocation.
- 4.29 Section 14 sets out the Procedures governing the new Appeals Panel. Rule C50.4 confirms that the Appeals Panel will provide brief reasons to the client and the solicitor for all determinations made under this section which are adverse to the client.
- 4.30 The new appeals procedures introduce a two tier system incorporating a reconsideration stage and an appeal stage. The provision of reasons for the initial refusal will aid the solicitor and client to target their comments to the specific reason for refusal and provide more relevant information if they wish the matter to be reconsidered. If the refusal was on the basis of specific information not being provided which is then subsequently provided the Commission can reconsider the decision to refuse and may grant the case on the basis of the new information therefore obviating the need for the case to go to full appeal. This is intended to streamline the appeals process and

hasten decision making in this area. The Commission is considering introducing this system of appeals in advance of the Funding Code being implemented and would welcome any comments in this area.

Chapter 5: Part D Special Procedures

- 5.1 Part D of the draft Procedures sets out the processes that apply in respect of administrative Committees operating within the Commission in respect of Civil Legal Services matters.
- 5.2 Section 1 of Part D details the Procedures which will apply to various Panels in the Commission, in particular the Appeals Panel.
- 5.3 Section 2 of part D contains the procedures relating to Exceptional Funding (previously under the SEGP scheme)⁶. Applications are made to the Commission who will consider whether to recommend a grant to the Lord Chancellor. If the request for funding is refused, the Commission will notify the client and solicitor and confirm in writing the reasons for the refusal. The arrangements for reconsidering decisions are also contained in this section.
- 5.4 Detailed Guidance will be available to underpin decision making in the area of Exceptional Funding.

⁶ Exceptional legal aid funding under Article 10(A) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

Chapter 6: Contracting Under the Funding Code

- 6.1 In previous consultations the Commission has signalled its intention to develop a mixed model in the provision of publicly funded legal services, through which advice and assistance can be provided by a trained, knowledgeable competent person in a community/voluntary organisation.⁷
- 6.2 The Commission has given more consideration to the development of a mixed model in the period following the consultation on the NI Funding Code. The Commission’s thinking has been informed by:-
- a) Consultation on the development of Community Legal Services in December 07. The responses received to this consultation indicated broad support for piloting alternative means of service provision;
 - b) The experience of operating a contract for the provision of advice and information with the Law Centre (NI) has informed the Commission’s thinking about innovative ways of expanding service provision, such as through the provision of telephone advice;
 - c) The Commission has also investigated the experience of other jurisdictions in operating a mixed model of service provision, including Scotland, Republic of Ireland and England and Wales.
- 6.3 The NI Funding Code closely mirrors that in England and Wales with appropriate amendment to reflect the NI context. The provisions applying to contracting are not included in the draft procedures that are the subject of this consultation. (The excluded areas covering applications; types of work; and details of devolved decision-making under Parts A, B+C of the Procedures). These provisions are excluded because on Day 1 of the NI Funding Code it is not intended that the contracting arrangements facilitating delivery of the mixed model, beyond the delivery of pilot schemes, will be in place. As the Commission proceeds with the development of the mixed model the powers required will be kept under review. The need for wider contracting powers will also be kept under review in light of the funding available for legal aid. An insight into the amendments required to facilitate contracting for legal services can be seen by following the link to the England and Wales procedures (www.legalservices.gov.uk).
- 6.4 In England and Wales contracts are operated with solicitors and also with the ‘not for profit’ sector. The Funding Code in England and Wales also devolves, through contracts with solicitors, the powers, in certain specific areas; to enable them to make decisions in the first instance to grant legal representation without recourse to the Commission (for example Mental Health Review Tribunals in England and Wales are operated under ‘controlled’ work).

⁷ ‘Delivering Access to Justice through Publicly Funded Legal Services. A Strategy for the development of Community Legal Services.’ Pg 6

- 6.5 The Commission's intention would be to devolve some decision-making powers going forward, to facilitate the operation of pilot schemes to meet legal need in specific target areas, subject to resource availability. The reform of Legal Help in the future could provide greater access to legal advice through other avenues such as electronic advice, salaried solicitors and specialist providers. However, regulations will need to be brought forward by the Lord Chancellor where decision-making powers on the provision of legal representation are devolved by the Commission.
- 6.6 The Commission does intend, therefore, to have available to it through the NI Funding Code the flexibility to fund alternative service provision by contracting specific areas of legal aid work in specific circumstances.

Chapter 7: Conclusion

- 7.1 The purpose of this consultation paper is to explain the draft procedures the Commission intends to adopt and highlight the areas of particular importance.
- 7.2 The Procedures are the legal framework through which the Funding Code will be delivered. The Funding Code Procedures set out procedures for the making of decisions in areas such as applications, emergency representation and withdrawal of funding.
- 7.3 These draft Procedures follow closely those of England and Wales however they have been adapted to suit Northern Ireland circumstances.
- 7.4 Development of the NI Funding Code is an important step in the process of reform of publicly funded legal services in Northern Ireland. The Code will introduce new flexible funding criteria that apply to different types of cases. In this way, limited public funding will be targeted to those who need it most. It is intended that the Code will operate alongside other new measures designed to improve our services, not only in targeting resources to those in need, but also to ensure that civil legal services made available through the Commission's funding represent real value for money. The 2003 Order also greatly enhances the ability of the Commission to fund Alternative Dispute Resolution methods as part of civil legal services and this area will require continued attention as the legal landscape in Northern Ireland develops.
- 7.5 The proposed Procedures will bring greater transparency to decision making through the publication of clear rules and reasons for refusals, as well as introducing a new streamlined appeal process.
- 7.6 When the NI Funding Code has undergone public consultation and the final version is agreed and approved by the Lord Chancellor, it will then be taken through the appropriate parliamentary process.

Key Question for Consultation

Do you have any comments on any of these Procedures? In particular are there any of the Procedures which you think may cause practical problems in the implementation of Legal Aid?

Annex 1

The Northern Ireland Funding Code Procedures

Contents

Part A - General

- A1. Scope of the Procedures
- A2. Varieties of Funded Work
- A3. Funding for Each Level of Service
- A4. Suppliers
- A5. Panels
- A6. Decisions Under the Code
- A7. Guidance
- A8. Computation of Time
- A9. Service of Documents
- A10. Interpretation

Part B - Authorised Work (Legal Help)

- B1. Scope of Part B
- B2. Applications
- B3. Attendance on a Client's Behalf
- B4. Application from a Child
- B5. Application on Behalf of a Child or Patient
- B6. Assessment of Means
- B7. False Statements/Misrepresentation
- B8. Postal Applications
- B9. Refusal of Authorised Work - Reasons
- B10. Previous Authorised Work
- B11. Separate Matters
- B12. Extensions
- B13. Entrusting Functions to Others

Part C - Certificated Work

Section 1 - General

- C1. Scope of this Part
- C2. Solicitor and Client Obligations

Section 2 - Applications

- C3. The Client
- C4. The Solicitor
- C5. Form of Application
- C6. Applications for Special Children Order Proceedings
- C7. Clients Resident Outside the European Union
- C8. Applications on Behalf of Children and Patients
- C9. Financial Eligibility

Section 3 - Emergency Representation

- C10. Applications for Emergency Representation
- C11. Emergency and Substantive Certificates
- C12. The Duration of Emergency Certificates

Section 4 - Issue of Certificates

- C13. Issue Where No Contribution is Payable
- C14. Offer of Certificate Where Contribution Payable
- C15. Notice of Issue of Certificates
- C16. Prior Authorities

Section 5 - Refusal Of Applications

- C17. Notification of Refusal
- C18. Reconsideration by the Commission
- C19. Appeal to the Appeals Panel Post Reconsideration

Section 6 - Special Cases

- C20. Criteria for Referral
- C21. Case Plans
- C22. Scope of Multi Party Actions
- C23. Decisions Concerning Multi Party Action Funding

Section 7 - Abuse Of The Scheme

- C24. Repeated Applications for Certificates
- C25. Power to make Prohibitory Directions

Section 8 - Form Of Certificates

- C26. Matters Specified on a Certificate
- C27. Limitations and Conditions
- C28. Levels of Service
- C29. Proceedings

Section 9 - Amendments

- C30. General Powers to Amend Certificates
- C31. Effective Date of Amendment
- C32. Procedure on Amendment
- C33. Reconsideration of Amendments

Section 10 - Representations

- C34. Procedure for Making Representations

Section 11 - Reporting Obligations

- C35. Duties of the Client
- C36. Duties of the Solicitor
- C37. Duties of the Legal Representatives
- C38. Referral from the Court

Section 12 - Decisions Of Principle

- C39. Decisions Affecting Several Cases
- C40. Referral to Public Interest Advisory Panel

Section 13 - Withdrawal Of Funding

- C41. Power to Revoke or Discharge a Certificate
- C42. Revocation or Discharge of an Emergency Certificate
- C43. Revocation or Discharge on Grounds of Conduct
- C44. Discharge on Financial Grounds
- C45. The Show Cause Procedure
- C46. Notification of Discharge or Revocation
- C47. Appeal to the Appeals Panel Post Discharge/Revocation

Section 14 - The Appeals Panel

- C48. Jurisdiction of the Appeals Panel
- C49. Procedure Before the Appeals Panel
- C50. Power of the Appeals Panel
- C51. Procedure Following a Determination by the Appeals Panel

Part D - Special Procedures

Section 1 - Panel Procedures

- D1. Scope of these Rules
- D2. Panel Hearings
- D3. Panel Decisions
- D4. Administration

Section 2 - Exceptional Funding

- D5. Scope of these Rules
- D6. Form of Application
- D7. Exceptional Funding Decisions

Part A - General

A1. Scope of the Procedures

- 1.1 These are procedures for making decisions about the funding of services by the Northern Ireland Legal Services Commission (“The Commission”) as part of Civil Legal Services.
- 1.2 These procedures apply from _____. They do not apply to decisions about the funding of any services which were granted before that date.

A2. Varieties of Funded Work

- 2.1 The Commission may fund services as part of Civil Legal Services in one of the three following ways:
- i) **Authorised Work** – the services specified as Authorised Work under Rule 3. Authorised Work is subject to Part B of these Procedures.
 - ii) **Certificated Work** – work which is carried out under a Certificate. Applications for Certificated Work must be made to the Commission in each case and are subject to the procedures for Certificated Work in Part C.
 - iii) **Other Grant Work** – these are services under grants. Such services are subject to any condition contained in the relevant grant, directions or orders by the Lord Chancellor and relevant procedures in Part D.

A3. Funding for Each Level of Service

The levels of service set out in paragraph 1.1 of the Criteria shall be funded in the following ways;

Authorised Work

- All Legal Help excepting that covered by other grant work.

Certificated Work

- All Family Help.
- All Legal Representation not covered by applications under Article 12A of the Order.
- Multi-Party Action Cases (“MPA’s”).
- High Cost Cases.

Other Grant Work

- Legal Help that is carried out by a supplier under a grant.
- Applications to the Commission under Article 12A of the Order.
- Such other services as may be authorised by specific orders or directions from the Lord Chancellor.
- Applications pursuant to the Lord Chancellor’s Direction on Cross Border Disputes.
- Applications for services which are ancillary to Other Grant Work.

A4. Suppliers

- 4.1 Services funded by the Commission as part of Civil Legal Services may only be carried out by persons authorised to supply services under a contract with or grant from the Commission.

A5. Panels

- 5.1 The Commission will appoint such panels as it sees fit for the purpose of carrying out functions under these Procedures.
- 5.2 Panels carrying out functions under these Procedures are subject to the Rules set out in Section 1 of Part D.

A6. Decisions Under the Code

- 6.1 Unless the Code specifies otherwise, the Commission shall be responsible for decisions under the Code, including exercising any judgement or discretion under the Criteria or Procedures.

A7. Guidance

- 7.1 All persons making decisions under the Code shall have regard to guidance issued by the Lord Chancellor under Article 8 of the Order or by the Commission.
- 7.2 Guidance issued by the Lord Chancellor or the Commission shall be published in such form as the Lord Chancellor or the Commission consider appropriate.
- 7.3 Paragraph 7.2 does not apply to guidance given by the Commission in relation to individual cases.

A8. Computation of Time

- 8.1 Where any time limit is specified under these Procedures that time limit may be extended by the Commission as it thinks fit.

A9. Service of Documents

- 9.1 Where the Procedures provide for documents to be served, such service may be carried out by personal delivery, post, document exchange, fax or e-mail save where the Commission or these Procedures specify a particular form of service for particular purposes.
- 9.2 Where a person to be served under these Procedures is being acted for by a solicitor, documents may instead be served on the solicitor unless the Code specifies otherwise.
- 9.3 Where a person is not being acted for by a solicitor, documents may be served at that person’s residence, last known residence or business address.
- 9.4 Any document served by the Commission by post or document exchange shall be deemed to be served two days after it is posted or left at the document exchange, unless the contrary is proved.

A10. Interpretation

- 10.1 Terms defined in the Order or in Section 2 of the Criteria have the same meanings in these Procedures.
- 10.2 These Procedures are divided into four parts. References in any part to a Rule mean a Rule in that Part unless otherwise stated.

10.3 References in any Rule to a paragraph mean a paragraph within that Rule, unless otherwise stated.

10.4 Unless the context otherwise requires, the following definitions apply:

“Certificate” means a certificate issued under Part C of the Procedures and, unless the context otherwise requires, this includes an emergency certificate.

“Condition” means a condition on a certificate which must be complied with by the solicitor or the client.

“Court” means any court or tribunal in which representation may be funded in accordance with Schedule 2 of the Order.

“Criteria”/“Criterion” means the Funding Code Criteria/Criterion.

“Generic Issue” means an issue within an MPA or potential MPA which is common to all clients or to a particular group of clients.

“Generic Work” means work in an MPA in pursuing the Generic Issues, and includes:

- i) the selection, preparation and trial of lead issues and lead cases;
- ii) the co-ordination of the action on behalf of clients;
- iii) any work determined to be Generic Work by the Commission.

“Legal Representative” means any solicitor or counsel.

“Levels of Service” means a level of service defined in section 2.1 of the Criteria. If a level of service can take two alternative forms (for example Legal Representation can be either Investigative Help or Full Representation), each form counts as a separate level of service in these Procedures.

“Limitation” means a limitation on a certificate which defines or limits the work which can be carried out under that certificate, by specifying that work on the certificate.

“Lord Chancellor’s Direction on Cross Border Disputes” means the Direction made under Article 12A of the Order to facilitate the funding of services covered by the Council Directive 2002/8/EC of 27 January 2003 and dated 16 June 2008.

“Next Friend” means a person representing a minor or person under a disability who is involved in legal proceedings.

“Rules of Court” mean the Rules of the Supreme Court (Northern Ireland) 1980, the County Court Rules (Northern Ireland) 1980 or equivalent rules in any court or tribunal which is not subject to those rules.

“Solicitor” means a solicitor of the Supreme Court.

“Substantive Application” means any application for Legal Representation under Part C of these procedures, other than an application for Emergency Representation.

“Substantive Certificate” means any certificate issued under Part C of these Procedures other than a certificate which covers only Emergency Representation.

“Supplier” means any person providing Authorised Work under these Procedures.

“The Order” means the Access to Justice (Northern Ireland) Order 2003.

Part B - Authorised Work (Legal Help)

B1. Scope of Part B

1.1 This Part contains the Funding Code Procedures which apply to Authorised Work.

B2. Applications

2.1 Unless otherwise specified by the Commission, all applications for Authorised Work shall be made to the supplier.

2.2 Except as otherwise provided in these Procedures, Authorised Work may not be provided unless the client has attended the supplier in person and completed an application on a form approved by the Commission.

B3. Attendance on a Client's Behalf

3.1 Where a client cannot for good reason attend on a supplier in order to apply for Authorised Work, that client may authorise another person ("the authorised person") to attend on their behalf.

3.2 An application for Authorised Work may not be accepted from an authorised person on behalf of a client unless that client is, at the time when the authorisation is given, either present in or resides in the European Union.

B4. Application from a child

4.1 An application for Authorised Work may not be accepted from a child unless:

- a) the Authorised Work is in relation to proceedings which the child is entitled to begin, prosecute or defend without a next friend, or guardian ad litem; or
- b) there is good reason why any of the persons referred to in Rule 5 below cannot seek advice on the child's behalf and the child is old enough to give instructions and understands the nature of the Authorised Work.

B5. Application on Behalf of a Child or Patient

5.1 An application for Authorised Work may only be accepted on behalf of a child or patient from:

- a) in the case of a child: his or her parent or guardian or other person in whose care he or she is; or
- b) in the case of a patient: his or her spouse, civil partner or controller appointed under Part VIII of the Mental Health (Northern Ireland) Order 1986 or nearest relative or guardian within the meaning of Part II of that Order; or

c) in the case of a child or patient:
a person acting for the purposes
of any proceedings as his or her
next friend, or guardian ad litem; or

d) in the case of a child or patient: any
other person where there is good
reason why none of the persons
specified in paragraphs (a) - (c)
above cannot make the application.

B6. Assessment of Means

6.1 Authorised Work shall only be carried
out on behalf of a client who has been
assessed as financially eligible in
accordance with regulations and
any Guidance thereon.

6.2 Subject to Guidance, satisfactory
evidence in support of the client’s
information as to their means must
be provided to the supplier before
financial eligibility is assessed.

6.3 This Rule does not apply to services
which, under the Regulations, are
available without reference to the
client’s financial resources.

B7. False Statements/Misrepresentation

7.1 Where a client has wilfully failed
to provide information relevant to
the decision to carry out Authorised
Work on their behalf or has knowingly
made a false statement or false

representation and after the failure
occurred or the false statement or
false representation was made the
client received Authorised Work; the
Commission may declare that the
Authorised Work was not given under
the Order and Regulations and, if the
Commission does, shall so inform the
client and solicitor; and thereafter the
Commission shall be entitled to recover
from the client any sums paid out of the
Fund in respect of the Authorised Work.

B8. Postal Applications

8.1 Subject to paragraph 2, an application
for Authorised Work may be accepted
by post where there is good reason to
do so.

8.2 Applications by post may not be accepted
where the client is resident outside the
European Union and:

a) such residence is purely temporary
and the client can without serious
disadvantage delay the application
until they have returned to the
European Union; or

b) the services could be applied for on
the same matter by a person resident
in the European Union, or

c) it is otherwise unreasonable to
accept the application.

B9. Refusal of Authorised Work - Reasons

9.1 Where the application for Authorised Work is refused on the basis that the Funding Code criteria are not satisfied or a supplier ceases to provide Authorised Work on the basis that the Funding Code criteria are no longer satisfied the supplier shall give the client brief reasons for such refusal and, where relevant, shall provide the client with information as to alternative ways of obtaining or funding services.

B10. Previous Authorised Work

10.1 Unless permitted to do so under a contract Authorised Work may not be provided to a client who has received Authorised Work for the same matter from another supplier within the six months preceding the application, except where:

- a) there is a gap in time and circumstances have changed materially between the first and second occasions when the Authorised Work was sought, e.g. a reconciliation which has failed; or
- b) the client has reasonable cause to be dissatisfied with the service provided by the first supplier; or

- c) the client has moved a distance away from the first supplier and communication is difficult; or
- d) the first supplier has confirmed that they will be making no claim for payment for the Authorised Work.

B11. Separate Matters

11.1 Where more than one separate matter is involved each matter shall be the subject of a separate application for Authorised Work provided that matters connected with or arising from proceedings for divorce or judicial separation, whether actual or prospective between the client and his or her spouse or civil partner, are not treated as separate matters for the purpose of Authorised Work.

B12. Extensions

12.1 Where it appears to the supplier that the cost of giving Authorised Work is likely to exceed the maximum limit as set down in Regulations, he or she shall apply to the Commission for an extension and shall furnish such information as may enable the Commission to consider and determine that application.

12.2 No extension shall be required under Work which relates to matters of such a kind, and its cost will not exceed such an amount, as may be specified in any notice given by the Commission.

B13. Entrusting Functions to Others

13.1 Nothing in these Procedures shall prevent a supplier where it is appropriate in his or her professional opinion from entrusting any function to a partner or to a competent and responsible representative employed in their office or otherwise under immediate supervision.

Part C - Certified Work

Section 1 - General

C1. Scope of this Part

1.1 This Part applies to all applications for Certificated Work and in this Part the term “application” means an application under this Part to carry out such work.

C2. Solicitor and Client Obligations

2.1 In this Part “the solicitor” means the solicitor proposing to act for the client on whose behalf the application is made, or who is acting for the client under a certificate issued under this Part.

2.2 Except where the Commission specifies who may undertake the functions of the solicitor under these Procedures, such functions may only be carried out:

- i) by the solicitor personally;
- ii) by a partner of the solicitor; or
- iii) by a competent and responsible representative of the solicitor employed in the same office or otherwise under the solicitor’s immediate supervision.

2.3 Subject to paragraph 4, the solicitor may act as the client’s agent when carrying out functions under these Procedures.

2.4 Rules 5 and 35 place personal obligations on the client or, in the case of a child or patient, the person who applies on behalf of the client under Rule 8.

Section 2 - Applications

C3. The Client

3.1 Each application shall be on behalf of a client who is an individual.

3.2 Where an application relates to proceedings, the client shall be a party or proposed party to the proceedings.

3.3 An application may not be submitted in respect of a client who is a Guardian ad Litem acting as such in the proceedings.

3.4 An application shall not be granted in respect of a client who is subject to a Prohibitory Direction under Section 7 which applies to the application.

C4. The Solicitor

4.1 Every application must specify the solicitor who is proposing to act for the client, and the person specified must not be a person who is disqualified from acting as such by his or her professional body.

C5. Form of Application

- 5.1 Subject to Section 3 (Emergency Representation) every application shall be made on a form approved by the Commission, and the Commission may approve different forms for different levels of service or circumstances.
- 5.2 Save for emergency applications, any application to the Commission must be made in writing and the form shall be duly completed and signed and dated by the solicitor and by the client.
- 5.3 The Commission may request such further information from the client or the solicitor as it requires for the purpose of determining any application and may require a client to attend a meeting for this purpose.
- 5.4 Each application shall be in English.

C6. Applications for Special Children Order Proceedings

- 6.1 An application for Legal Representation in Special Children’s Order Proceedings in Family Proceedings shall be made at the first available opportunity and the solicitor shall ensure that the application is received by the Commission within seven working days of receiving instructions to act for the client in proceedings.

- 6.2 Work done by the solicitor in Special Children’s Order Proceedings prior to the issue of a certificate shall be deemed to be work done whilst the certificate is in force, provided the application was made at the first available opportunity and received within the time limit specified above.

C7. Clients Resident Outside the European Union

- 7.1 This Rule applies where the client resides outside the European Union and cannot be present in Northern Ireland whilst his or her application is considered.
- 7.2 Such applications should be written in English.
- 7.3 Except where the client is a member of Her Majesty’s Armed Forces, the application shall be sworn before a justice of the peace, magistrate, British consular official, or any other person for the time being authorised by law in the place where the client resides to administer an oath for any judicial or other legal purpose.
- 7.4 The application shall be accompanied by a statement in writing, signed by a responsible person who has knowledge of the facts, certifying that section of the application which relates to the client’s financial resources.

7.5 The requirements of this Rule may be waived by the Commission if it considers that compliance with them would cause serious difficulty, inconvenience or delay and the application otherwise satisfies the Procedures.

C8. Applications on Behalf of Children and Patients

8.1 An application on behalf of a child or patient shall be made by a person of full age and capacity who is or who proposes to be the next friend of the child or patient in the proceedings.

8.2 Where the court has ordered that a child may conduct proceedings without a next friend, the application may be made by the child's solicitor.

8.3 Any certificate issued to a child or patient shall be in his or her name, stating the name of the person who applied for it on his or her behalf.

8.4 Any obligations on a client under these Procedures shall also apply to the person who made the application on behalf of the child or patient, and that person may be treated for all purposes under these Procedures as the agent of the child or patient.

8.5 The Commission may, where the circumstances appear to make it desirable, waive all or any of the requirements of this Rule.

C9. Financial Eligibility

9.1 Save for emergency applications, or where under Regulations funding is available without reference to financial resources, the Commission shall not approve an application unless the client has been assessed as financially eligible under Regulations.

9.2 If a client has been assessed as financially eligible under an application under this Part, the Commission may, if it sees fit, treat the client as financially eligible in relation to any further application for the purpose of these Procedures.

Section 3 - Emergency Representation

C10. Applications for Emergency Representation

10.1 An application for emergency representation may be made in such manner as the Commission may accept in accordance with guidance, including by telephone or fax if the urgency of the situation requires it.

10.2 Where the urgency of the situation requires it, work done prior to the issue of a certificate may be deemed to be work done whilst the certificate is in force, provided the application was made at the first available opportunity and in accordance with guidance.

- 10.3 Emergency representation may be granted before the client has been assessed as financially eligible under Regulations, but only if, in the opinion of the Commission, sufficient information has been provided to demonstrate that the client is likely to be financially eligible.
- 10.4 An application for emergency representation may be treated as a substantive application if the Commission is satisfied that it has sufficient information to do so.
- 10.5 An application for emergency representation may be treated as a substantive application where the financial eligibility assessment has been carried out by the solicitor under Regulations.
- 10.6 When an application for emergency representation is granted as such by the Commission, the Commission shall issue an emergency certificate and shall send the emergency certificate to the solicitor, and a copy of the certificate to the client.
- 10.7 The Commission may grant emergency representation which is conditional on the submission of further forms or information by such time as the Commission may specify.
- 10.8 A conditional grant of emergency representation under paragraph 7 above may be revoked by the Commission if the further forms or information required are not submitted within the time specified.
- 10.9 When emergency representation is revoked under paragraph 8 above the client, the solicitor and all other persons shall be treated for all purposes as if the grant had not been made.
- C11. Emergency and Substantive Certificates**
- 11.1 Save where otherwise provided in these procedures or in Regulations, an emergency certificate shall have the same effect in all respects as a substantive certificate.
- 11.2 Where an emergency certificate has been issued to a client and a substantive certificate is subsequently issued to that client for the same proceedings while the emergency certificate is in force, the emergency certificate shall merge with the substantive certificate and the substantive certificate shall take effect from the date upon which the emergency certificate was granted.
- 11.3 Where an emergency certificate is merged in a substantive certificate, the substantive certificate shall state the date of issue of the emergency

certificate and that the emergency certificate has been continuously in force from that date until the date of the substantive certificate.

C12. The Duration of Emergency Certificates

- 12.1 Emergency certificates shall be subject to a time limit as specified by the Commission which may be extended by the Commission in individual cases under Rule 8 of Part A.
- 12.2 Once such a time limit, or extended time limit, has expired, the emergency certificate shall cease to be in force and no further work may be carried out under it.
- 12.3 Otherwise an emergency certificate shall remain in force until it is discharged or revoked in accordance with these Procedures or is merged with a substantive certificate under Rule 11 above.

Section 4 - Issue Of Certificates

C13. Issue Where No Contribution is Payable

- 13.1 Where the Commission is satisfied that all relevant Criteria and Procedures are complied with, that the client is financially eligible under Regulations and that no contribution is payable under Regulations the Commission shall issue a certificate.

C14. Offer of Certificate Where Contribution Payable

- 14.1 Where the Commission is satisfied that all relevant Criteria and Procedures are complied with and that the client is financially eligible but under Regulations a contribution is payable, the Commission shall issue an offer to the client of a certificate, requiring:

- i) any sums payable out of capital or by third parties to be paid forthwith if the sum is readily available or, if it is not, by such time as seems to the Commission reasonable in all the circumstances; and
- ii) the first contribution payable out of income to be paid forthwith, with further contributions payable at monthly intervals thereafter.

- 14.2 The Commission shall notify the client of sums payable by way of contribution and of the terms under which a certificate will be issued if accepted.

- 14.3 A client who wishes to accept such an offer of a certificate shall, within 28 days of receiving the offer (or, if the urgency of the situation requires it, within such shorter period as the Commission may specify):

- i) signify his acceptance of those terms on a form approved by the Commission and return it to the Commission, and
- ii) if those terms require the payment of any sums of money, pay any sums due or, if the Commission has so specified, provide an undertaking on a form approved by the Commission to pay those sums under the terms of the offer.

14.4 When a client has accepted the offer, paid any sums due and given any required undertakings, the Commission shall issue a certificate.

C15. Notice of Issue of Certificates

15.1 Where the Commission issues a certificate it shall send the certificate to the solicitor and a copy of the certificate to the client.

15.2 If a certificate relates to proceedings which are already in existence, on receipt of the certificate the solicitor shall forthwith serve a copy on the Court and notify all other parties to proceedings of the issue of the certificate in a form approved by the Commission, and shall forthwith serve such a notice on any person who becomes a party to the proceedings thereafter.

15.3 If proceedings are not in existence when the certificate is issued the solicitor shall:

- i) (except in family proceedings) serve notice of the certificate on a form approved by the Commission when first notifying a potential opponent of the proposed claim;
- ii) when proceedings are started, forthwith send a copy of the certificate to the Court and serve notice of the certificate in a form approved by the Commission on all other parties to the proceedings, unless such notice has already been served under paragraph (i) above; and
- iii) forthwith serve such notice on any person who becomes a party to the proceedings thereafter.

15.4 Any documents served on the Court under these Procedures shall form part of the papers for the use of the Court in the proceedings.

15.5 Any document purporting to be a certificate issued under this Part shall, until the contrary is proved, be deemed to be a valid certificate issued to the person named in it and covering the services described in it and shall be received in evidence without further proof.

- 15.6 The Commission may waive any of the requirements of this Rule if the certificate covers Legal Representation in a multi-party action.
- 15.7 Nothing in these Procedures entitles an opponent to see the contents of a certificate other than such information as is included in any notice sent under paragraph 3 above.

C16. Prior Authorities

- 16.1 Where an application is made in writing to the Commission in advance, it may give prior authority to incur certain types of disbursements. If a solicitor receives prior authority it means that, unless it becomes apparent that the authority was obtained as a result of a provision of incorrect information, the disbursement in question will be allowed on Assessment. Prior authority may be sought from the Commission whenever a solicitor proposes to incur further expenditure in the circumstances set out in Guidance.
- 16.2 Any decision by the Commission under this provision is subject to the appeal provisions set out in Section 14.

Section 5 - Refusal Of Applications

C17. Notification of Refusal

- 17.1 Where an application to the Commission is refused under the Criteria or these Procedures, the Commission shall notify the client and the solicitor of the refusal together with a brief statement of the reasons for it.
- 17.2 Every such refusal shall notify the client of the right to have the decision reconsidered by the Commission and, if desired thereafter, by an Appeals Panel and of the right to make further written representations to the Commission.
- 17.3 Where a refusal is under Criterion 5.3.3 (Alternatives to Litigation), the solicitor shall ensure that the client is informed of the alternatives relevant to the decision and that the client is informed about how to pursue those alternatives.

C18. Reconsideration by the Commission

- 18.1 Where an application is refused by the Commission or the client is dissatisfied with the terms upon which a certificate is issued or with the terms of any offer, the client may within 14 days of the date of service of the notice of refusal, certificate or offer, apply on a form approved by the Commission to have the decision reconsidered by the Commission and may make representations in writing to the Commission in support of the application.

- 18.2 The Commission will consider any representations received under this Rule and may, if it thinks fit, affirm, amend or reverse the earlier decision.
- 18.3 Where the Commission amends or reverses the earlier decision under this Rule, it shall notify the solicitor and the client of the decision and where appropriate, shall issue an offer of a certificate or a certificate in accordance with Section 4.
- 18.4 Where the Commission issues a certificate under paragraph 3 above in any of the circumstances specified in paragraph 6 below, the Commission may, if it thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date on which it received the application.
- 18.5 Where the Commission issues a certificate (whether under this Rule or otherwise) and is satisfied that:
- i) any of the circumstances specified in paragraph 6 below apply, and
 - ii) the solicitor took all reasonable steps to apply to the Commission for emergency representation, and
 - iii) it was necessary for the solicitor to carry out urgent work before the application was determined,
- the Commission may, if it thinks fit and subject to guidance, backdate the certificate to a date no earlier than the date such urgent work was undertaken.
- 18.6 The specified circumstances for the purpose of this Rule are either where :
- i) the Commission is satisfied that Criterion 7.5.2 (Judicial Review – the Presumption of Funding) applies, or
 - ii) in a review by the High Court under Section 101(2) of the Nationality, Immigration and Asylum Act 2002, the court reverses the decision of the Immigration Appeal Tribunal.
- 18.7 No reconsideration may be carried out under this part by the Commission where the refusal is on the grounds of the financial eligibility of the client under Regulations or any contribution due from the client under Regulations in respect of a client’s financial resources.

**C19. Appeal to the Appeals Panel
Post Reconsideration**

- 19.1 Subject to paragraph 2 below, where a client has applied to have a decision reconsidered under Rule 18 above and the matter has not been resolved by the Commission to the client’s satisfaction, the client may within 14 days of the date of receipt of the reconsidered decision apply on a form approved by the Commission to appeal the reconsidered decision to the Appeals Panel.

19.2 No such appeal may be carried out under this part by the Commission where the refusal is on the grounds of the financial eligibility of the client under Regulations or any contribution due from the client under Regulations in respect of the client's financial resources.

19.3 Where an emergency application to the Commission is refused under the Criteria or these Procedures, the client may within 14 days of the date of receipt of the refusal decision apply on a form approved by the Commission to appeal the refusal decision to the Appeals Panel.

Section 6 - Special Cases

C20. Criteria for Referral

20.1 An application or an existing certificate shall be referred by the Commission to be treated as a special case where it appears to the Commission that either:

- i) the actual or likely costs of the case exceed £25,000;
- ii) if the case were to proceed to contested trial or final hearing (or, in the case of appeal proceedings before the Court of Appeal or House of Lords, to the conclusion of that appeal stage) the likely costs of the case might exceed £75,000; or
- iii) the application or certificate relates to a multi-party action or potential multi-party action.

and for the purpose of the above rules the Commission may treat more than one set of proceedings or certificates as a single "case" if they appear to the Commission to be closely connected or proceeding together before the court.

C21. Case Plans

21.1 Where an application or a certificate has been referred to the Commission to be treated as a special case, the Commission will require a costed case plan for the future handling of the proceedings.

C22. Scope of Multi Party Actions

22.1 Each Multi Party Action (MPA) shall specify the claims or types of claim to which it relates and shall specify the work which it covers, which will be either:

- i) all work
- ii) Generic work; or
- iii) Such other work as is specified.

22.2 Work under the MPA shall be subject to such conditions and limitations as the procedures within Part C impose.

22.3 Each MPA shall specify a lead solicitor responsible for liaising with the Commission.

C23. Decisions Concerning Multi Party Action Funding

- 23.1 All decisions as to the scope or continuation of work relating to an MPA shall be made by the Commission and the decision of the Commission on that matter shall be final.
- 23.2 Refusal, amendment or withdrawal of funding for an MPA shall be subject to the same procedures and rights of review as for work under certificates, except that:
- i) All applications on behalf of clients in the MPA shall be made through the lead solicitor. The responsibility of the lead solicitor under these Procedures shall be to the clients generally, not necessarily to respond to every request by an individual client.
 - ii) All notices, decisions and reasons to be served by the Commission shall be served on the lead solicitor. The lead solicitor shall communicate with clients and other solicitors where required to do so by the Commission, or otherwise as he or she thinks fit.
- 23.3 All decisions by the Commission relating to an MPA shall operate as decisions of principle under Rule 39 in relation to all claims within the scope of that MPA, unless the Commission specifies otherwise.

Section 7 - Abuse Of The Scheme

C24. Repeated Applications for Certificates

- 24.1 Where it appears to the Commission that a person has made three or more unsuccessful applications for certificates such that his or her conduct may amount to an abuse of services funded as part of Civil Legal Services, the matter may be reported to the Commission or to a committee appointed by the Commission for the purposes of this section.
- 24.2 For the purpose of paragraph 1, the Commission may take into account any previous applications by or on behalf of that person for advice, assistance or representation under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and any court order declaring that person to be a vexatious litigant.

C25. Power to Make Prohibitory Directions

- 25.1 On receipt of a report under Rule 24 above, the Commission may make such other enquiries as appear to be necessary and, if the Commission consider that it may be appropriate to make a prohibitory direction under this Rule, the Commission shall disclose the report and any other material information to the person concerned and give him or her the opportunity to make representations in writing within such period as the Commission may specify.

- 25.2 If, having considered any such representations, the Commission is satisfied that the person's conduct has amounted to an abuse of the scheme, the Commission may make a prohibitory direction under this Rule that no consideration shall, for a period not exceeding three years, be given by the Commission to applications on behalf of that person.
- 25.3 A prohibitory direction under this Rule may apply either to applications in relation to proceedings of a description specified in the direction, or, in exceptional circumstances, it may cover any future or pending applications by that person whatsoever.
- 25.4 The Commission may in its discretion at any time vary or revoke a prohibitory direction in whole or in part.
- 25.5 Where the Commission makes a prohibitory direction in respect of any person, that person may apply for the direction to be varied or revoked.

Section 8 - Form Of Certificates

C26. Matters Specified on a Certificate

- 26.1 Each Certificate Issued Under these Procedures Shall Specify:
- i) the name and address of the client;
 - ii) where the client is a minor or a patient the name and address of any person who applied on behalf of the client under Rule 8;
 - iii) the name and address of the solicitor;
 - iv) the date the certificate was granted;
 - v) the level of service covered by the certificate;
 - vi) a description of the proceedings (or in the case of Family Help (Lower) or Family Help (Higher), the dispute) to which the certificate relates;
 - vii) the opposing parties to the proceedings, save where the certificate is for Family Help (Lower), Family Help (Higher) or Legal Representation in Family Proceedings or the Commission considers it inappropriate to specify all such parties;
 - viii) any limitations and conditions on the certificate.

C27. Limitations and Conditions

27.1 The Commission may grant or issue a certificate subject to such limitations and conditions as it thinks fit, and limitations and conditions may be amended or imposed from time to time (including limitations to prevent further work being carried out under the certificate).

27.2 Emergency or substantive certificates granted by the Commission will be subject to such limitations or conditions as the Commission imposes, in accordance with guidance, but the Commission may thereafter place such further or alternative limitations or conditions on such a certificate as it considers appropriate.

C28. Levels of Service

28.1 A certificate for Legal Representation shall state whether it is for Investigative Help or Full Representation.

28.2 Where investigations have been completed under a certificate for Investigative Help, and an application for Full Representation in the same proceedings is granted, the Commission may amend that certificate to cover Full Representation.

28.3 Where a certificate for Family Help (Lower) is in force, and an application for Family Help (Higher) in Family

Proceedings arising out of the same or a related family dispute is granted, the Commission may amend that certificate to cover Family Help (Higher) in those proceedings.

28.4 Where a certificate for Family Help (Lower) or (Higher) is in force, and an application for Legal Representation in Family Proceedings arising out of the same or a related family dispute is granted, the Commission may amend that certificate to cover Legal Representation in those proceedings.

28.5 Except where as stated above, no certificate shall authorise more than one level of service.

C29. Proceedings

29.1 Each certificate shall cover only one set of proceedings except where:

- i) the certificate relates to family proceedings; or
- ii) the Commission considers that two or more sets of proceedings are so closely related that they should be covered under a single certificate.

29.2 An application for Legal Representation to bring or defend any form of appeal in proceedings must be made to the Commission. Except where a certificate for Legal Representation has been

granted for the substantive case that certificate will cover the lodgement of a notice of appeal.

- 29.3 An application for Legal Representation to bring or defend a removal application must be made to the Commission.
- 29.4 Where a certificate for Legal Representation has been granted, that certificate will cover any application to Court to bring or defend the remittal of proceedings.
- 29.5 A certificate shall not cover services in relation to alternative methods of dispute resolution unless this is specifically authorised by the Commission.
- 29.6 A certificate shall not cover enforcement action unless this is specifically authorised by the Commission.
- 29.7 A certificate shall not cover representation by an EU lawyer or reference to the Court of Justice of the European Community for a preliminary ruling unless this is specifically authorised by the Commission.
- 29.8 No client may have more than one certificate relating to private law family proceedings in force at any time, unless the Commission is satisfied that the certificates relate to different

family relationships or that there are exceptional circumstances which make it appropriate to do so. In this Rule, a certificate relates to private law family proceedings if it is issued under sections 11.3, 11.10, 11.11 or 11.12 of the Code.

Section 9 - Amendments

C30. General Powers to Amend Certificates

- 30.1 The Commission may amend a certificate either following an application to do so made on behalf of the client on a form approved by the Commission, or otherwise as it thinks fit.

C31. Effective Date of Amendment

- 31.1 Subject to paragraph 2 below, an amendment shall take effect from the date of the decision to amend by the Commission.
- 31.2 Where the Commission amends a certificate so as to:
- i) correct some mistake in the certificate; or
 - ii) record a change of solicitor or any change of address on the certificate

the amendment shall take effect from such date as the Commission may specify (which may be before or after the date of the decision to amend).

C32. Procedure on Amendment

- 32.1 Where the Commission amends a certificate either under Rule 30 or a reconsideration under Rule 33, it shall send the amended certificate to the solicitor and a copy to the client.
- 32.2 If a certificate covers proceedings which have commenced, the solicitor shall send a copy to the court.
- 32.3 Where the Commission refuses an application to amend a certificate, it shall notify the client and the solicitor in writing, including a brief statement of the reasons for so doing.
- 32.4 Where the certificate covers proceedings which are in existence and the amendment to the certificate affects the description of proceedings or the level of service covered, the solicitor shall forthwith notify all other parties to the proceedings that that is the case (save where the Commission notifies the solicitor that it is not necessary or appropriate to do so).

C33. Reconsideration of Amendments

- 33.1 Where a client is dissatisfied with the Commission’s decision to amend a certificate or to refuse an application on his or her behalf to amend a certificate, the client may, within 14 days of receiving notice of the amendment or the decision not to amend the certificate, apply to

the Commission on a form approved by the Commission to have that decision reconsidered by the Commission, and may make written representations in support of that application.

- 33.2 The Commission will consider any representations received under this Rule and may, if it thinks fit, amend the certificate accordingly.
- 33.3 Where a client has applied to have a decision reconsidered under Rule 32 above and the matter has not been resolved by the Commission to the client’s satisfaction, the client may within 14 days of the date of receipt of the reconsidered decision apply on a form approved by the Commission to appeal the reconsidered decision to the Appeals Panel.

Section 10 - Representations

C34. Procedure for Making Representations

- 34.1 If representations are received from a person and it appears to the Commission that the person making representations has neither sent them to the solicitor or client nor given permission for the Commission to do so, the Commission shall not copy them to the solicitor or the client unless he or she has obtained the consent of the person making representations to do so.

34.2 On receipt of representations, the Commission may, if appropriate, place limitations on any certificate, but shall not take steps to discharge or revoke a certificate on the basis of representations received unless the solicitor has been given an opportunity to respond to issues raised by the representations. If a certificate is in force it shall be deemed to cover reasonable work done in responding to representations.

Section 11 - Reporting Obligations

C35. Duties of the Client

35.1 The client shall immediately ensure that the Commission is informed of any change in his or her financial circumstances which has occurred since the client's financial resources were assessed and which would reasonably be considered to affect the terms or the continuation of the certificate.

35.2 The client shall immediately inform the solicitor of any other change in his or her circumstances or in the circumstances of the case which he or she has reason to believe might affect the terms or continuation of the certificate.

35.3 The client shall comply with any request by or on behalf of the Commission for such information as the Commission may require for the purpose of carrying out functions under the Code or Regulations.

35.4 The client shall attend a meeting with the Commission where requested to do so.

C36. Duties of the Solicitor

36.1 The solicitor shall give a report to the Commission whenever requested to do so, containing such details as the Commission may specify for the purpose of carrying out functions under the Code and Regulations.

36.2 The solicitor shall also report to the Commission where:

- i) the client gives the solicitor information under Rule 35 above which the solicitor considers may be material to the terms or continuation of the certificate;
- ii) a certificate for Investigative Help is in force, as soon as investigations have been carried out such that prospects of success can be estimated in one of the categories provided for under the Code (other than Unclear);
- iii) the proceedings covered by the certificate have concluded or where otherwise all work authorised has been completed;
- iv) the client has died;
- v) a bankruptcy order has been made against the client;

- vi) the client has declined to accept any of the following;
 - a) an Offer to Settle;
 - b) a Payment into Court;
 - c) an offer to mediate any issue in the proceedings;
 - d) an offer to participate in any alternative dispute resolution scheme specified by the Commission for the purpose of this Rule;
 - e) any other offer of settlement of the proceedings which the solicitor considers may be reasonable.
- vii) a certificate has been issued to a person who is an opponent of the client in the proceedings. This requirement does not apply to Family Proceedings other than proceedings considered under Section 11.10 of the Code (Financial Provision and Other Proceedings).
- i) the client has required the case to be conducted unreasonably or so as to incur an unjustifiable expense to the Fund or has unreasonably required that the case be continued;
- ii) the client may have given inaccurate, misleading or incomplete information to the Commission where required to provide information under the Code or Regulations;
- iii) new information or a change of circumstances has come to light which may affect the terms or continuation of the certificate;
- iv) it is no longer possible to act or continue to act for the client (and in that case the legal representative shall give the Commission reasons why this is so.)

C38. Referral from the Court

38.1 Any court or tribunal hearing proceedings for which a certificate has been granted may report to the Commission any information which it considers may be relevant to the Commission’s decision as to the terms and continuation of a certificate.

C37. Duties of the Legal Representatives

37.1 In addition to the specific duties of a solicitor under Rule 36 above, any legal representative carrying out work under a certificate shall ensure that the Commission is informed if it appears to the legal representative that:

Section 12 - Decisions of Principle

C39. Decisions Affecting Several Cases

- 39.1 Where the Commission is considering granting an application which relates to proceedings which have a significant wider public interest, the Commission may require the client, as a condition of providing funding, to agree not to settle the proceedings without the consent of the Commission.
- 39.2 Where the Commission is considering an issue concerning any application or certificate which appears likely to affect a group of claims or claims of any given description, the Commission may declare that the decision shall stand as a decision of principle under this Rule.
- 39.3 Any decision of principle under this Rule shall specify the cases or the description of cases to which it applies and the date on which it takes effect.
- 39.4 A decision of principle may be made under this Rule whether or not the clients affected by it have issued proceedings as part of a multi-party action or otherwise.
- 39.5 Where a decision of principle may be made under this Rule it shall apply to all claims of the description specified in the decision and the procedures for

individual cases, including rights of review, shall take effect in light of the decision of principle.

- 39.6 Nothing in this Rule shall prevent an individual client asserting that:
- i) his or her claim does not fall within the terms of the decision given; or
 - ii) significant new information has arisen which was not before the Commission when the decision of principle was made or has since come to light such that there are grounds for reconsideration of the decision of principle;
- 39.7 A decision of principle under this Rule may be varied as the Commission considers necessary and shall cease to have effect from such date as the Commission may specify.
- 39.8 Decisions under this Rule shall be published in such manner as the Commission thinks fit.
- ### **C40. Referral to Public Interest Advisory Panel**
- 40.1 Where an issue arises concerning any application or certificate as to whether a case has a significant wider public interest, or as to the nature and extent of that public interest, the Commission may refer the matter to the Public Interest Advisory Panel (“the Panel”)

of the Commission in England and Wales or to some other appropriate individual or panel.

40.2 The Panel (or other appropriate individual or panel) shall report to the Commission on any matter referred to it in such manner as may be specified by the Commission and in accordance with guidance.

40.3 Any report shall be sent by the Commission to the solicitor, or in a multi-party action to the lead solicitor (who may copy it to other solicitors or clients as he or she considers appropriate), and the solicitor may make such further representations arising from the report as he or she thinks fit.

40.4 When making decisions on matters which have been referred to the Panel or some other appropriate individual or panel, the Commission shall take into account any report received and any further representations from the solicitor.

Section 13 - Withdrawal of Funding

C41. Power to Revoke or Discharge a Certificate

41.1 The Commission may withdraw funding by either revoking or discharging a certificate from such date as it considers appropriate in accordance with section 15 of the Criteria and Section 13 of these Procedures.

41.2 Where a certificate is revoked or discharged no further services may be provided under it from the date of the notice of discharge or revocation and the retainer of the solicitor shall cease in accordance with Regulations.

41.3 Where a certificate is revoked the client shall repay to the Commission all costs paid or payable under the certificate and shall be liable to the Commission or the solicitor for such further costs as may be specified in Regulations.

41.4 The Commission may convert a discharge into a revocation if following the discharge information comes to light which would justify revocation under Rules 42 or 43.

C42. Revocation or Discharge of an Emergency Certificate

42.1 An emergency certificate may be revoked or discharged on any of the grounds under which a substantive certificate may be revoked or discharged.

42.2 An emergency certificate shall be revoked if it is determined that, under Regulations, the client is not financially eligible for Legal Representation.

42.3 An emergency certificate may be revoked or discharged if the client fails to accept an offer of a substantive certificate within the time limit specified under Rule 15.

42.4 Subject to Rule 41.4 an emergency certificate shall be deemed to be discharged as soon as any time limit on the certificate, including any extension of the time limit by the Commission under Rule 12, has expired.

C43. Revocation or Discharge on Grounds of Conduct

43.1 A certificate may be revoked or discharged if the Commission is satisfied that the client has failed without good cause to provide information or documents or attend a meeting when required to do so under Procedures or Regulations.

43.2 A certificate may be revoked or discharged if the Commission is satisfied that the client has made an untrue or misleading statement or failed to disclose a material fact (either when making an application or when supplying information under Procedures or Regulations) and the Commission considers that the client failed to use reasonable care when doing so.

43.3 A certificate may be revoked or discharged if the client is declared a vexatious litigant by the court or is subject to a Prohibitory Direction under Section 7.

43.4 A certificate may be discharged if the Commission is satisfied that the client has required proceedings to be conducted unreasonably so as to incur unjustifiable expense to the Fund or has unreasonably required proceedings to be continued.

43.5 If a client's certificate is revoked or discharged under this rule, any other certificate of the client may be revoked or discharged if the Commission considers it appropriate in all the circumstances to do so.

C44. Discharge on Financial Grounds

44.1. A certificate shall be discharged by the Commission if under Regulations the client is no longer financially eligible to receive it.

44.2. A certificate may be discharged if any contribution due from the client under Regulations has been outstanding for more than 21 days.

C45. The Show Cause Procedure

45.1 Subject to paragraph 2 below, no certificate shall be revoked or discharged until a notice has been served on the client and the solicitor that the Commission may revoke or discharge his certificate and that the client may show cause why it should not be revoked or discharged, and the Commission shall give the client

an opportunity to respond and say why the certificate should not be revoked or discharged.

45.2 The show cause procedure does not apply to revocation or discharge of an emergency certificate under Rule 42.2, 42.3 or 42.4 above, to discharge on financial grounds under Rule 43 or to discharge under the following Criteria:

- i) 15.5 (i) (death of the client);
- ii) 15.5 (iv) (consent of the client);
- iii) 15.5 (v) (all work completed).

45.3 When notice is served under paragraph 1 above, no further work may be done or steps taken under the certificate unless authorised by the Commission.

C46. Notification of Discharge or Revocation

46.1 When a certificate is discharged or revoked the Commission shall send notice of the discharge or revocation to the solicitor and shall send a copy to the client (unless the client has died).

46.2 Notice of discharge or revocation shall contain or enclose a brief statement of the Commission’s reasons for revoking or discharging the certificate.

46.3 Notice of discharge or revocation shall also inform the client of the right to have the decision appealed to the Appeals Panel and of the right to make further representations in writing to the Commission.

46.4 The Commission may, if it considers it appropriate to do so, notify any other parties to the proceedings that a certificate has been discharged or revoked.

46.5 When a certificate has been discharged or revoked and any appeal under Rule 47 has been concluded, the solicitor shall serve notice of the discharge or revocation on a form approved by the Commission on all other parties to the proceedings.

C47. Appeal to the Appeals Panel Post Discharge/Revocation

47.1 Except where a certificate is discharged under the following criteria:

- i) 15.5 (i) (death of the client);
- ii) 15.5 (iv) (consent of the client);
- iii) 15.5 (v) (all work completed)

the client may apply on a form approved by the Commission within 14 days of service of the Notice of Discharge or Revocation to have the discharge

or revocation appealed to the Appeals Panel and may make representations in writing in support of the application.

47.2 The Appeals Panel will consider any representations received under this Rule and may, if it thinks fit, restore the certificate or convert a revocation to a discharge, or vice versa, and if so shall inform the solicitor and the client of the decision.

47.3 Where a certificate is restored or a decision is changed under this Rule, the final decision shall take effect for all purposes as if the original decision to discharge or revoke had not been made (unless the Appeals Panel specifies otherwise).

47.4 The Appeals Panel may not consider an appeal on:

- i) The revocation or discharge of an emergency certificate under Rules 42.2, 42.3 or 42.4;
- ii) The discharge of a certificate under Rule 44 (Financial Grounds).

Section 14 - The Appeals Panel

C48. Jurisdiction of the Appeals Panel

48.1 The Appeals Panel may consider any decision of the Commission which has been referred to it under Rules 19, 33 or 47.

C49. Procedure before the Appeals Panel

49.1 Subject to paragraph 2 below, determinations under these procedures shall be made on the papers submitted and, at the option of the client, on oral representations.

49.2 Hearings before the Appeals Panel are subject to the conditions set out in Rule 3 of Part D.

C50. Powers of the Appeals Panel

50.1 An appeal shall be by way of a consideration of all issues raised in the request for appeal and the decision of the Appeals Panel shall be final.

50.2 The Appeals Panel shall consider in every instance whether the decision under appeal was improper or unreasonable in the sense that either:

- i) the Commission has not acted in accordance with the Code, the Order or Regulations, or;
- ii) the decision was one which no reasonable Commission could have made.

50.3 Where, in the light of a determination by the Appeals Panel under this Rule, the Appeals Panel confirms, reverses or amends the decision of the Commission, the Appeals Panel shall do so and ensure that the client and his solicitor are informed.

50.4 The Appeals Panel shall give reasons to the client and to his solicitor for all determinations made under this Rule which are adverse to the client.

C51. Procedure Following a Determination by the Appeals Panel

51.1 In an appeal of a decision under Rule 19 or Rule 33 (Appeal to the Appeals Panel Post Reconsideration or Reconsideration of Amendments) if, following a determination of issues by the Appeal Panel under Rule 50 above that the criteria for granting or amending the certificate are satisfied and the client is financially eligible, the Commission shall immediately issue an offer of a certificate or grant or amend the certificate as required; in an appeal of a decision under Rule 19.3 (Refusal of an Emergency Application) if, following a determination of issues by the Appeals Panel under Rule 50 above that the criteria for granting an emergency certificate are satisfied, the Commission shall issue an emergency certificate.

51.2 In a review under Rule 41 (Power to Revoke or Discharge a Certificate) if, in the light of any determination by the Appeals Panel under Rule 50 above, the Commission shall reinstate the certificate.

51.3 Where a certificate is reinstated under this Rule it shall be treated as having been continuously in force as if the discharge or revocation had not taken place, unless the Appeal Panel specifies otherwise.

Part D - Special Procedures

Section 1 - Panel Procedures

D1. Scope of these Rules

1.1 These Rules apply to Panels exercising functions under these Procedures.

D2. Panel Hearings

2.1 The Commission shall make arrangements for members of Panels to meet as required to make decisions in individual cases.

2.2 Each Panel shall include a chair.

2.3 Except so far as the Panel is regulated by the Procedures or by the Commission, the Panel shall have power to regulate its own procedures and the ruling of the chair on any issue or procedure arising at any meeting shall be final.

D3. Panel Decisions

3.1 Panel decisions shall be by a majority of members present and voting and, in the event of a tie, the chair of the meeting nominated by the Commission only shall have a casting vote.

3.2 Subject to paragraph 3.3, three members of a Panel shall form a quorum.

3.3 If the urgency of the situation so requires, the chair nominated by the Commission can determine an appeal and his decision shall be ratified subsequently by the other members of the Panel.

3.4 It is the responsibility of the chair of a Panel to ensure that reasons are recorded and given as required under the Order.

3.5 Any defect in the appointment or continued membership of a Panel member shall not affect the validity of any decision by a Panel.

D4. Administration

4.1 The Commission shall make such other arrangements and procedures as it considers necessary for the establishment, membership and administration of committees.

Section 2 - Exceptional Funding

D5. Scope of these Rules

5.1 These Rules apply to applications to the Commission:

- i) for exceptional funding under Article 12A(1)(b) of the Order;
- ii) under level 4 of the Code relating to representation in Inquest proceedings;
- iii) pursuant to the Lord Chancellor's Direction on Cross Border Disputes; or
- iv) for services which are ancillary to (i), (ii) or (iii) above.

D6. Form of Application

- 6.1 Applications under this section shall be made to the Commission and shall be in accordance with the relevant guidance.
- 6.2 Applications shall be made in writing on a form approved by the Commission.
- 6.3 Applications may be rejected if they do not contain sufficient information for the Commission to carry out a determination required in an application under these Rules.

D7. Exceptional Funding Decisions

- 7.1 If the Commission refuses an application under these Rules or declines to request funding from the Lord Chancellor under Article 12A of the Order the Commission will write to the client confirming the decision and giving reasons.
- 7.2 A client may, within 14 days of receiving notice of this decision under paragraph 1 above apply to have the decision reconsidered by the Commission and shall set out his or her reasons for the request in accordance with the relevant guidance.
- 7.3 The Commission or the Lord Chancellor will reconsider any decision when requested to do so under paragraph 2 and will write to the client setting out the further decision and giving reasons.

- 7.4 If the Lord Chancellor, having received a recommendation from the Commission, refuses an application under Article 12A of the Order, he will notify the Commission giving reasons and the Commission will so notify the client.
- 7.5 A client may, within 14 days of receiving notice of a decision under paragraph 4 above apply to the Commission to have the decision reconsidered by the Lord Chancellor and shall set out his or her reasons for the request in accordance with the relevant guidance.
- 7.6 The Commission or the Lord Chancellor will reconsider any decision when requested to do so under paragraph 5 above and will write to the client setting out the further decision and giving reasons.

Annex 2

Consultation Criteria

When to Consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Duration of Consultation Exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Clarity of Scope and Impact

Consultation document should be clear about the consultation process, what is being proposed, the scope of influence and the expected costs and benefits of the proposals.

Accessibility of Consultation Exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

The Burden of Consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Responsiveness of Consultation Exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Capacity to Consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience



Northern Ireland Legal Services Commission
2nd Floor, Waterfront Plaza
8 Laganbank Road, Mays Meadow
Belfast BT1 3BN

Telephone 028 9040 8888

Email: accesstojustice@nilsc.org.uk
www.nilsc.org.uk