

INSTITUTE OF PROFESSIONAL LEGAL STUDIES

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NORTHERN IRELAND LEGAL SERVICES COMMISSION

Let me begin by quoting a few statistics

Applications queried at registration

Family Care Centre and Superior Courts			
Year	Applications Received	Applications Returned	%
2002/03	608	110	18
2003/04	719	110	15
2004 to date	298	56	19
Family Proceedings Court			
2002/03	5991	1077	18
2003/04	5535	1264	23
2004 to date	2235	504	23

The main reasons were:-

- Wrong forms used
- Forms not signed and dated correctly
- Additional information not furnished
- Incomplete details
- No full statement of case given
- Details of previous applications not provided

It is clear therefore that solicitors are having problems in submitting applications for legal aid in Children's Order cases. I propose to touch upon those areas which seem to present the most frequent occasions for mistakes to be made.

Returning forms which are wrong or incomplete represents a significant waste of staff's time and is as irritating to them as it must be to the profession. If there were 37 different types of form in use, mistakes would be perfectly understandable. However, there are only 4 types of form in use, 2 of which are used for proceedings in the Family Proceedings Court and 2 of which are used for proceedings in the Family Care Centre and above. I apologise for going over ground that is probably very familiar to most of you practitioners, but there must be many areas of

uncertainty out there in the profession. I will do my best to try and clarify the situation.

Two of the application forms relate to Public Law cases which are not subject to either a means test or a merits test, the form APP8 for Family Proceedings Court and Form CO2 for the Family Care Centre and above. These relate to applications in respect of proceedings under **Articles 44, 50, 62, 63 & 64**. In the case of **Article 44** this only applies where you are acting for the **CHILD**. In the case of the other 4 articles mentioned above, the non means/non merits situation applies if you are acting for the **child, a parent or anyone with parental responsibility**.

These forms are **self certifying** by the solicitor - if the application is received in the Commission within 7 working days of the date upon which it is signed, the certificate will issue bearing the date upon which the solicitor has signed the application. If the application is received outside this period, the certificate will be dated the day the application was received by the Commission.

Difficulty can often be experienced in cases where a Guardian ad litem is involved. In practice, the Commission will accept application forms signed by the Guardian ad litem Agency, not necessarily the guardian appointed to that particular case. There is no space in these forms for any narrative about the case - there is no need. Simply exhibit a copy of the proceedings.

These forms, generally speaking, present few problems and are quite straightforward.

However, one aspect that does cause problems is the failure by the solicitor to insert the name and address of the firm of solicitors. As most of these applications are submitted without a covering letter, it is impossible to know which firm has submitted the application!

The other two forms, the App7 and CO1, present a greater range of problems. Practitioners will be aware that the current form App7 is a version of the longstanding Application By Way of Representation form used for applications under the Domestic Proceedings Order which was amended to cover Children's Order applications.

Completion of the first page is generally straightforward.

The problem most frequently encountered in App7 applications is the failure by the solicitor to complete **Section 5** which relates to **previous proceedings**. **If this box is left unanswered, the application will be returned.** If there have been no previous proceedings, **simply write "NONE"**. **The reason for this request for information is, say, a case where there is a certificate in existence covering separation and maintenance proceedings which are ongoing**, the existing legal aid certificate can simply be **amended** without the need to issue a further certificate.

Page 3 creates difficulties. Sometimes the solicitor omits to complete the details of the applicant's case. **If nothing is inserted, the forms will be returned.** Please try to provide a comprehensive background statement setting out the applicant's case. Remember that this is the only knowledge Commission staff have of your client.

The form must be **signed and dated by the applicant. The date of the applicant's signature should be the date he signed the Green Form.** The form should also be **signed and dated by the solicitor.** If the form isn't signed and dated, it will be returned to the solicitor.

The **certificate will issue bearing the date the application was received** in the Commission.

As you are aware, an App7 must be accompanied by the **Original Green Form** (Rep 5). As you can imagine, the requirement to submit **two completed forms** increases the possibility of errors or omissions being made.

Generally speaking, one very common problem is the failure to insert the name and address of the solicitor.

Page 1 - A common problem is to **fail to insert the date of the initial Green Form advice**. Why should this be so important? Because that date is relevant in determining the applicant's financial eligibility which is based on his income over the previous 7 days.

Page 2 - This does not need to be completed - it relates to advice and assistance as opposed to representation.

Page 3 - The financial section is a fertile source of error. In the **CAPITAL** section, if the applicant has none, insert "NONE". **If left blank, the application will be returned.**

In the **INCOME** section please note that there are only **three** passport benefits, **INCOME SUPPORT** and **INCOME RELATED JOB SEEKERS ALLOWANCE** and **PENSION CREDIT**. **On Page 4 - Please make it clear which benefit the applicant is on.**

Insert the name of the applicant's benefit office. The purpose of this information is to assist with the Commission's random benefit checks.

If the applicant is not on passport benefits, you must provide details of all the applicant's income.

It is important to note that **all** other benefits must be treated as income, to include:

- Working Family Tax Credit
- Child Tax Credit
- Incapacity Benefit
- Child Benefit
- Maintenance - whether on foot of a court order, voluntary or through the Child Support Agency

Finally, Page 4 **must be signed and dated by the applicant and the solicitor. If not, the application will be returned.**

EMERGENCY PROCEDURE FOR ABWOR APPLICATIONS

Practitioners will be aware of this procedure introduced in February 2003.

Under this procedure a **NOTIFICATION OF EMERGENCY APPLICATION** form can be **faxed** into the Commission **ON ITS OWN**. **(Do not send REP 5 or APP7).**

If the completed forms are received in the Commission within 7 working days, the certificate will issue with the date of the faxed Notification.

NOTE: The ORIGINAL version of the Notification MUST be submitted with the APP7 & Rep 5.

It should also be noted that this is an **EMERGENCY** procedure and should only be used when there is insufficient time for the solicitor to submit the forms by post. **Practitioners are requested not to abuse the system.**

FORM CO1 is the equivalent of the App7 form and is used for applications relating to proceedings in the Family Care Centre and Superior Courts. It is to be used in all merits tested and means tested situations. It should be accompanied by form A4 (Emergency application form) and form CLA4 and L17 if necessary.

One frequent problem is the **failure to provide the applicant's National Insurance Number. This is essential for checking whether or not the applicant is on benefits.**

Attention is drawn to Section 8. Applications to be joined as a party to proceedings under articles 50, 62, 63 & 64 are Means Tested only.

The most common instances of irritation are:

- No explanation of the reason why a particular type of proceedings are being taken
- Precisely what type of proceedings are being contemplated
- If defending proceedings, failure to submit copy proceedings

It should be noted that some cases involve a mixture of **public law** and **private law** applications. **Separate legal aid applications are required.** Practitioners should note that, where there are a number of separate proceedings being taken by various relatives, they are covered in respect of each proceeding - this may involve submitting further legal aid applications.

EMERGENCY PROCEDURE FOR CIVIL AID APPLICATIONS

Solicitors may telephone the Emergency Section seeking emergency cover. They will speak with an Adjudicator who will record the information on an internal TELEPHONE EMERGENCY form which is signed and dated. Provided a full legal aid application is received within 14 days, a certificate will issue dated on the day on which the telephone emergency was granted.

When submitting the application forms, **please be good enough to state in your covering letter (1) when the telephone emergency was granted and (2) by which Adjudicator.** This will ensure that the application is **married up to the original telephone emergency form.**

If an application form is not received within the 14 day time limit (and the Commission has received no request for an extension), the certificate will not issue bearing the date the telephone emergency was granted.

This procedure should be used for cases of **genuine emergency**. However, it is often sought by solicitors in relation to cases which have been transferred to another jurisdiction but the solicitor has forgotten to submit the fresh legal aid application at the time the case was originally transferred and is only moved to act when he has received a notice of hearing.

TRANSFERS TO OTHER JURISDICTIONS

When proceedings are transferred to a superior court, a **separate legal aid application** is required **for each jurisdiction**. This may involve an application for the Family Care Centre followed by a subsequent application for the High Court. It is preferable if the transfer order is enclosed with the legal aid application. However, if same is not available and you are carrying out further work, do not delay, submit the application and forward the copy order when received to enable the new certificate (when issued) to bear the earliest possible date, ie, the date of receipt by the Commission.

APPEALS

If your client has been unsuccessful at first instance and wishes to appeal, an **OPINION ON THE MERITS OF THE PROPOSED APPEAL** should accompany the legal aid application. All appeals are subject to the merits test. The opinion should be prepared by the solicitor/counsel who represented the applicant and should deal with what happened at the lower court, the magistrate's/judge's comments and that person's opinion on the merits of the appeal. Please remember that, as in all civil legal aid applications, the **last step** one can take on the certificate covering the proceedings in the lower court is to **lodge a Notice of Appeal with the appellate court**. You should then submit a copy of that Notice of Appeal, along with your legal aid application, in respect of the proposed appeal.

If you are defending an appeal, remember to always **submit a copy of the Notice of Appeal**. Your success in the lower court generally satisfies the merits test.

Please note that if you hold a civil aid certificate for proceedings in the Family Care Centre and you are pursuing an appeal to the High Court, **there is no need to submit any financial forms as the applications will be legally and financially linked**. No such arrangement exists when you are appealing from the Family Proceedings Court to the Family Care Centre and financial forms must therefore be submitted.

SENIOR COUNSEL

All requests for Senior Counsel should be accompanied by Junior Counsel's opinion on the necessity of engaging Senior Counsel. Broadly speaking, authority is only rarely granted for Senior Counsel in Family Care Centre cases. Requests for authority in those circumstances are often referred to the NILSC Appeals Panel.

One point worthy of mention - it is the **solicitor's duty** to ensure that the civil aid certificate he holds clearly covers the proceedings being undertaken. **If it doesn't mention Senior Counsel on the certificate, then you do not have authority**. It is also important to note in instances where there are a number of related cases all being heard at the same time, and Senior Counsel is engaged, that **all certificates bear the authority for Senior Counsel**. Failure to ensure the "limitation" in respect of Senior Counsel will almost certainly guarantee problems on taxation.

ENGAGEMENT OF EXPERTS

To enable requests for expert evidence to be dealt with as efficiently as possible, the following information is required:

- Details of the expert to be retained and their professional qualifications
- Confirmation of the experts **hourly rate and fees for court attendance**
- Confirmation that the expert is to be jointly instructed and, if so, the parties to the joint instruction
- Copy court direction
- Copy letter of instruction
- Confirmation of the nature of the documentation to be released to the expert, the number of pages contained in the documentation and the identities of all persons to be seen by the expert

If the authority is in excess of the authority that can be granted by an Adjudicator, the request will be referred to the Appeals Panel as soon as possible. Please note that this process will be delayed if the above information is not made available.

It has been noted in Children's Order proceedings that there has been an increasing number of requests for the Commission to authorise therapeutic treatment by experts in the course of proceedings. The Commission does not consider that motivational interviewing or individual therapy work falls within the ambit of a legal aid certificate.

FEES

I have avoided up to now speaking about, probably, **the only topic you would wish me to speak about. The answer to the three most important questions:**

- (1) **How much** am I going to get paid?
- (2) **When** am I going to get paid?
- (3) Maybe even, **am I** going to get paid?

Consistent with good accounting practice, I only grant legal aid certificates or authorities - I have nothing to do with paying the profession.

Assessment of Fees in Family Care Centre under REP1 Report on Case

Common Problems

- No Article 3 certificates submitted with REP1
- No Counsel marking or reports submitted
- Outlay not properly vouched, eg, if a report has been submitted for payment from a specialist doctor, only the receipt will be submitted. The report is needed to determine that the examination was carried out within the parameters of the authority granted.
- Letters and telephone calls not itemised on a bill drawn by a Cost Drawer
- Preparation not itemised on the bill
- No information that the solicitor is on the Children Order panel
- No information to tell the assessor that there is other proceedings ongoing and covered by another certificate and dealt with by the same court on the same day
- Perusal of reports (the number of pages not stated)

- Computerised accounts submitted do not state who the particular fee earner is. In some cases, this may be non qualified staff or secretaries.
- Wrong certificate numbers quoted on reports
- The outcome of proceedings in most cases never stated on the report.

Assessment Process of Rep 7s in Family Proceedings Court

Common Problems

Page 1

- Failure to complete reference numbers or wrong numbers quoted
- Failure to indicate relates files/cases

Page 2

- Section 3 – amount of costs awarded is often omitted
- Place of hearing or court incomplete
- Information re final order incomplete
- No indication of number of pages in a report when claiming perusal time
- Failure to forward original receipts for outlay

The Profession must be aware that when they have multiple proceedings in Children's Order cases, all proceedings must be disposed of before they can submit their claim for payment.

Page 4

- Rep 7 not signed or dated

CHILDREN ORDER TABLE

VERSION 4 - DATED 20 AUGUST 2004

CHILDREN (NI) ORDER 1995

1. The Legal Services Commission has prepared this table for the assistance of solicitors in identifying the proper forms to be used in relation to proceedings under the Children (Northern Ireland) Order 1995 and in relation to other proceedings involving children.
2. Please note that if your case includes both public or private law proceedings, separate application forms are required.
3. It is essential that copies of all proceedings issued and orders made are forwarded with the appropriate legal aid forms.

Children Order Forms Table

Article 7 & 8 Orders Private Law	Parties	Conditions Applied	ABWOR	Civil Legal Aid
			Magistrates/Family Proceedings Court	County Court/Family Care Centre/ High Court
Parental Responsibility Order (Art 7)	Any	Means & Merit Test	App 7	CO1 CLA4 A4 Emergency
Residence Order (Custody) (Art 8)	"	" "	"	" " "
Contact Order (Access) (Art 8)	"	" "	"	" " "
Specific Issue Order (Art 8)	"	" "	"	" " "
Prohibited Steps Order (Art 8)	"	" "	"	" " "
Any other Freestanding Children Order proceedings	"	" "	"	" " "
Public Law Applications				
Secure Accommodation Order (Art 44) (Child only)	Child Only	No Means or Merit Test	App 8	CO2 alone
Representation in (Art 44) (Parties to be joined)	Parent, those with Parental Responsibility	Means & Merit Test	App 7	CO1 CLA4 & A4 Emergency
Care & Supervision Orders (Art 50)	Child, Parent, those with Parental Responsibility	No Means or Merit Test	App 8	CO2 alone
Child Assessment Order (Art 62)	Child, Parent, those with Parental Responsibility	No Means or Merit Test	App 8	CO2 alone
Emergency Protection Order (Art 63)	Child, Parent, those with Parental Responsibility	"	App 8	CO2 alone
Extension or Discharge of an Emergency Protection Order (Art 64)	Child, Parent, those with Parental Responsibility	"	App 8	CO2 alone

Public Law Applications	Parties	Conditions Applied	ABWOR Magistrates/Family Proceedings Court	Civil Legal Aid County Court/Family Care Centre/High Court
Application to join Proceedings under Care & Supervision Orders, (Art 50)	Any	Means Only Test	App 7	COI CLA4 & A4 Emergency
Child Assessment Orders, (Art 62)	“	“	“	“ “ “
Emergency Protection Order, (Art 63)	“	“	“	“ “ “
Extension or Discharge of an Emergency Protection Order, (Art 64)	“	“	“	“ “ “
An application to discharge or vary Care Orders or Supervision Order, (Art 58)	Any	Means & Merit Test	App 7	COI CLA4 & A4 Emergency
Adoption	Any	Means & Merit Test	N/A	A1 CLA4 & A4 Emergency
Wardship	Any	Means & Merit Test	N/A	A1, CLA4 & A4 Emergency
Freeing for Adoption	Any	Means & Merit Test	N/A	CO1, CLA4 & A4 Emergency

The Legal Services Commission has prepared this table for the assistance of Solicitors in identifying the proper forms to be used in Referrals and Appeals.

If your client's case includes both Public and Private Law proceedings separate application forms are required.

REFERRALS from the Family Proceedings Court to > Family Care Centre > High Court

Where proceedings are REFERRED to another court within the same jurisdiction no amendment of the Certificate is necessary. If the proceedings are REFERRED to any of the above courts, separate applications for Legal Aid are required for each jurisdiction. A copy of the Court Order referring proceedings must be submitted with the application.

Private Law Applications	Parties	Conditions Applied	Legal Aid Forms Required
Art 7 & Art 8 and any other private law applications	Any	Means & Merit Test	COI CLA4 & A4 & Copy Order
<u>Public Law Applications</u> Art 44 - Child Only Art 50, 62, 63, 64	Child Only Child, Parent, those with Parental Responsibility	No Means & Merit Test " " " "	CO2 & Copy Order " " "
Applications to join in proceedings under Arts 50, 62, 63, 64 If joined submit further application CO2	Any	Means & Merit Test	COI CLA4 & A4 & Copy Order
An Application to discharge or vary Care Order or Supervision Order under Art 58 or any other Public Law applications	Any	Means & Merit Test	COI CLA 4 & A4 & Copy Order

APPEALS from the Family Proceedings Court to > Family Care Centre > High Court

Where a decision is APPEALED to any of the above courts, separate applications for Legal Aid are required. Please note if you are acting for an appellant, an opinion on the merits of bringing the appeal, and prospects of success, must be submitted either from the Solicitor or Counsel if instructed.

Note: No Fee will be payable in respect of the opinion.

Private Law Applications	Parties	Conditions Applied	Legal Aid Forms Required
Art 7 & Art 8 and any other private law applications	Any	Means & Merit Test	COI CLA4 & A4 & Copy Notice of Appeal
<u>Public Law Applications</u>			
Art 44 - Child Only	Child Only	Merits Test	COI & A4 & Copy Notice of Appeal
Arts 50, 62, 63, 64	Child, Parent, those with Parental Responsibility	“ “	“ “ “ NB Financial Forms not required as test is merit test only
Applications to join in proceedings under Arts 50, 62, 63, 64	Any	Means & Merit Test	COI & CLA4 & A4 & Copy Notice of Appeal
An Application to discharge or vary Care Order or Supervision Order under Art 58 and any other Public Law appeals	Any	Means & Merit Test	COI & CLA 4 & A4 & Copy Order