

NILSC Interim Fees Solicitors: March 2010

Proceedings Type	Standard Fee
Adoption:	
Uncontested	£400
Contested	£3500
Freeing Order	£3500
Combined: (Article 50 and Freeing Order)	£5000
Non-molestation/Occupation Order	£528
Mixed Proceedings	Highest Applicable Standard Fee Paid and 30% and 20% of Standard Fees for Second and Third related Proceedings
All Proceedings Above:	
Refresher (Full Day)	£400
Refresher (Half Day)	£200
Delivery of Judgement	£150
Case Withdrawn or Transferred	35% Standard Fee 20% Standard Fee

Draft NILSC Guidance

Remuneration of Counsel for Proceedings in the Family Care Centre Granted a Certificate under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981

1 Introduction

1.1 Currently there are two payment schemes in operation for the remuneration of Counsel in Family Care Centre (FCC) proceedings where a certificate has been granted under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981 (as amended):

- Remedial Scheme

This initial scheme provided for payment of Children Order only cases concluded on or before 30 June 2005. After this date no agreement was reached between the Bar Council and the Commission on proposed new fees. Consequently the NILSC reinstated the scheme in November 2007. **The rates payable under this scheme remains applicable to all Children Order cases concluded on or before 31 December 2008 (see Appendix 1).**

- January 2009 Scheme

This scheme provides for new fees in all proceedings types (including Children Order cases) granted an Article 3 certificate. **The rates payable under this scheme apply to all cases concluded on or after 1 January 2009 (see Appendix 1).**

Proceedings Type	Conclusion of Case	Payment Scheme Applicable
Children Order	On or before 31 December 2008	Remedial Scheme
	On or after 1 January 2009	January 2009 Scheme
All other proceedings	Any Date	January 2009 Scheme

1.2 **This Guidance pertains to the 2009 scheme only.** The conclusion of the case in Children Order proceedings however will determine whether cases are assessed under the remedial or 2009 scheme. For the purposes of determining which scheme applies, the conclusion of the case will be taken to be the date of final judgment in the case.

2 Details of 2009 Scheme

2.1 Brief Fee

This covers all preparatory work, consultations, interlocutory hearings and court hearings in the case up to the close of the first day of the substantive hearing.

2.2 Directions and Written Work

This covers all directions and written work undertaken throughout the duration of the case. Directions hearings will not attract a further refresher fee.

2.3 Refresher Days

Where there is a clearly specified interim issue listed for hearing that is contested or relates to questions of law and/or fact and occurs after first and subsequent days of substantive hearing, a refresher fee will be paid.

Claims for refresher fees must be verified by copy of court orders specifying counsel's time in court. Where same is not provided, Counsel's remittance advices shall record why payment has not been authorised. **For proceedings prior to 30 June 2005, the Commission does not require claims for refreshers to be verified by copy of court orders.**

Where copy of court orders have been provided but which do not specify Counsel's time in court, refresher fees may be authorised if the order indicates that either (a) any order has been made or renewed at hearing or (b) evidence has been tendered at the hearing.

A Half Day refresher fee is payable where Counsel is in court up to 3.5 hours and a Full Day refresher fee is payable where Counsel is in court in excess of 3.5 hours. Where times in court are not specified, assessment staff will assume a half-day refresher fee applies.

2.4 Delivery of Judgment

A one-off payment will be made for the final judgement in the case. Counsel must verify attendance for final judgment by providing copy of court order. A refresher fee will not be paid for the same date for which the 'Delivery of Final Judgement' fee is paid.

2.5 Combined Proceedings

A combined fee is payable in cases where an application for care proceedings (Article 50) and Freeing Order application are consolidated and heard together.

2.6 *Mixed Proceedings*

Where there is a combination of proceedings heard together (excluding combined proceedings), the highest applicable brief fee will be payable with additional payments of 30% of the brief fee in respect of the 1st related proceedings and 20% of the brief fee in respect of the 2nd related proceedings (see Example A below); mixed proceedings includes the different categories of case under Article 8 of the Children (NI) Order 1995 (see Example B further below)

Example A

Junior counsel in a case comprising Children Order Article 50, Children Order Article 8 and Non Molestation Order would be assessed as follows:

Article 50 Brief Fee	£2000
Article 8 (30% of £2000)	£600
Non-Molestation Order (20% of £1500)	£300
Total	£2900

Example B

Junior counsel in a case comprising Children Order Article 50, Children Order Article 8 (Contact) and Article 8 (Residence) would be assessed as follows:

Article 50 Brief Fee	£2000
Article 8 (30% of £2000)	£600
Article 8 (20% of £2000)	£400
Total	£3000

2.7 *Combined and Mixed Proceedings*

Where combined proceedings (Article 50 and Freeing Order application) plus one or more additional Article 3 proceedings (such as an Article 8 or Non-Molestation Order application) are heard together, the combined brief fee (£3520) will be payable plus 30% of the brief fee in respect of the 1st related proceedings (see Example C below).

In all cases where mixed proceedings or combined and mixed proceedings are heard together, a maximum of three proceedings will be considered in the calculation of the total fee payable. The combined brief fee pertains to two proceedings.

Example C

Junior counsel in a case comprising Children Order Article 50, Freeing Order and Children Order Article 8 would be assessed as follows:

Article 50 & Freeing Order (Combined) Brief Fee	£3520
Article 8 (30% of £2000)	£600
Total	£4120

In all cases where mixed proceedings or combined and mixed proceedings are heard together, only a maximum of three proceedings will be considered in the calculation of the total fee payable. The combined brief fee equates to two proceedings.

2.8 *Appeals from Family Proceedings Court (FPC)*

All appeal cases (from FPC to FCC) will be paid under the terms of the 2009 settlement regardless of date of conclusion of case and original proceedings type. Distinction is made between appeals involving 'New Evidence' (NE) and 'No New Evidence' (NNE). Counsel must provide a written supporting statement outlining details of NE. Where this is not supplied, the NNE fee will be paid. No uplifts are applicable for appeal cases arising from mixed or combined proceedings.

2.9 *Change of Counsel*

Where there is change of counsel during the course of the proceedings and an Article 3 has been granted to more than one counsel it is preferable that counsel(s) agree apportionment of costs between themselves and inform the Commission accordingly. In the absence of same, the Commission must be in receipt of completed reports on case from all counsel involved to facilitate apportionment of fees. In this scenario, there is no guarantee that respective claims will be processed within designated targets for assessment. Counsel dissatisfied with apportionment of their fees can revert to the appeals process outlined further below.

2.10 *Withdrawn or transferred cases*

Where an Article 3 certificate has been issued by the court and proceedings have been either withdrawn or transferred to another court, the following arrangements apply:

- Proceedings withdrawn/transferred to High Court at first direction hearing: 20% of Brief Fee
- Proceedings withdrawn/transferred to High Court at any point following first direction hearing: 35% of Brief Fee
- Proceedings withdrawn close to final hearing wherein the final hearing date is set and there is evidence that legal representatives have worked together to uphold the no-order principle: Full Brief Fee

2.11 *Travel and Mileage*

Travel is payable at the rate of £12 per hour. Mileage will be paid at the standard rate of 35.7p per mile. The starting point for calculation of travel will be the Bar Library, Belfast.

3 **Administrative Arrangements**

3.1 *Time Frame for Assessment/Payment*

Subject to receipt of properly and adequately completed forms and provision of the necessary supporting documentation, the Commission will assess and authorise claims for payment on 75% of Children Order claims under standard fee remuneration within 6 weeks.

Any items found during assessment to be claimed without validation will be highlighted on the remittance form. Upon receipt of the required validation the original assessment will be reviewed and any additional fees owed authorised for payment.

3.2 *Forms*

Counsel must complete and submit the most up to date Article 3 Claim Form ('Counsel Additional Claim Form') which is available to download from the Members' Area of the NILSC website.

3.3 *Direct payment*

In accordance with the Lord Chancellor's Guidance (29 June 2005) the Commission will continue to receive claims for payment of fees directly from Counsel. Counsel must:

- Provide full details of the fee which s/he is claiming;
- Provide a copy of the Article 3 certificate granted by the court; and
- Enclose a signed copy of a letter to his/her instructing solicitor advising that the claim has been lodged directly with the Commission.

Upon receipt of same, the Commission will assess claims and pay all authorised fees directly to Counsel and notify instructing solicitor that payment has been made.

4 **Appeals Process**

4.1 Appeals must be made in writing and lodged with the Commission within 30 days of receipt of remittance. The appeal must set out written reasons why the appellant considers the case has been assessed incorrectly or merits payment in excess of the standard fees.

4.2 Appeals will be referred back to the original assessor in the first instance. If s/he finds that an error was made in the original assessment the file will be processed for the appropriate additional fee(s) to be paid. Where the original assessor considers the original assessment as correct, the civil assessment team leader will review the original assessment to determine whether the appeal is merited and refer the case accordingly for consideration by the Fees Assessment Committee (FAC). The FAC will provide advice to the Commission as the merits, or otherwise of the appeal and the appropriateness of any increased payments in individual cases.

4.3 Thereafter, the Commission will make its decision having regard to the advice of the FAC and notify the appellant the outcome of the appeal in writing. The Commission will make every effort to conclude the appeals process within 3 months of receipt of the appeal.

Combined							
Senior	£5,280.00	£1,755.00	£600.00	£300.00	£300.00	£1,848.00	£1,056.00
Junior	£3,520.00	£1,170.00	£400.00	£200.00	£200.00	£1,232.00	£704.00
Contested Adoption							
Senior	£3,750.00	£1,170.00	£600.00	£300.00	£225.00	£1,312.50	£750.00
Junior	£2,500.00	£780.00	£400.00	£200.00	£150.00	£875.00	£500.00
Uncontested Adoption							
Senior	£1,725.00	£468.00	£600.00	£300.00	£225.00	£603.75	£345.00
Junior	£1,150.00	£312.00	£400.00	£200.00	£150.00	£402.50	£230.00

***See section 2.10 above for when the 35% and 20% Brief fee applies where proceedings are withdrawn or transferred.**

Legal Services Commission Circular 07/04

24 September 2007

Dear Practitioner

Article 3 Children Order Cases - Family Care Centre – Solicitor Fees

1. Introduction: This Circular is to confirm the payment arrangements regarding Children (NI) Order 1995 cases conducted in the Family Care Centre where a certificate has been granted under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981 as amended. This proposal relates to this specific group of Children Order cases only and does not apply to mixed proceedings or cases relating to adoption proceedings or any such other cases that have been awarded Article 3 certification.
2. Specific Issues: The Commission seeks to clarify and bring to your attention some of the key terms and conditions of this Settlement, those being:
 - (a) The Commission will pay the standard fees as specified in Appendix 1, for Children (NI) Order 1995 cases heard in the Family Care Centre where a certificate has been granted under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981 as amended.
 - (b) The rates will apply to all cases concluded after the 30th June 2005, up to and including 30th September 2007.
 - (c) The standard fees outlined are 'composite' fees intended to cover all preparatory work, consultations, directions hearings, interlocutory hearings and court hearings in the case, up to the close of the first day of hearing (and to include any solicitor advocacy and whether carried out by a solicitor who is a member of the Children Order Panel or not). In addition these fees incorporate waiting time at court. These fees are exclusive of VAT. Travel time and mileage will be paid at current rates¹. Disbursements will also be paid subject to prior authority and proper vouching.
 - (d) In arriving at the proposed set of fees and arrangements, the Commission undertook extensive analysis of the cases paid under the June 2005 Settlement. The Commission has had regard to the principle of allowing fair remuneration according to the work reasonably undertaken and properly done². In developing this framework for standard fees due consideration has also been given to introducing control, predictability and value for money to the Legal Aid fund.
3. Application for Payment: To submit an Application for Payment, the following items are required:
 - a) An Article 3 Certificate. In cases where either a solicitor or counsel or both, consider that they are entitled to Article 3 certification to ensure fair remuneration, **each individual professional involved must obtain their own certificate** in order to apply for, and receive, the

¹ Current mileage rate applicable is 35.7p per mile; solicitors' travel time is payable at £29.25 per hour.

² As provided under Article 37(1) of, together with paragraph 6 of Schedule 2 to, the 1981 Order, taken together with the corresponding reference in Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (Northern Ireland) 1981.

appropriate standard fee payment. This is in accordance with "Practice Direction (Family Care Centre) No 1 2002 Legal Aid Costs."

- b) A signed Report on Case (Rep 1) form.
- c) A completed Additional Claim Form as set out in Appendix 3 hereto.

4. Payment: Standard Fee Payments cannot be processed without an Article 3 Certificate pertaining to the individual or firm seeking remuneration as this may contravene the *Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981*. NILSC will issue a further Circular when this requirement for Article 3 certification is amended.

The Commission will facilitate direct payment to counsel which will be accompanied with remittance advice detailing the legal aid certificate number. It is expected that counsel will retain adequate records to identify payments relating to particular cases. Counsel must forward a copy of the letter forwarded to their instructing solicitor, advising that they intend to lodge their claim directly with NILSC, in order that direct payment to counsel can be facilitated.

NILSC are aware of the maximum payments applicable under Article 2 *Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981*. It is important to note that these are maximum amounts payable and that the awarding of Article 3 certification does not compel NILSC to pay this amount. NILSC will continue to provide fair remuneration for work reasonably undertaken and properly done through a standard fee scheme with appeal mechanism for exceptional cases.

5. Recoupment of Interim Payments: Interim payments were sought by a small number of practitioners. 29 interim payments have been made in total to date³ in respect of solicitors' profit costs and/or counsel fees. These payments will be recouped on payment of the solicitor's full bill. It will be a matter for each solicitor to obtain any interim fees paid to counsel, directly from the individual counsel where applicable. To assist in this regard, the Commission will provide information to solicitors in individual cases, if possible, or in report form to the Law Society, on the cases that have already attracted interim payments.

6. Proceedings Withdrawn or Transferred to another court
For those proceedings where an Article 3 Certificate has been issued by the court and have then been either withdrawn or transferred to another court, the following rates will apply:

Proceedings withdrawn / transferred to High Court – at first directions hearing	20% of fee
Proceedings withdrawn / transferred to High Court – at any point following first directions hearing	35% of fee
Proceedings withdrawn close to final hearing with:	Full fee

³ Accurate as of September 21st 2007.

<ul style="list-style-type: none"> • Final hearing date set; and • <i>It has been stated⁴ that legal representatives have worked together to uphold the no-order principle.</i> 	
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It should be noted that approximately 3% of cases in 2005/06 were awarded an Article 3 certificate in the Family Care Centre prior to withdrawal; 5% of cases were awarded certification prior to transfer to another court.

7. Transferred to another solicitor:

Where there has been a change of instructing solicitor during the course of the proceedings the Commission will require completed reports on cases from all firms of solicitors acting for the assisted person/s to enable the apportionment of the single 'composite fee' applicable to that case, taking into account the extent of the work carried out by each legal representative. NILSC will pay in total one standard fee, as would be due if the case had been completely undertaken by one representative. Where a legal representative is dissatisfied with the apportionment, the appeals process will apply.

8. Appeals Process: There will be an appeal mechanism available for practitioners wishing to appeal the fee paid under this Settlement. In cases where the Commission considers all the conditions of the appeal to be met, the matter will be placed before the Appeal Panel. The conditions of the appeal are that it must:

- Be in writing;
- Be lodged within 30 days from the date of the receipt of the remittance advice;
- Set out in the appropriate application form (Appendix 4) the written reasons why, due to the nature of exceptionality and complexity of the case, the appellant considers that the case merits fees in excess of the composite fee applicable. *The onus rests with the appellant to provide supporting written evidence to support their application for remuneration in excess of the standard fee.*

Appeals under this second interim settlement will be treated under the current delegated authority arrangements, which are transitional in nature at present. This will result in appeal cases being heard by either a full Appeals Panel or under the quorum arrangements outlined in the LSC Circular 06/06 of 26th July 2006. Where practitioners are dissatisfied with the decision of an appeal panel, a review mechanism is also available.

9. Monitoring and Review of the Implementation of these arrangements: The Commission will monitor progress on clearing the backlog and will liaise regularly with the profession on progress, anticipated clearance times and any other issues arising from these arrangements for this specific group of cases.

In the event of queries arising in relation to claims under this September 2007 Settlement, the Commission will operate a temporary helpdesk to facilitate timely turnaround of claim submission and processing. Further information regarding this facility will be sent out in due course.

⁴ Practitioners can state this when setting out the agreed terms on the Solicitor Additional Claim Form, attached as Appendix 3, in the Proceedings Result descriptor section.

10. Claims already lodged with NILSC: NILSC will endeavour to process all claims already submitted as expeditiously as possible, without requiring practitioners to complete a new Solicitor Additional Claim Form, as appended. It is anticipated however that cases of greater than one day in duration will necessitate further information from practitioners as a result of the 'refresher' fee structure outlined.

Yours sincerely



Gerry Crossan
Chief Executive

Enclosures:

Appendix 1 – Table of Standard Fees relating to solicitors.

Appendix 2– Application Form for Article 3 cases submitted under the terms of the September 2007 Settlement.

Appendix 3- Application Form for Article 3 Standard Fee Appeals.

Appendix 4 - Application Form for Review of Article 3 standard Fee Appeal Decision.

Our Mission and Aim

The Commission will promote fair and equal access to justice in Northern Ireland in its provision of publicly-funded legal services.

Our aim is to provide high quality, customer focussed services that target those in greatest need and demonstrate value for money.

Quality Statement

The Northern Ireland Legal Services Commission is committed to the pursuit of excellence in delivering access to justice.

APPENDIX 1–Standard fees for Solicitors under the September 2007 Settlement

The standard fee in Family Care Centre proceedings applies to cases involving the following Articles of the Children (NI) Order 1995:

Table 1 - Family Care Centre Children Order Cases - Solicitors

	June 05	Post –June 05	
	All Children (NI) Order 1995 proceedings	Article 50 Article 50(1)b Article 44	All other Children (NI) Order 1995 Proceedings in the FCC
Standard fee (solicitor’s professional remuneration)	£3,500	£3,500	£2,000
Refresher (full day)	£300	£400	£400
Refresher (half day)	-	£200	£200
Delivery of judgement	£150	£150	£150

Table 2 - Children Order Appeals to the Family Care Centre- Solicitors (no June 2005 comparator)

Solicitor	Article 50 Article 50(1)b Article 44	All Other Children (NI) Order 1995 Appeals
Standard fee (solicitor’s professional remuneration)	£1,400	£800
Refresher (full day)	£400	£400
Refresher (half day)	£200	£200
Delivery of judgement	£150	£150

Note:

1. Where proceedings relate to more than one Article of the Children (NI) Order 1995, the highest fee applicable will be paid.
2. These fees are exclusive of VAT. Mileage and travel will be paid at the current rates of 35.7p per mile and £29.25 per hour respectively. Disbursements will also be paid subject to prior authority and proper vouching.
3. In order to assist the Commission in assessing the applicability of Refresher days, which will be payable from the second substantive day of the hearing⁵, the profession will be required to provide an accurate account of both the nature of the hearing and the times spent in court for such days.

⁵ Currently the Commission assess on the basis of a half day being between either 10.00 a.m. to 1.00 p.m. or 2.00 p.m. to 5.30 p.m.

APPENDIX 2

SOLICITOR ADDITIONAL CLAIM FORM

For Children (NI) Order 1995 Cases, concluding after 30/06/2005, in a Family Care Centre, in which an Article 3 Certificate was awarded to the solicitor.

**Please attach the relevant Article 3 certificate to this form.
Please ensure all sections of this form are fully completed. Failure to do so will result in the form being returned to you and will delay payment of the fees.**

Instructing Solicitor Firm Reference No.	Name and address of Firm
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Certificate number	Name of applicant
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Did you represent any other parties in this case?	YES	NO
If yes, please give names and certificate numbers.		

Date Set for Final Hearing (if any):	Did case proceed to full final hearing: YES NO ORDER BY CONSENT
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Family Care Centre Location:	
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If this case was transferred to or from another solicitor, please provide details including: point of transfer in case, name of previous/subsequent Solicitor and date of transfer.

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Please provide details of all counsel instructed by you in this case, indicating whether Junior or Senior Counsel.

If this case was transferred between Counsel, please provide details including names, date(s) of transfer, reason(s) for transfer and a brief outline of work undertaken by each.

PROCEEDINGS RESULT

Case Transferred

Case Withdrawn

Case Settled

Final Hearing decided as per Client's original application

Final Hearing not decided as per Client's original application

Confirm nature and outcome of all Children Order Proceedings issued in this case. (Applications cannot be processed without this information and will be returned.)

- Details of all proceedings must be listed
- If case **settled**, outline agreed terms and date of settlement.
- If case was **withdrawn**, outline reasons for, and date of, withdrawal.
- If case **dismissed** please provide date and reasons.
- If case was **transferred to another court**, please indicate date of transfer, court to which transferred, and stage in proceedings at which transfer took place.

Were any costs awarded to or against your client?	YES	NO
<p>If yes, please give details (including amount, whether Article 11(1)(e) of the Legal Aid, Advise and Assistance (Northern Ireland) Order 1981 was invoked and amount of party and party costs).</p>		

Work	Date	Time spent	Amount claimed	LSC use only
Date of first substantive hearing and subsequent hearing days.				
Attendance for Judgement				
Mileage claim. Provide date and destination of all journeys including mileage claimed.				
Travel time claimed. Please provide date, destination and duration of all journeys being claimed.				
Total				

Details of disbursements claimed. NB Disbursements must be properly vouched.

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Signed: _____

Date: _____

CHECKLIST

Prior to submitting this form please ensure you have attended to the following:

1. Attached a copy of the Article 3 Certificate.
2. Fully completed, signed and dated this Form.
3. Furnished a signed Report on Case (Rep 1) form.
4. Attached vouching details for any disbursements claimed.

APPENDIX 3**Form A3FA****Request to Appeal the Standard Fee Payment on Children (NI) Order 1995 Cases holding an Article 3 Certificate under the September 2007 Settlement****The Legal Services Commission: Appeals and Review Administration Unit****1. Applicant and Practitioner information (Complete as appropriate)**

Applicant's name	
LSC Application Ref No	
Date of Article 3 Payment (a)	
Solicitor's name and firm	
Solicitors Reference No.	
Counsel Name:	
Counsel LSC Reference No.	
CLS Appeal Panel Ref No (Internal)	

- (a) All requests for appeal against a standard fee payment under the September 2007 settlement for Article 3 cases must be made within 30 days of the receipt of the remittance advice.

2. Request for Appeal:

I am the solicitor/counsel awarded an Article 3 certificate in this case and, having regard to the nature and complexity of this case, I am of the opinion that the standard fee does not provide adequate remuneration for the work undertaken. I believe that this case was exceptional and should not come within the scope of the standard fee scheme for the following reasons:

[THE ONUS RESTS WITH THE PROFESSION TO SET OUT CLEARLY, AND TO PROVIDE SUCH SUPPORTING INFORMATION AND DOCUMENTATION AS APPROPRIATE, TO ENABLE NILSC TO CONSIDER ALL THE RELEVANT FACTS OF THE CASE IN THEIR DETERMINATION. REASONS SHOULD BE SET OUT CLEARLY AND CONCISELY, ADDITIONAL DOCUMENTATION SHOULD BE ATTACHED AT THE BACK OF THIS FORM]

3. List of Attachments

	Description of attachments and information relevant to the decision
1.	
2.	
3.	
4.	
5.	

All attachments must be indexed and numbered and the relevant excerpt(s) of the attachment clearly flagged.

4. Request for Audience or Representation in person:

I believe that the CLS Appeal Panel should not consider this appeal on the information and papers provided alone for the following reasons

[A FULL DESCRIPTION OF THE REASONS WHY THE APPEAL SHOULD NOT BE CONSIDERED ON THE BASIS OF THE PAPERS AND INFORMATION PROVIDED ALONE]

I,(insert name(s)) wish to attend the CLS Appeal Panel to give oral representations in this appeal for the following reasons

[A FULL DESCRIPTION OF THE REASONS WHY THE SOLICITOR/CLIENT/COUNSEL WISHES TO ATTEND TO GIVE ORAL REPRESENTATION]

Signed Firm Name (if appropriate).....

Date

Address

.....

.....

Request To Review the CLS Appeal Panel Decision In Relation To An Article 3 Standard Fee Appeal

The Legal Services Commission: Appeals and Review Administration Unit

1. Applicant and Solicitor information (Complete as appropriate)

Applicant's name	
LSC Application Ref No	
Appeal Panel Ref No	
Date of notification of unsuccessful appeal(a)	
Solicitor's name and firm	
Solicitors Reference No.	
Counsel Name	
Counsel LSC Reference No.	
CLS Review Panel Ref No. (Internal)	

(a) All requests for review should be made within 10 working days of the date of notification of the Appeal Panel decision.

2. Request for Review of Refusal of Civil Legal Aid by CLS Appeal Panel

I am the solicitor/counsel awarded an Article 3 certificate in this case and, having regard to the nature and complexity of this case, and having considered the decision of the CLS Appeal Panel, I believe that the remuneration decision is unreasonable and I now request a review of the Commission's decision in this appeal case. I consider that the Commission's decision was unreasonable for the reasons set out below.

[THE GROUNDS FOR THE ARGUMENT THAT THE DECISION IS UNREASONABLE SHOULD BE SET OUT CLEARLY AND CONCISELY HERE. ALL RELEVANT CASE LAW OR OTHER STATUTORY REFERENCES MUST BE INCLUDED]

3. Additional Information:

I request the Civil Legal Services Review Panel to consider the following additional information or document which was not previously submitted in the original application or to the CLS Appeal Panel.

[A DESCRIPTION OF THE FURTHER INFORMATION MUST BE PROVIDED HERE WITH THE REASONS FOR IT NOT BEING PROVIDED AT THE TIME OF THE ORIGINAL APPLICATION,]

4. List of Attachments included with Appeal Request

	List of attachments
1.	
2.	
3.	
4.	
5.	

All attachments must be indexed and numbered and the relevant excerpt(s) of the attachment clearly flagged

5. Request for Audience or Representation in person

I believe that the CLS Review Panel should not consider this review on the information and papers provided alone for the following reasons:

[A FULL DESCRIPTION OF THE REASONS WHY THE REVIEW CANNOT BE CONDUCTED ON THE BASIS OF THE PAPERS AND INFORMATION PROVIDED ALONE]

I,(insert name(s)) wish to attend the CLS Review Panel to give oral representation in this review for the following reasons

[A FULL DESCRIPTION OF THE REASONS WHY THE SOLICITOR/COUNSEL WISHES TO ATTEND TO GIVE ORAL REPRESENTATION]

6. CLS Appeal Panel

In the event of this request being granted and my application for civil legal aid being remitted to a CLS Appeal Panel, I request that the CLS Appeal Panel is

- (a) the original CSL Appeal Panel that considered the original appeal *[OR]*
- (b) a differently constituted CLS Appeal Panel.

[APPLICANT MUST DELETE (a) OR (b) AS APPROPRIATE]

Signed

Date

Address

.....

.....

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Note:

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**Please attach the relevant Article 3 certificate to this form.
Please ensure all sections of this form are fully completed. Failure to do so will result in the form being returned to you and will delay payment of the fees.**

Instructing Solicitor Firm Reference No.	Name and address of Firm
---	---------------------------------

Certificate number	Name of applicant
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Did you represent any other parties in this case?	YES	NO
If yes, please give names and certificate numbers.		

Date Set for Final Hearing (if any):	Did case proceed to full final hearing: YES NO ORDER BY CONSENT
---	--

Family Care Centre Location:	
-------------------------------------	--

If this case was transferred to or from another solicitor, please provide details including: point of transfer in case, name of previous/subsequent Solicitor and date of transfer.

--

Please provide details of all counsel instructed by you in this case, indicating whether Junior or Senior Counsel.

If this case was transferred between Counsel, please provide details including names, date(s) of transfer, reason(s) for transfer and a brief outline of work undertaken by each.

PROCEEDINGS RESULT

Case Transferred

Case Withdrawn

Case Settled

Final Hearing decided as per Client's original application

Final Hearing not decided as per Client's original application

Confirm nature and outcome of all Children Order Proceedings issued in this case. (Applications cannot be processed without this information and will be returned.)

- Details of all proceedings must be listed
- If case **settled**, outline agreed terms and date of settlement.
- If case was **withdrawn**, outline reasons for, and date of, withdrawal.
- If case **dismissed** please provide date and reasons.
- If case was **transferred to another court**, please indicate date of transfer, court to which transferred, and stage in proceedings at which transfer took place.

Were any costs awarded to or against your client?	YES	NO
<p>If yes, please give details (including amount, whether Article 11(1)(e) of the Legal Aid, Advise and Assistance (Northern Ireland) Order 1981 was invoked and amount of party and party costs).</p>		

Work	Date	Time spent	Amount claimed	LSC use only
Date of first substantive hearing and subsequent hearing days.				
Attendance for Judgement				
Mileage claim. Provide date and destination of all journeys including mileage claimed.				
Travel time claimed. Please provide date, destination and duration of all journeys being claimed.				
Total				

Details of disbursements claimed. NB Disbursements must be properly vouched.

--

Signed: _____

Date: _____

CHECKLIST

Prior to submitting this form please ensure you have attended to the following:

1. Attached a copy of the Article 3 Certificate.
2. Fully completed, signed and dated this Form.
3. Furnished a signed Report on Case (Rep 1) form.
4. Attached vouching details for any disbursements claimed.

APPENDIX 3**Form A3FA****Request to Appeal the Standard Fee Payment on Children (NI) Order 1995 Cases holding an Article 3 Certificate under the September 2007 Settlement****The Legal Services Commission: Appeals and Review Administration Unit****1. Applicant and Practitioner information (Complete as appropriate)**

Applicant's name	
LSC Application Ref No	
Date of Article 3 Payment (a)	
Solicitor's name and firm	
Solicitors Reference No.	
Counsel Name:	
Counsel LSC Reference No.	
CLS Appeal Panel Ref No (Internal)	

- (a) All requests for appeal against a standard fee payment under the September 2007 settlement for Article 3 cases must be made within 30 days of the receipt of the remittance advice.

2. Request for Appeal:

I am the solicitor/counsel awarded an Article 3 certificate in this case and, having regard to the nature and complexity of this case, I am of the opinion that the standard fee does not provide adequate remuneration for the work undertaken. I believe that this case was exceptional and should not come within the scope of the standard fee scheme for the following reasons:

[THE ONUS RESTS WITH THE PROFESSION TO SET OUT CLEARLY, AND TO PROVIDE SUCH SUPPORTING INFORMATION AND DOCUMENTATION AS APPROPRIATE, TO ENABLE NILSC TO CONSIDER ALL THE RELEVANT FACTS OF THE CASE IN THEIR DETERMINATION. REASONS SHOULD BE SET OUT CLEARLY AND CONCISELY, ADDITIONAL DOCUMENTATION SHOULD BE ATTACHED AT THE BACK OF THIS FORM]

3. List of Attachments

	Description of attachments and information relevant to the decision
1.	
2.	
3.	
4.	
5.	

All attachments must be indexed and numbered and the relevant excerpt(s) of the attachment clearly flagged.

4. Request for Audience or Representation in person:

I believe that the CLS Appeal Panel should not consider this appeal on the information and papers provided alone for the following reasons

[A FULL DESCRIPTION OF THE REASONS WHY THE APPEAL SHOULD NOT BE CONSIDERED ON THE BASIS OF THE PAPERS AND INFORMATION PROVIDED ALONE]

I,(insert name(s)) wish to attend the CLS Appeal Panel to give oral representations in this appeal for the following reasons

[A FULL DESCRIPTION OF THE REASONS WHY THE SOLICITOR/CLIENT/COUNSEL WISHES TO ATTEND TO GIVE ORAL REPRESENTATION]

Signed Firm Name (if appropriate).....

Date

Address

.....

.....

Request To Review the CLS Appeal Panel Decision In Relation To An Article 3 Standard Fee Appeal

The Legal Services Commission: Appeals and Review Administration Unit

1. Applicant and Solicitor information (Complete as appropriate)

Applicant's name	
LSC Application Ref No	
Appeal Panel Ref No	
Date of notification of unsuccessful appeal(a)	
Solicitor's name and firm	
Solicitors Reference No.	
Counsel Name	
Counsel LSC Reference No.	
CLS Review Panel Ref No. (Internal)	

(a) All requests for review should be made within 10 working days of the date of notification of the Appeal Panel decision.

2. Request for Review of Refusal of Civil Legal Aid by CLS Appeal Panel

I am the solicitor/counsel awarded an Article 3 certificate in this case and, having regard to the nature and complexity of this case, and having considered the decision of the CLS Appeal Panel, I believe that the remuneration decision is unreasonable and I now request a review of the Commission's decision in this appeal case. I consider that the Commission's decision was unreasonable for the reasons set out below.

[THE GROUNDS FOR THE ARGUMENT THAT THE DECISION IS UNREASONABLE SHOULD BE SET OUT CLEARLY AND CONCISELY HERE. ALL RELEVANT CASE LAW OR OTHER STATUTORY REFERENCES MUST BE INCLUDED]

3. Additional Information:

I request the Civil Legal Services Review Panel to consider the following additional information or document which was not previously submitted in the original application or to the CLS Appeal Panel.

[A DESCRIPTION OF THE FURTHER INFORMATION MUST BE PROVIDED HERE WITH THE REASONS FOR IT NOT BEING PROVIDED AT THE TIME OF THE ORIGINAL APPLICATION.]

4. List of Attachments included with Appeal Request

	List of attachments
1.	
2.	
3.	
4.	
5.	

All attachments must be indexed and numbered and the relevant excerpt(s) of the attachment clearly flagged

5. Request for Audience or Representation in person

I believe that the CLS Review Panel should not consider this review on the information and papers provided alone for the following reasons:

[A FULL DESCRIPTION OF THE REASONS WHY THE REVIEW CANNOT BE CONDUCTED ON THE BASIS OF THE PAPERS AND INFORMATION PROVIDED ALONE]

I,(insert name(s)) wish to attend the CLS Review Panel to give oral representation in this review for the following reasons

[A FULL DESCRIPTION OF THE REASONS WHY THE SOLICITOR/COUNSEL WISHES TO ATTEND TO GIVE ORAL REPRESENTATION]

6. CLS Appeal Panel

In the event of this request being granted and my application for civil legal aid being remitted to a CLS Appeal Panel, I request that the CLS Appeal Panel is

- (a) the original CSL Appeal Panel that considered the original appeal *[OR]*
- (b) a differently constituted CLS Appeal Panel.

[APPLICANT MUST DELETE (a) OR (b) AS APPROPRIATE]

Signed

Date

Address

.....

.....

Legal Services Commission Circular 05/14

11 August 2005

Dear Practitioner

Article 3 Children Order Cases - Family Care Centre

1. Introduction: This Circular is to confirm the payment arrangements regarding Children Order cases where Article 3 Certificates have been granted by the Family Care Centre. The fees have been agreed with the Law Society and the Bar Council representatives on behalf of their members. This agreement constitutes a remedial proposal to address the specific group of Children Order cases, which are Article 3 Family Care Centre only, was reached following extensive and prolonged discussions with both the Law Society and the Bar Council and included the Northern Ireland Court Service on the funding of these cases.
2. Terms of the Agreement: The Commission is aware that the Law Society and the Bar Council have already notified members about the agreed payment arrangements for these cases. The proposals have been set out in the letters from Sir Anthony Holland, Chairman of the NILSC to Mr Joe Donnelly, Chairman, Access to Justice Committee and Mr Peter Cush, Chairman, Bar Council, which are attached as Appendices 1 and 2 to this circular.
3. Specific Issues: The Commission seeks to clarify and bring to your attention some of the key terms and conditions set out in full in Appendices 1 and 2. These are set out below:
 - (a) The Commission will pay, in Children Order cases heard in the Family Care Centre where a certificate has been granted under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981, the fees as specified in Appendices 1 and 2 (attached) at points 1 – 5
 - (b) The rates will apply to all cases concluded up to 30 June 2005 specified Appendices 1 and 2 – point 7
 - (c) In arriving at the agreed set of fees and arrangements, the Commission undertook to re-assess all cases already paid (where an Article 3 certificate was granted) in accordance with the rates referred to at (a) and (b) above.

The Commission further agreed that, where an assessed case has already attracted payment in excess of the amount calculated under the new rates, the original assessment process would be relied upon and, as a consequence, no deduction or recoupment would be applied – Appendix 1 at point 6.

4. The Appeals Process: As part of the discussions with the Law Society and the Bar Council, the Commission undertook to clarify the appeals process and the role of the Fees Assessment Committee. Part of the process is addressed at points 8 – 10 of Appendices 1 and 2. The Commission wishes to draw your attention to the fact that this agreement was arrived at with both sides of the profession, on the assumption that there would be a small number of appeals. Where the Commission considers all the conditions of the appeal to be met, the matter will be placed before the Fees Assessment Committee.
5. The Fees Assessment Committee: The Fees Assessment Committee's function, in relation to this specific group of cases, will consider any appeal referred to it and provide advice to the Commission as to the merits, or otherwise, of the appeal and the appropriateness of any increased payments in individual cases. Thereafter, the Commission will make its decision, having regard to the advice of the Fees Assessment Committee, the outcome of which will be notified to the appellant.
6. Monitoring and Review of the Implementation of these arrangements: The Commission will monitor progress on clearing the backlog, and any appeals arising from this, and will liaise regularly with the Law Society and the Bar Council on progress, anticipated clearance times and any other issues arising from these agreed arrangements for this specific group of cases.

Yours sincerely



Gerry Crossan
Chief Executive

Enclosures:

Appendix 1 – Letter from Sir Anthony Holland, Chairman NILSC to Mr Joe Donnelly,
Chairman, Access to Justice Committee

Appendix 2 - Letter from Sir Anthony Holland, Chairman NILSC to Mr Peter Cush,
Chairman, Bar Council N.I.

June 2005

Proposal, Article 3 Children Order Cases – Family Care Centre

Thank you for your assistance in taking forward the discussions on this issue. Following the meetings that we had on this issue and extensive and prolonged discussion with NICTS on the funding of the Children Order Article 3, Family Care Centre cases, I am now in a position to set out the terms of the final proposal that the Commission is making. The concerns raised by the Law Society in its letter of 17 June 2005 have been noted. However, at this time the Commission is keen to agree the proposal set out below so that the Commission can begin to process payments for these types of cases. I can also confirm that the proposal is similar to the terms agreed with the Bar. I would be grateful if you would confirm that these proposals are acceptable to you before close of business today, Tuesday 21 June 2005..

Remedial Proposals:

The Commission will pay in all Children Order cases in Family Care Centre where a certificate has been granted under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981 the following:

Fees

1. £3500 + VAT (less any interim payment already issued) will be paid per case as solicitors' professional remuneration

This fee is a 'composite fee' intended to cover all preparatory work, consultations, directions hearings and interlocutory hearings and court hearings in the case up to the close of the first day of hearing (and to include any solicitor advocacy and whether carried out by a solicitor who is a member of the Children Order Panel or not).

2. 'Refreshers' for additional days will be paid at a rate of £300 + VAT for each day after the first full day of hearing.
3. Disbursements will be paid, subject to prior authority and proper vouching.
4. Where cases involve hearings which are for delivery of judgement only these attendances will attract a one-off flat fee of £150.

Expenses

5. Travel and mileage will be paid in accordance with the usual rates.

Cases already assessed

6. All cases already paid will be re-assessed by the Commission in accordance with the rates outlined above and the Commission will calculate the balance in each case. Where an assessed case has already attracted payment in excess of the amount calculated under the above rates, the Commission will rely on the original assessment process and not apply these remedial rates to the case.

Cases to which these proposals will apply

7. These rates will apply to all cases concluded up to 30 June 2005

Appeals:

8. All appeals will be referred to the Fees Assessment Committee, operating under the Transitional Arrangements which were established in October 2003.
9. Any appeal must:
 - (a) be made in writing
 - (b) be lodged within 30 days from the date of the receipt of the remittance advice
 - (c) set out written reasons why the appellant considers the case merits fees in excess of the composite rates.
10. Where the conditions are met the appeal will be placed before the Fees Assessment Committee. Instructing Solicitor should note that where the Fees Assessment Committee considers appeals, the Committee may require details of related cases.

The Commission will make every effort to conclude appeals processes within 3 months of the appeal being received.

Apportionment of Costs:

11. Where there has been a change of instructing solicitor during the course of the proceedings the Commission will require completed reports on cases from all firms of solicitors acting for the assisted persons/s to enable 'composite fee' to be apportioned by the Commission, taking into account the extent of the work carried out by each firm. Where a legal representative is dissatisfied with the apportionment the normal appeals process will apply, as set out at point 9 above.

Recoupment of Interim Payments:

12. Interim payments already paid in respect of solicitors' profit costs and/or counsel's fees will be recouped on payment of the solicitor's full bill. It will be a matter for each solicitor to obtain any interim fees paid to counsel, directly from the individual counsel.

To assist, the Commission will provide information to solicitor's in individual cases, if possible, or in report form to the Law Society, on the cases that have already attracted interim payments.

Direct payment to counsel

13. The Commission is seeking the assistance of NICTS to enable direct payments to be made to Counsel and the Commission anticipates that this facility will be available from July 2005. If this is not possible, the Commission will make payments to solicitors and make every effort to inform counsel, either in individual cases if possible, or in report form to the Bar on the cases that have attracted payments which have been made to solicitors.

Timescale for clearing the Article 3 cases

14. The Commission aims to begin to make payments in July 2005.

Monitoring progress of backlog clearance and appeals

15.
 - (a) The Commission will monitor progress on clearing the backlog and the appeals arising from this and liaise regularly with the Law Society on progress, anticipated clearance times and any other issues arising as the work progresses.
 - (b) There will be on-going monitoring of claims, appeals and payment for these types of cases to include regular meetings with Law Society representatives on a regular basis to begin to develop a scheme to guide future remuneration in Family Care Centre cases.

Submission of Claims/Appeals

16. The Forms to be used by The Law Society members are as follows:
- (a) All Cases – Completed form Rep1 and insert, which must be signed and dated, supported by an Article 3 Certificate, to include travel and mileage details. Claims for disbursements must be accompanied by original receipts
 - (b) Appeal Cases – Any appeal must be set out by way of an itemised bill for assessment to include detailing all work done and full supporting documentation to include specific reasons for the appeal.

The list of Frequently Asked Questions (FAQs) will be revised as soon as possible and put on website.

I note that The Law Society has requested a lunchtime seminar on this subject and the NILSC will try to facilitate this, if required.

Your letter also raised the issue of solicitor advocacy this is, as we have previously mentioned, a matter for the reform agenda discussions in due course.

**SIR ANTHONY HOLLAND
CHAIRMAN**

21 June 2005

Proposal, Article 3, Children Order Cases – Family Care Centre

Thank you for your assistance in taking forward the discussions on this issue. I am glad to be able to report that the further meetings that took place between NILSC staff and representatives of the Bar have proved to be useful in clarifying the detail of the issues that separated our last positions. I am also hopeful that the proposals contained in this letter, which have been developed in the light of the further discussions between the NILSC and the Bar will be acceptable to you and your colleagues. I would be grateful if you would confirm that these proposals are acceptable to and your colleagues before close of business today Tuesday 21 June 2005.

Remedial Proposals

The Commission will pay in all Children Order cases in the Family Care Centre where a certificate has been granted under Article 3 of the Legal Aid (Remuneration of Solicitors and Counsel in County Court Proceedings) Order (NI) 1981 the following:

Fees

1. Junior Counsel will receive a brief fee of £1500 and Senior Counsel will receive a brief fee of £2250.
2. Junior Counsel will receive a fee of £500 for all written work, consultations, direction hearings and interlocutory hearings and Senior Counsel will receive £750 for this work.
3. Junior Counsel will receive a refresher fee of £400 per day for each day after the first full day of hearing and Senior Counsel will receive £600.
4. Where cases involve hearings which are for delivery of judgment only these attendances will attract a one-off flat fee of £150 and Senior Counsel will receive £225.

Expenses

5. Travel and mileage will be paid in accordance with the usual rates.

Cases already assessed

6. All cases already paid will be re-assessed by the Commission in accordance with the rates outlined above and the Commission will calculate the balance in each case. Where an assessed case has already attracted payment in excess of the amount calculated under the above rates, the Commission will rely on the original assessment process and not apply these remedial rates to the case.

Cases to which these proposals will apply

7. These rates will apply to all cases concluded up to 30 June 2005.

Appeals

8. All appeals will be referred to the Fees Assessment Committee, operating under the Transitional Arrangements which were established in October 2003.
9. Any appeal must:
 - a) be made in writing;
 - b) be lodged within 30 days from the date of the receipt of the remittance advice;

- c) set out written reasons why the appellant considers the fees proposed do not provide adequate remuneration because of the exceptional and complex nature of the case
10. Where the conditions are met the appeal will be placed before the Fees Assessment Committee. Counsel should note that where the Fees Assessment Committee considers appeals the Committee may require details about related cases.

The Commission will make every effort to conclude appeals processes within 3 months of the appeal being received.

Apportionment of Costs

11. Where there has been a change of counsel during the course of the proceedings the Commission will require completed reports on cases from all counsel acting for the assisted person/s to enable fees to be apportioned by the Commission, taking into account the extent of the work carried out by each Counsel. Where a legal representative is dissatisfied with the apportionment the normal appeals process will apply, as set out point 9 above.

Recoupment of Interim Payments

12. Fees will be paid less any interim fee already issued. Counsel should themselves repay interim counsel fees which have been paid to solicitors.
13. To assist this process the Commission will provide information to counsel in individual cases, if possible, or in report form to the Bar, on the cases that have already attracted interim payments.

Direct payment to counsel

14. The Commission is seeking the assistance of the NICtS to enable direct payments to be made to counsel and the Commission anticipates that this facility will be available from July 2005. If this is not possible, the Commission will make payments to solicitors and make every effort to inform counsel, either in individual cases if possible, or in report form to the Bar on the cases that have attracted payments which have been made to solicitors.

Timescale for clearing the Article 3 cases

15. The Commission aims to begin to make payments in July 2005.

Monitoring progress of backlog clearance and appeals

16. (a) The Commission will monitor progress on clearing the backlog and the appeals arising from this and liaise regularly with the Bar on progress, anticipated clearance times and any other issues arising as the work progresses.
- (b) There will be on-going monitoring of claims, appeals and payments for these types of cases to include meetings with Bar representatives on a regular basis to begin to develop a scheme to guide future remuneration in Family Care Centre cases.

SIR ANTHONY HOLLAND
Chairman