

2009 No. 1854

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2009

<i>Made</i> - - - -	<i>13th July 2009</i>
<i>Laid before Parliament</i>	<i>14th July 2009</i>
<i>Coming into force</i> - -	<i>4th August 2009</i>

The Lord Chancellor makes this Order in exercise of the powers conferred by section 6(4) of the Access to Justice Act 1999(a). He has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

Citation, commencement, interpretation and transitional provisions

1.—(1) This Order may be cited as the Community Legal Service (Funding) (Counsel in Family Proceedings) (Amendment) Order 2009 and comes into force on 4th August 2009.

(2) In this Order—

“the 2001 Order” means the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001(b);

“certificate” means a certificate to fund services issued under the funding code approved under section 9 of the Access to Justice Act 1999 and includes amendments made to an existing certificate to add new proceedings.

(3) This Order applies in respect of work carried out by counsel under instructions received on or after 4th August 2009, where the certificate was granted on or after 28th February 2005.

(4) In respect of work carried out by counsel which does not fall within paragraph (3), the 2001 Order continues to apply as if this Order had not been made.

Amendments to the 2001 Order

2. The 2001 Order is amended as follows.

3. In article 2(1) (interpretation) omit the definition of “business accounts”.

4. In article 9(1) (special issue payments)—

(a) omit sub-paragraph (c);

(a) 1999 c. 22. The powers were transferred from the Lord Chancellor to the Secretary of State by S.I. 2003/1887 and transferred back to the Lord Chancellor by S.I. 2005/3429.

(b) S.I. 2001/1077; relevant amending instruments are S.I. 2005/184, 2006/2364 and 2008/666.

- (b) omit sub-paragraph (cc);
- (c) omit sub-paragraph (cd);
- (d) after sub-paragraph (e) insert “or”;
- (e) omit sub-paragraph (f);
- (f) for sub-paragraph (g) substitute—

“(g) a party who has or may have been involved in conduct by virtue of which a child who is the subject of the proceedings has or may have suffered, or might suffer, very significant harm.”.

5. After article 16(5) (special preparation fee) insert—

“(6) Counsel who makes an application under paragraph (5) in proceedings referred to in paragraph (2)(a) must supply the judge with written information about—

- (a) the complexity of the relevant issues of law and fact or as to why the case was otherwise an exceptional one of its nature, as the case may be, and
- (b) the number of hours of additional preparation.”.

6. In paragraph 1 of Schedule 1 (Table of Fees), for each of the tables relating to special issue payments for Queen’s Counsel and for counsel other than Queen’s Counsel substitute—

“Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	10
More than one expert	10”

7. In paragraph 2 of Schedule 1—

- (a) in the table relating to the graduated fee for Queen’s Counsel—
 - (i) in the column “Base fee £”, for “200.00” and “175.00” substitute “234.00” and “205.00” respectively;
 - (ii) in the column “Hearing unit fee £”, for “212.50”, “325.00”, “1075.00” and “575.00” substitute “249.00”, “380.50”, “1,258.50” and “673.00” respectively;
- (b) in the table relating to the graduated fee for counsel other than Queen’s Counsel—
 - (i) in the column “Base fee £”, for “80.00” and “70.00” substitute “93.50” and “82.00” respectively;
 - (ii) in the column “Hearing unit fee £”, for “85.00”, “130.00”, “430.00” and “230.00” substitute “99.50”, “152.00”, “503.50” and “269.50” respectively;

(c) for each of the tables relating to special issue payments for Queen’s Counsel and for counsel other than Queen’s Counsel substitute—

“Special issue payments

<i>Category</i>	<i>%</i>
Difficulty in giving instructions/understanding advice	25
Parents/allegations against others	25
More than one expert	15
Foreign	25
Conduct	20”

8. In paragraph 3 of Schedule 1, for each of the tables relating to special issue payments for Queen’s Counsel and for counsel other than Queen’s Counsel substitute—

“Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	30

More than two parties	30
Difficulty giving instructions/understanding advice	25
More than one expert	20
Foreign	30
Conduct	30”

9. In paragraph 4 of Schedule 1, for each of the tables relating to special issue payments for Queen’s Counsel and for counsel other than Queen’s Counsel substitute—

“Special issue payments

<i>Category</i>	<i>%</i>
Litigant in person	20
More than two parties	10
Foreign	20”

Signed by authority of the Lord Chancellor

Bach
Parliamentary Under Secretary of State
Ministry of Justice

13th July 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (S.I. 2001/1077), which sets out the system for the payment of graduated fees for counsel for work in family proceedings. The Order increases the base fees payable in public law children cases (article 7) and reduces or abolishes certain special issue payments in public law children cases, private law children cases and ancillary relief and other family proceedings (articles 3 and 4 and 6 to 9). It also introduces a requirement on counsel to provide information in support of certain claims for a special preparation fee (article 5). The Order applies to work done under instructions received on or after 4th August 2009, under certificates granted since 28th February 2005.

An impact assessment has been prepared for this instrument and is available from Civil, Family and Immigration Legal Aid Strategy Division, Ministry of Justice, 102 Petty France, London SW1H 9AJ or at www.justice.gov.uk/docs/reforming-legal-aid-family-barrister-fee-scheme-response.pdf.

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STATUTORY INSTRUMENTS

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£4.00