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STATUTORY INSTRUMENTS

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**2012 No. 3098**

**The Civil Legal Aid (Procedure) Regulations 2012**

**PART 6**

**Special Case Work**

**General**

**54.**—(1) This Part makes provision about the making and withdrawal of determinations about Special Case Work.

(2) An application for—

- (a) a determination that an individual qualifies for a form of civil legal services; or
- (b) an amendment of a determination,

may be treated by the Director as an application for Special Case Work in the circumstances described in paragraph (3).

(3) The circumstances mentioned in paragraph (2) are where the Director has reasonable grounds to believe that—

- (a) the actual or likely costs of the case exceed £25,000;
- (b) if the case were to proceed to—
  - (i) a trial or final hearing; or
  - (ii) in the case of appeal proceedings before the Court of Appeal, the conclusion of that appeal,  
the likely costs would exceed £75,000;
- (c) the application relates to a multi-party action or potential multi-party action;
- (d) the application relates to an appeal or proposed appeal to the Supreme Court;
- (e) it is necessary to decide whether—
  - (i) the case is of significant wider public interest; or
  - (ii) the substance of the case relates to a breach of Convention rights (within the meaning of the Human Rights Act 1998<sup>(1)</sup>),  
in order to determine whether the individual qualifies for civil legal services in accordance with the criteria set out in regulations made under section 11 of the Act;
- (f) the application relates to a case which satisfies the effective administration of justice test;  
or
- (g) the application relates to a community action.

(4) Different proceedings may be treated as if they were a single case for the purpose of paragraph (2) if the Director decides that the proceedings are closely connected or are being heard together by the court or tribunal.

(5) Except as provided in this Part, Part 4 (Licensed Work) applies to Special Case Work.

(6) In this Part—

“community action” means proceedings proposed, begun or continued by or against one or more individuals who belong to an identifiable geographic community the members of which have a common interest in the proceedings;

“likely costs” means the total costs likely to have been incurred on behalf of the applicant for civil legal services at final judgment or settlement of the proceedings—

- (a) calculated on the basis that the proceedings fail to obtain a successful outcome or costs are not recovered from another party to the proceedings; and
- (b) taking into account the prospects of the proceedings settling before trial or other final hearing;

“multi-party action” means proceedings in which a number of individuals have a cause of action which involves common or related issues of fact or law; and

“significant wider public interest” has the meaning given in regulations made under section 11 of the Act.

### **Conditions**

**55.**—(1) The Director may make a determination about Special Case Work conditional upon the proposed provider entering into an individual case contract with the Lord Chancellor.

(2) The Director may make a determination about Special Case Work conditional upon the proposed provider submitting a costed case plan in a form specified by the Lord Chancellor which—

- (a) sets out proposals for progressing the Special Case Work; and
- (b) identifies—
  - (i) the key stages of the case;
  - (ii) the form of civil legal services likely to be needed at each key stage;
  - (iii) the likely costs at each key stage; and
  - (iv) appropriate intervals for the plan to be checked and adjusted by the provider with the agreement of the Director to reflect the progress of the Special Case Work.

(3) The Director may make a determination about a case which is of significant wider public interest conditional upon the individual agreeing not to settle the proceedings without the prior written consent of the Director.

### **Determinations affecting several cases**

**56.**—(1) A determination (“a determination of principle”) about Special Case Work which appears likely to affect a group of cases or cases of a particular description may specify that it applies generally to the cases which appear likely to be affected.

(2) A determination of principle must specify—

- (a) the group of cases or the particular description of cases to which it applies;
- (b) the date on which it takes effect and, if relevant, ceases to have effect;
- (c) whether the cases are being treated as a multi-party action.

(3) An application for a determination about Special Case Work may include a request, with written reasons, for the case to be covered by a determination of general principle.

### **Multi-party actions**

**57.**—(1) An application for a determination in relation to a multi-party action must name a lead provider.

(2) Applications from different individuals in the same multi-party action may be treated as a single application.

(3) The Director must specify in a determination in relation to a multi-party action—

- (a) the identity of the lead provider;
- (b) whether the civil legal services to be made available are limited to an issue which is common to all parties or a particular group of parties (a “generic issue”); and
- (c) if the civil legal services do relate to a generic issue, whether the services include or are limited to—
  - (i) the selection, preparation and trial of lead issues and lead cases;
  - (ii) the co-ordination of the action; and
  - (iii) any other civil legal services which the Director considers necessary for the action to be progressed as a multi-party action.

(4) The Director may send any notices in relation to a multi-party action to the lead provider who must communicate the information in those notices to the parties for whom that provider is the lead provider.

(5) The Director may waive any of the requirements of regulations 37 and 49 in relation to a multi-party action.

(6) A certificate recording a determination in relation to a multi-party action must be amended to record a change in the identity of the lead provider.

### **Special controls**

**58.**—(1) Special Case Work to be provided in the circumstances described in—

- (a) regulation 54(3)(c), (d), (e) and (g); and
- (b) regulation 54(3)(b) where the Director has reasonable grounds to believe that the likely costs would exceed £250,000,

is subject to special controls.

(2) The provisions about appeals in Part 4 (Licensed Work) do not apply to Special Case Work subject to special controls.

(3) Where the individual remains dissatisfied following a review about Special Case Work subject to special controls, the individual may appeal to the Special Controls Review Panel appointed by the Lord Chancellor (“the Panel”) under section 2 of the Act unless the determination in question is—

- (a) a determination under section 21 of the Act; or
- (b) a determination that the services which are the subject of the application are not civil legal services described in Part 1 of Schedule 1 to the Act.

(4) The Director may refer to the Panel any issue which is relevant to a determination or the withdrawal of a determination about Special Case Work subject to special controls.

(5) Appeals and issues referred to the Panel must be considered without a hearing unless the Panel considers that it is in the interests of justice for the individual, the Director or any person authorised by the individual or the Director to make oral representations before the Panel.

(6) The Panel may—

- (a) confirm the determination or withdrawal of a determination; or
- (b) report to the Director its views on the case and any issues referred by the Director.

(7) The Panel must—

- (a) give written reasons for its findings; and
- (b) send a copy of the confirmation or report to the Director and the individual.

(8) The individual or any person authorised by the individual may make further written representations to the Director about the Panel's findings or any issue addressed in the Panel's report.

(9) The Director must—

- (a) consider the Panel's report and any further representations;
- (b) make a determination on the issues raised in the report;
- (c) give written reasons for any determination;
- (d) send a copy of the determination with written reasons to the individual; and
- (e) ensure that any certificate accurately records the civil legal services for which an individual qualifies following an appeal.

(10) A determination by the Panel about the prospects of success made in accordance with the criteria set out in regulations made under section 11 of the Act is binding on the Director.

## **Appeals**

**59.** Where an adjudicator is considering an appeal in relation to Special Case Work, regulation 47(1)(b) does not apply but the adjudicator must instead consider the likely damages or any other benefit or remedy which the individual is likely to receive.