



Access to Justice Act 1999

1999 CHAPTER 22

PART I

LEGAL SERVICES COMMISSION

Criminal Defence Service

12 Criminal Defence Service

- (1) The Commission shall establish, maintain and develop a service known as the Criminal Defence Service for the purpose of securing that individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require.
- (2) In this Part “criminal proceedings” means—
 - (a) proceedings before any court for dealing with an individual accused of an offence,
 - (b) proceedings before any court for dealing with an individual convicted of an offence (including proceedings in respect of a sentence or order),
 - (c) proceedings for dealing with an individual under section 9 of, or paragraph 6 of Schedule 1 to, the Extradition Act 1989,
 - (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the Magistrates' Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,
 - (e) proceedings on an appeal brought by an individual under section 44A of the Criminal Appeal Act 1968,
 - (f) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
 - (g) such other proceedings concerning an individual, before any such court or other body, as may be prescribed.

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- (3) The Commission shall fund services as part of the Criminal Defence Service in accordance with sections 13 to 15.
- (4) The Commission may accredit, or authorise others to accredit, persons or bodies providing services which may be funded by the Commission as part of the Criminal Defence Service; and any system of accreditation shall include provision for the monitoring of the services provided by accredited persons and bodies and for the withdrawal of accreditation from any providing services of unsatisfactory quality.
- (5) The Commission may charge—
- (a) for accreditation,
 - (b) for monitoring the services provided by accredited persons and bodies, and
 - (c) for authorising accreditation by others;
- and persons or bodies authorised to accredit may charge for accreditation, and for such monitoring, in accordance with the terms of their authorisation.
- (6) The Lord Chancellor may by order require the Commission to discharge the functions in subsections (4) and (5) in accordance with the order.

13 Advice and assistance

- (1) The Commission shall fund such advice and assistance as it considers appropriate—
- (a) for individuals who are arrested and held in custody at a police station or other premises, and
 - (b) for individuals involved in criminal investigations in such other circumstances as may be prescribed;
- and for this purpose “criminal investigations” means investigations relating to offences or to individuals convicted of an offence.
- (2) The Commission may comply with the duty imposed by subsection (1) by—
- (a) entering into contracts with persons or bodies for the provision of advice or assistance by them,
 - (b) making payments to persons or bodies in respect of the provision of advice or assistance by them,
 - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, advice or assistance,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, advice or assistance,
 - (e) making grants to individuals to enable them to obtain advice or assistance,
 - (f) employing persons to provide advice or assistance, or
 - (g) doing anything else which it considers appropriate for funding advice and assistance.
- (3) The Lord Chancellor may by order require the Commission to discharge the function in subsection (2) in accordance with the order.
- (4) The Commission may fund advice and assistance by different means—
- (a) in different areas in England and Wales, and
 - (b) in relation to different descriptions of cases.

14 Representation

- (1) Schedule 3 (which makes provision about the grant of a right to representation in criminal proceedings) has effect; and the Commission shall fund representation to which an individual has been granted a right in accordance with that Schedule.
- (2) Subject to the following provisions, the Commission may comply with the duty imposed by subsection (1) by—
 - (a) entering into contracts with persons or bodies for the provision of representation by them,
 - (b) making payments to persons or bodies in respect of the provision of representation by them,
 - (c) making grants or loans to persons or bodies to enable them to provide, or facilitate the provision of, representation,
 - (d) establishing and maintaining bodies to provide, or facilitate the provision of, representation,
 - (e) making grants to individuals to enable them to obtain representation,
 - (f) employing persons to provide representation, or
 - (g) doing anything else which it considers appropriate for funding representation.
- (3) The Lord Chancellor—
 - (a) shall by order make provision about the payments which may be made by the Commission in respect of any representation provided by non-contracted private practitioners, and
 - (b) may by order make any other provision requiring the Commission to discharge the function in subsection (2) in accordance with the order.
- (4) For the purposes of subsection (3)(a) representation is provided by a non-contracted private practitioner if it is provided, otherwise than pursuant to a contract entered into by the Commission, by a person or body which is neither—
 - (a) a person or body in receipt of grants or loans made by the Commission as part of the Criminal Defence Service, nor
 - (b) the Commission itself or a body established or maintained by the Commission.
- (5) The provision which the Lord Chancellor is required to make by order under subsection (3)(a) includes provision for reviews of, or appeals against, determinations required for the purposes of the order.
- (6) The Commission may fund representation by different means—
 - (a) in different areas in England and Wales, and
 - (b) in relation to different descriptions of cases.

15 Selection of representative

- (1) An individual who has been granted a right to representation in accordance with Schedule 3 may select any representative or representatives willing to act for him; and, where he does so, the Commission is to comply with the duty imposed by section 14(1) by funding representation by the selected representative or representatives.
- (2) Regulations may provide that in prescribed circumstances—
 - (a) the right conferred by subsection (1) is not to apply in cases of prescribed descriptions,

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- (b) an individual who has been provided with advice or assistance funded by the Commission under section 13 by a person whom he chose to provide it for him is to be taken to have selected that person as his representative pursuant to that right,
 - (c) that right is not to include a right to select a representative of a prescribed description,
 - (d) that right is to select only a representative of a prescribed description,
 - (e) that right is to select not more than a prescribed number of representatives to act at any one time, and
 - (f) that right is not to include a right to select a representative in place of a representative previously selected.
- (3) Regulations under subsection (2)(b) may prescribe circumstances in which an individual is to be taken to have chosen a person to provide advice or assistance for him.
- (4) Regulations under subsection (2) may not provide that only a person employed by the Commission, or by a body established and maintained by the Commission, may be selected.
- (5) Regulations may provide that in prescribed circumstances the Commission is not required to fund, or to continue to fund, representation for an individual by a particular representative (but such provision shall not prejudice any right of the individual to select another representative).
- (6) The circumstances which may be prescribed by regulations under subsection (2) or (5) include that a determination has been made by a prescribed body or person.

16 Code of conduct

- (1) The Commission shall prepare a code of conduct to be observed by employees of the Commission, and employees of any body established and maintained by the Commission, in the provision of services as part of the Criminal Defence Service.
- (2) The code shall include—
- (a) duties to avoid discrimination,
 - (b) duties to protect the interests of the individuals for whom services are provided,
 - (c) duties to the court,
 - (d) duties to avoid conflicts of interest, and
 - (e) duties of confidentiality,
- and duties on employees who are members of a professional body to comply with the rules of the body.
- (3) The Commission may from time to time prepare a revised version of the code.
- (4) Before preparing or revising the code the Commission shall consult the Law Society and the General Council of the Bar and such other bodies or persons as it considers appropriate.
- (5) After preparing the code or a revised version of the code the Commission shall send a copy to the Lord Chancellor.
- (6) If he approves it he shall lay it before each House of Parliament.

- (7) The Commission shall publish—
 - (a) the code as first approved by the Lord Chancellor, and
 - (b) where he approves a revised version, either the revisions or the revised code as appropriate.
- (8) The code, and any revised version of the code, shall not come into force until it has been approved by a resolution of each House of Parliament.

17 Terms of provision of funded services

- (1) An individual for whom services are funded by the Commission as part of the Criminal Defence Service shall not be required to make any payment in respect of the services except where subsection (2) applies.
- (2) Where representation for an individual in respect of criminal proceedings in any court other than a magistrates' court is funded by the Commission as part of the Criminal Defence Service, the court may, subject to regulations under subsection (3), make an order requiring him to pay some or all of the cost of any representation so funded for him (in proceedings in that or any other court).
- (3) Regulations may make provision about—
 - (a) the descriptions of individuals against whom an order under subsection (2) may be made,
 - (b) the circumstances in which such an order may be made and the principles to be applied in deciding whether to make such an order and the amount to be paid,
 - (c) the determination of the cost of representation for the purposes of the making of such an order,
 - (d) the furnishing of information and evidence to the court or the Commission for the purpose of enabling the court to decide whether to make such an order and (if so) the amount to be paid,
 - (e) prohibiting individuals who are required to furnish information or evidence from dealing with property until they have furnished the information or evidence or until a decision whether to make an order, or the amount to be paid, has been made,
 - (f) the person or body to which, and manner in which, payments required by such an order must be made and what that person or body is to do with them, and
 - (g) the enforcement of such an order (including provision for the imposition of charges in respect of unpaid amounts).

18 Funding

- (1) The Lord Chancellor shall pay to the Commission such sums as are required to meet the costs of any advice, assistance and representation funded by the Commission as part of the Criminal Defence Service.
- (2) The Lord Chancellor may—
 - (a) determine the manner in which and times at which the sums referred to in subsection (1) shall be paid to the Commission, and
 - (b) impose conditions on the payment of the sums.
- (3) In funding services as part of the Criminal Defence Service the Commission shall aim to obtain the best possible value for money.