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## STATUTORY INSTRUMENTS

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# 2013 No. 104

## The Civil Legal Aid (Merits Criteria) Regulations 2013

### PART 4

#### GENERAL MERITS CRITERIA

##### Criteria for determinations for legal help

**32.** An individual may qualify for legal help only if the Director is satisfied that the following criteria are met—

- (a) it is reasonable for the individual to be provided with legal help, having regard to any potential sources of funding for the individual other than under Part 1 of the Act; and
- (b) there is likely to be sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of legal help.

##### Criteria for determinations for help at court

**33.** An individual may qualify for help at court only if the Director is satisfied that the following criteria are met—

- (a) it is reasonable for the individual to be provided with help at court having regard to any potential sources of funding for the individual, other than under Part 1 of the Act;
- (b) there is likely to be sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of help at court; and
- (c) the nature and circumstances of—
  - (i) the proceedings;
  - (ii) the particular hearing; and
  - (iii) the individual,

are such that advocacy is appropriate and will be of real benefit to that individual.

##### Criterion for determinations for family help

**34.** An individual may qualify for family help only if the Director is satisfied that the reasonable private paying individual test is met.

##### Criteria for determinations for family help (lower)

**35.** An individual may qualify for family help (lower) only if the Director is satisfied that the criterion in regulation 34 (criterion for determinations for family help) is met and that the provision of family help (lower) would help to avoid the issue of contested proceedings.

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### **Criteria for determinations for family help (higher)**

**36.—(1)** An individual may qualify for family help (higher) only if the Director is satisfied that the criterion in regulation 34 (criterion for determinations for family help) is met and that the individual has exhausted all reasonable alternatives to bringing proceedings.

(2) Alternatives to bringing proceedings include, but are not limited to, mediation and negotiation.

### **Criteria for determinations for family mediation**

**37.** An individual may qualify for family mediation under regulation 16(1)(b) (mediation) only if the Director is satisfied that the mediator has assessed that, in all the circumstances of the case, the case is suitable for mediation.

### **Criteria for determinations for help with family mediation**

**38.** An individual may qualify for help with family mediation only if the Director is satisfied that the following criteria are met—

- (a) the individual is participating, or has participated in, family mediation (other than attending an assessment of the kind referred to in regulation 16(1)(a)); and
- (b) there is sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of help with family mediation.

### **Standard criteria for determinations for legal representation**

**39.** An individual may qualify for legal representation only if the Director is satisfied that the following criteria are met—

- (a) the individual does not have access to other potential sources of funding (other than a conditional fee agreement) from which it would be reasonable to fund the case;
- (b) the case is unsuitable for a conditional fee agreement;
- (c) <sup>F1</sup>except in proceedings which concern a relevant application falling within paragraph 31A(2)(a) of Part 1 of Schedule 1 to the Act,] there is no person other than the individual, including a person who might benefit from the proceedings, who can reasonably be expected to bring the proceedings;
- (d) the individual has exhausted all reasonable alternatives to bringing proceedings including any complaints system, ombudsman scheme or other form of alternative dispute resolution;
- (e) there is a need for representation in all the circumstances of the case including—
  - (i) the nature and complexity of the issues;
  - (ii) the existence of other proceedings; and
  - (iii) the interests of other parties to the proceedings; and
- (f) the proceedings are not likely to be allocated to the small claims track.

**F1** Words in [reg. 39\(c\)](#) inserted (25.10.2019) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Legal Aid for Separated Children\) \(Miscellaneous Amendments\) Order 2019 \(S.I. 2019/1396\)](#), arts. 1, [4\(4\)](#)

### **Criteria for determinations for investigative representation**

**40.**—(1) An individual may qualify for investigative representation only if the Director is satisfied that the criteria in regulation 39 (standard criteria for determinations for legal representation) and the following criteria are met—

- (a) the prospects of success of the case are unclear and substantial investigative work is required before those prospects can be determined;
- (b) the Director has reasonable grounds for believing that, once the investigative work to be carried out under investigative representation is completed, the case will satisfy the criteria for full representation and, in particular, will meet the cost benefit criteria in regulation 42 and the prospects of success criterion in regulation 43; and
- (c) subject to paragraph (2), if the individual's claim is primarily a claim for damages or other sum of money in which the likely damages do not exceed £5,000, the case must be of significant wider public interest.

(2) For the purposes of paragraph (1)(c), if the claim forms part of a multi-party action only the lead claim within that action is capable of being a case of significant wider public interest.

### **Criteria for determinations for full representation**

**41.** An individual may qualify for full representation only if the Director is satisfied that the criteria in regulation 39 (standard criteria for determinations for legal representation) and the following criteria are met—

- (a) the cost benefit criteria in regulation 42;
- (b) the prospects of success criterion in regulation 43; and
- (c) if the individual's claim forms part of a multi-party action and is primarily a claim for damages or other sum of money in which the likely damages do not exceed £5,000, the multi-party action damages criterion in regulation 44.

### **Cost benefit criteria for determinations for full representation**

**42.**—(1) The cost benefit criteria are as follows.

(2) If the case is primarily a claim for damages or other sum of money and is not of significant wider public interest—

- (a) if the prospects of success of the case are very good, the Director must be satisfied that the likely damages exceed likely costs;
- (b) if the prospects of success of the case are good, the Director must be satisfied that the likely damages exceed likely costs by a ratio of two to one; or
- (c) if the prospects of success of the case are moderate<sup>F2</sup>..., the Director must be satisfied that the likely damages exceed likely costs by a ratio of four to one.

(3) If the case is—

- (a) not primarily a claim for damages or other sum of money; and
- (b) not of significant wider public interest,

the Director must be satisfied that the reasonable private paying individual test is met.

(4) If the case is of significant wider public interest, the Director must be satisfied that the proportionality test is met.

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**F2** Words in reg. 42(2)(c) omitted (22.7.2016) by virtue of [The Civil Legal Aid \(Merits Criteria\) \(Amendment\) Regulations 2016 \(S.I. 2016/781\)](#), regs. 1(1), **2(3)** (with reg. 3)

#### **Prospects of success criterion for determinations for full representation**

[<sup>F3</sup>**43.** The prospects of success criterion is only met if the Director is satisfied that the prospects of success are—

- (a) very good, good or moderate; or
- (b) borderline or marginal, and the case is—
  - (i) of significant wider public interest; or
  - (ii) a case with overwhelming importance to the individual.]

**F3** [Reg. 43](#) substituted (22.7.2016) by [The Civil Legal Aid \(Merits Criteria\) \(Amendment\) Regulations 2016 \(S.I. 2016/781\)](#), regs. 1(1), **2(4)** (with reg. 3)

#### **Multi-party action damages criterion for determinations for full representation**

**44.** The multi-party action damages criterion is only met if—

- (a) the individual's claim is the lead claim, and
- (b) the Director is satisfied that the case is of significant wider public interest.

#### **Criterion for determinations for other legal services**

**45.** An individual may qualify for other legal services only if the Director is satisfied that it would be reasonable in all the circumstances of the case for the individual to be provided with other legal services.

#### **Criteria for determinations for family help (higher) or legal representation provided as emergency representation**

**46.** An individual may qualify, in relation to an application for emergency representation for family help (higher) or legal representation, only if the Director is satisfied that—

- (a) the merits criteria which apply to that application are met; and
- (b) it is in the interests of justice to provide emergency representation.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 11(9)(e) and word inserted by [2022 c. 36 s. 25\(3\)](#)
- reg. 11(9)(f) and word inserted by [2023 c. 37 s. 56\(5\)\(b\)](#)