
STATUTORY INSTRUMENTS

2013 No. 104

The Civil Legal Aid (Merits Criteria) Regulations 2013

PART 6

SPECIFIC MERITS CRITERIA

CHAPTER 1

Mental Health and Mental Capacity

Criteria for determinations for full representation in relation to mental health proceedings

51.—(1) For the purposes of a determination for full representation in relation to any matter described in paragraph 5(1)(a) or (b) of Part 1 of Schedule 1 to the Act (mental health and the repatriation of prisoners), to the extent that it relates to proceedings before the First-tier Tribunal or the Mental Health Review Tribunal for Wales—

- (a) the criteria in regulations 39 (standard criteria for determinations for legal representation) and 41 to 44 (criteria for determinations for full representation) do not apply; and
- (b) the criterion in paragraph (2) applies.

(2) The Director must be satisfied that it would be reasonable in all the circumstances of the case for the individual to be provided with full representation.

Criteria for determinations for full representation in relation to mental capacity proceedings

52.—(1) For the purposes of a relevant determination the criteria in—

- (a) regulation 39 (standard criteria for determinations for legal representation) and regulations 41(a) and (b), 42 and 43 (criteria for determinations for full representation) apply;
- (b) regulations 41(c) and 44 (multi-party action damages criterion) do not apply; and
- (c) paragraph (2) apply.

(2) The Director must be satisfied that—

- (a) the Court of Protection has ordered, or is likely to order, an oral hearing; and
- (b) it is necessary for the individual to be provided with full representation in the proceedings.

(3) In this regulation, a relevant determination is a determination for full representation in relation to any matter described in paragraph 5(1)(c) of Part 1 of Schedule 1 to the Act (mental capacity) in proceedings before the Court of Protection to the extent that they relate to—

- (a) a person's right to life;
- (b) a person's liberty or physical safety;
- (c) a person's medical treatment (within the meaning of the Mental Health Act 1983(1));

- (d) a person's capacity to marry, to enter into a civil partnership or to enter into sexual relations; or
- (e) a person's right to family life.

CHAPTER 2

Public law

Standard criteria for determinations for legal representation in relation to public law claims

53. For the purposes of a determination for legal representation in relation to a public law claim, the Director must be satisfied that the criteria in regulation 39 (standard criteria for determinations for legal representation) are met and that—

- (a) the act, omission or other matter complained of in the proposed proceedings appears to be susceptible to challenge; and
- (b) the individual exhausted all administrative appeals and other alternative procedures which are available to challenge the act, omission or other matter before bringing a public law claim.

Standard criteria for determinations for investigative representation in relation to public law claims

54. For the purposes of a determination for investigative representation in relation to a public law claim, the Director must be satisfied that—

- (a) the criteria in regulation 53 (standard criteria for determinations for legal representation in relation to public law claims) are met; and
- (b) the individual has—
 - (i) notified the proposed defendant of the individual's potential challenge and given a reasonable time for the proposed defendant to respond; or
 - (ii) shown that doing so would be impracticable.

Criteria for determinations for investigative representation in relation to public law claims

55. For the purposes of a determination for investigative representation in relation to a public law claim the criteria in regulation 40(1)(a) and (b) (investigative representation) and 54 (standard criteria for determinations for investigative representation in relation to public law claims) apply and the criteria in regulation 40(1)(c) and (2) (investigative representation: minimum damages rule) do not apply.

Criteria for determinations for full representation in relation to public law claims

56.—(1) For the purposes of a determination for full representation in relation to a public law claim—

- (a) the criteria in regulations 41 to 44 (criteria for determinations for full representation) do not apply;
- (b) the Director must be satisfied that the criteria in regulation 53 (standard criteria for determinations for legal representation in relation to public law claims) are met; and
- (c) the criteria in paragraphs (2) and (3) apply.

(2) An individual may qualify for full representation in relation to a public law claim only if the Director is satisfied that—

- (a) the individual has sent a letter before claim to the proposed defendant (except where this is impracticable), and where such a letter has been sent, the proposed defendant has been given a reasonable time to respond;
 - (b) the proportionality test is met; and
 - (c) the criterion in paragraph (3) is met.
- (3) The Director must be satisfied that the prospects of successfully obtaining the substantive order sought in the proceedings are—
- (a) very good, good or moderate; or
 - (b) borderline, and—
 - (i) the case is of significant wider public interest;
 - (ii) the case is one with overwhelming importance to the individual; or
 - (iii) the substance of the case relates to a breach of Convention rights.

CHAPTER 3

Claims against public authorities

Criteria for determinations for investigative representation in relation to claims against public authorities

57.—(1) For the purposes of a determination for investigative representation in relation to any matter described in paragraph 21 (abuse of position or powers by public authority) or 22 (breach of Convention rights by public authority) of Part 1 of Schedule 1 to the Act the criteria in—

- (a) regulations 39 (standard criteria for determinations for legal representation) and 40(1)(a) and (b) (criteria for determinations for investigative representation) apply; and
- (b) regulation 40(1)(c) and (2) apply, subject to paragraph (2).

(2) The criteria in regulation 40(1)(c) and (2) (investigative representation: minimum damages rule) only apply to the extent that such a matter—

- (a) is part of a multi-party action; and
- (b) does not relate to—
 - (i) the abuse of a child or a vulnerable adult; or
 - (ii) a contravention of the Equality Act 2010(2) or of a previous discrimination enactment.

(3) In this regulation and in regulation 59—

- (a) “abuse”, “child” and “vulnerable adult” have the meaning given by paragraph 3(5) of Part 1 of Schedule 1 to the Act (abuse of child or vulnerable adult); and
- (b) “previous discrimination enactment” has the meaning given by paragraph 43(3) of Part 1 of Schedule 1 to the Act (equality).

Criteria for determinations for full representation in relation to claims against public authorities

58.—(1) For the purposes of a determination for full representation in relation to any matter described in paragraph 21 (abuse of position or powers by public authority) or 22 (breach of Convention rights by public authority) of Part 1 of Schedule 1 to the Act, the criteria in—

- (a) regulation 39 (standard criteria for determinations for legal representation) apply;

(2) 2010 c.15.

- (b) regulation 41(a) and (b) (criteria for determinations for full representation), regulation 42 (cost benefit criteria) and regulation 43 (prospects of success criterion) do not apply; and
- (c) paragraphs (2) and (3) apply.

(2) An individual may qualify for full representation in relation to any matter described in paragraph 21 (abuse of position or powers by public authority) or 22 (breach of Convention rights by public authority) of Part 1 of Schedule 1 to the Act only if the Director is satisfied that—

- (a) the proportionality test is met; and
- (b) the criterion in paragraph (3) is met.

(3) The Director must be satisfied that the prospects of success are—

- (a) very good, good or moderate; or
- (b) borderline, and—
 - (i) the case is of significant wider public interest;
 - (ii) the case is one with overwhelming importance to the individual; or
 - (iii) the substance of the case relates to a breach of Convention rights.

Criteria for determinations for full representation in relation to claims against public authorities: multi-party action damages criterion

59. For the purposes of a determination for full representation in relation to any matter described in paragraph 21 (abuse of position or powers by public authority) or paragraph 22 (breach of Convention rights by public authority) of Part 1 of Schedule 1 to the Act, the criteria in regulation 41(c) and 44 (multi-party action damages criterion) only apply to the extent that such a matter does not relate to—

- (a) the abuse of a child or a vulnerable adult; or
- (b) a contravention of the Equality Act 2010 or of a previous discrimination enactment.

CHAPTER 4

Immigration

Criteria for determinations for full representation in relation to immigration

60.—(1) For the purposes of a determination for full representation in relation to any matter described in paragraphs 25 to 30 (immigration) or 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act, to the extent that it relates to proceedings before the First-tier Tribunal or Upper Tribunal, the criteria in—

- (a) regulation 39(a) to (e) (standard criteria for determinations for legal representation) apply;
- (b) regulations 39(f) and 41 to 44 (criteria for determinations for full representation) do not apply; and
- (c) paragraphs (2) and (3) apply.

(2) An individual may qualify for full representation in relation to any matter described in paragraphs 25 to 30 (immigration) or 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act only if the Director is satisfied that—

- (a) if the case is not of significant wider public interest, the reasonable private paying individual test is met;
- (b) if the case is of significant wider public interest, the proportionality test is met; and
- (c) the criterion in paragraph (3) applies.

- (3) The Director must be satisfied the prospects of success are—
- (a) very good, good or moderate; or
 - (b) borderline or unclear, and—
 - (i) the case is of significant wider public interest;
 - (ii) the case is one with overwhelming importance to the individual; or
 - (iii) the substance of the case relates to a breach of Convention rights.

CHAPTER 5

Housing

Criteria for determinations for full representation in relation to court orders for possession

61.—(1) For the purposes of a determination for full representation in relation to any matter described in paragraph 33(1)(a) of Part 1 of Schedule 1 to the Act (court orders for sale or possession of the individual's home), to the extent that it relates to court orders for possession of the individual's home, the criteria in—

- (a) regulation 39 (standard criteria for determinations for legal representation) apply;
 - (b) regulations 41 to 44 (criteria for determinations for full representation) do not apply; and
 - (c) paragraph (2) apply.
- (2) The Director must be satisfied that the following criteria are met—
- (a) if the individual is the defendant to a claim for possession, the individual has a defence to the claim;
 - (b) the prospects of success are very good, good, moderate or borderline; and
 - (c) the proportionality test is met.

Criteria for determinations for full representation in relation to other housing matters to which specific merits criteria apply

- 62.**—(1) For the purposes of a relevant determination the criteria in—
- (a) regulations 39 (standard criteria for determinations for legal representation), 41(b) and 43 apply (prospects of success criterion);
 - (b) regulations 41(a) and (c) (criteria for determinations for full representation), 42 (costs benefit criteria) and 44 (multi-party action damages criterion) do not apply; and
 - (c) paragraph (2) apply.
- (2) The Director must be satisfied that—
- (a) the proportionality test is met; and
 - (b) the landlord or other person responsible for the matter complained of has been notified of the individual's complaint (except where this is impracticable) and, where such notice has been given, the landlord or other person has had a reasonable opportunity to resolve the matter.
- (3) In this regulation, a relevant determination is a determination for full representation in relation to any matter described in—
- (a) paragraph 33(1)(b) of Part 1 of Schedule 1 to the Act (the eviction from the individual's home of the individual or others), to the extent that it relates to services provided to an individual in relation to the unlawful eviction from the individual's home of the individual or others;

- (b) paragraph 35 of Part 1 of Schedule 1 to the Act (risk to health or safety in rented home); or
- (c) paragraph 37 of Part 1 of Schedule 1 to the Act (protection from harassment), to the extent that it relates to the interference with an individual's enjoyment of their home (within the meaning of paragraph 35(4) of Part 1 of Schedule 1 to the Act) by a landlord or other person.

Criteria for determinations for investigative representation in relation to unlawful eviction cases

63.—(1) For the purposes of a determination for investigative representation in relation to any matter described in paragraph 33(1)(b) of Part 1 of Schedule 1 to the Act (the eviction from the individual's home of the individual or others), to the extent that it relates to services provided to an individual in relation to the unlawful eviction from the individual's home of the individual or others, the criteria in—

- (a) regulations 39 (standard criteria for determinations for legal representation) and 40(1)(a) and (b) (criteria for determinations for investigative representation) apply;
- (b) regulation 40(1)(c) and (2) do not apply; and
- (c) paragraphs (2) and (3) apply.

(2) Subject to paragraph (3), if the individual's claim is primarily a claim for damages or other sum of money in which the likely damages do not exceed £1,000, the case must be of significant wider public interest.

(3) For the purposes of paragraph (2), 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.

CHAPTER 6

Family

Standard criteria for determinations for full representation in relation to certain family disputes

64.—(1) For the purposes of a relevant determination the criteria in—

- (a) regulation 39(a) and (c) to (e) (standard criteria for determinations for legal representation) apply; and
- (b) regulations 39(b) and (f) (standard criteria for determinations for full representation) and 41 to 44 (criteria for determinations for full representation) do not apply.

(2) In this regulation, a relevant determination is a determination for full representation in relation to—

- (a) a domestic violence case;
- (b) a private law children case;
- (c) any matter described in paragraph 15 (children who are parties to family proceedings) of Part 1 of Schedule 1 to the Act;
- (d) any matter described in paragraph 17(1)(EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that regulations 11(9)(c) or 65 do not apply; or
- (e) any matter described in paragraph 18(1)(EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that regulation 65 does not apply.

Criteria for determinations for full representation in relation to special Children Act 1989 cases and certain cases relating to EU and international agreements

65.—(1) For the purposes of a determination for full representation in relation to a relevant determination, the criteria in—

- (a) regulation 39(e) apply (standard criteria for determinations for legal representation); and
- (b) regulations 39(a) to (d) and (f) (standard criteria for determinations for legal representation) and 41 to 44 (criteria for determinations for full representation) do not apply.

(2) In this regulation, a relevant determination is—

- (a) a determination for full representation in relation to a special Children Act 1989 case; or
- (b) a determination for full representation in a case in which the applicant is an individual who, in the State of origin, has benefited from complete or partial legal aid in relation to any matter described in—
 - (i) paragraph 17(1)(c)(EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act;
 - (ii) paragraph 18(1)(EU and international agreements concerning maintenance) of that Part;
 - (iii) paragraph 18(3)(parties who benefited from free legal aid etc. in the Member State of origin) of that Part;
 - (iv) paragraph 18(3A)(applications under Article 10 of the 2007 Hague Convention) of that Part, to the extent that Article 17(b) of that Convention applies; or
 - (v) paragraph 18(3B)(applications under Article 17(b) of the 2007 Hague Convention which is applied by virtue of Article 37(2)) of that Part.

Criteria for determinations for full representation in relation to public law children cases

66.—(1) For the purposes of a determination for full representation in relation to a public law children case—

- (a) the criteria in regulations 39(b) to (d) and (f) (standard criteria for determinations for legal representation) and 41 to 44 (criteria for determinations for full representation) do not apply;
- (b) the criteria in regulation 39(a) and (e) apply; and
- (c) paragraph (2) applies.

(2) An individual may qualify for full representation in a public law children case only if the Director is satisfied that—

- (a) it is reasonable for full representation to be provided, having regard to the importance of the case to the individual; and
- (b) if the individual is making or supporting an appeal or application, the prospects of success of that appeal or application are very good, good, moderate or borderline.

Criteria for determinations for full representation in relation to domestic violence cases

67.—(1) For the purposes of a determination for full representation in relation to a domestic violence case, regulation 64 (standard criteria for determinations for full representation in relation to certain family disputes) applies in addition to the criteria in paragraph (2).

(2) An individual may qualify for full representation in a domestic violence case only if the Director is satisfied that—

- (a) the prospects of success are very good, good, moderate or borderline; and
- (b) the proportionality test is met.

Criteria for determinations for full representation in relation to private law children cases and certain cases relating to EU and international agreements

68.—(1) For the purposes of a relevant determination the criteria in regulation 64 (standard criteria for determinations for full representation in relation to certain family disputes) apply in addition to the criteria in paragraph (2).

(2) The Director is satisfied that—

- (a) the prospects of success are very good, good, moderate or borderline; and
- (b) the reasonable private paying individual test is met.

(3) In this regulation, a relevant determination is a determination for full representation in relation to—

- (a) a private law children case;
- (b) any matter described in paragraph 17(1) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that regulations 11(9)(c) and 65 do not apply; or
- (c) any matter described in paragraph 18(1) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that regulation 65 does not apply.

Criteria for determinations for full representation in relation to other family cases to which specific merits criteria apply

69.—(1) For the purposes of a relevant determination the criteria in—

- (a) regulations 39(a) to (e) (criteria for determinations for legal representation) apply;
- (b) regulations 39(f), 41, 42 (cost benefit criteria), 43 (prospects of success criterion) and 44 (multi-party) do not apply; and
- (c) paragraphs (2) and (3) apply.

(2) The Director must be satisfied that—

- (a) the reasonable private paying individual test is met; and
- (b) the criterion in paragraph (3) is met.

(3) The Director must be satisfied that the prospects of success of the case are—

- (a) very good, good or moderate; or
- (b) unclear or borderline, and—
 - (i) the case is one of significant wider public interest;
 - (ii) the case is one with overwhelming importance to the individual; or
 - (iii) the substance of the case relates to a breach of Convention rights.

(4) In this regulation, a relevant determination is—

- (a) a determination for full representation in relation to any matter described in paragraph 12 of Part 1 of Schedule 1 to the Act (victims of domestic violence and family matters) to the extent that it does not relate—

- (i) to Part 1 or 3 of the Family Law Act 1986⁽³⁾ (child custody and declarations of status);
- (ii) subject to sub-paragraph (b), to any provision of Part 1 or 2 of the Children Act 1989⁽⁴⁾ (orders with respect to children in family proceedings);
- (b) a determination for full representation in relation to any matter described in paragraph 12 of Part 1 of Schedule 1 to the Act (victims of domestic violence and family matters) to the extent that it relates an order made under section 15 of, and Schedule 1 to, the Children Act 1989;
- (c) a determination for full representation in relation to any matter described in paragraph 18(2) of Part 1 of Schedule 1 to the Act (applications in relation to maintenance decisions), to the extent that regulations 11(9)(b) or 70 do not apply; or
- (d) any matter described in paragraph 18(3A) of Part 1 of Schedule 1 to the Act (applications under Article 10 of the 2007 Hague Convention), to the extent that article 17(a)⁽⁵⁾ of the 2007 Hague Convention applies.

Criteria for determinations in relation to the EU Maintenance Regulation

70.—(1) For the purposes of a determination for any form of civil legal services in relation to any matter described in paragraph 18(2) of Part 1 of Schedule 1 to the Act (applications relating to maintenance decisions), to the extent that it—

- (a) is an application under Article 56(1)(c) to (f) of the EU Maintenance Regulation; and
- (b) concerns maintenance obligations arising from a parent-child relationship towards a person under the age of 21,

the general merits criteria do not apply and paragraph (2) applies.

(2) An individual may qualify for civil legal services only if the Director is satisfied that the application is not manifestly unfounded.

Criteria for determinations in relation to the 2007 Hague Convention

71.—(1) For the purposes of a determination for any form of civil legal services in relation to any matter described in paragraph 18(3A) (applications under Article 10 of the 2007 Hague Convention), to the extent that it—

- (a) does not relate to an application under Article 10(1)(a) or (b) of the 2007 Hague Convention; and
- (b) is an application by a creditor under the 2007 Hague Convention concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21,

the general merits criteria do not apply and paragraph (2) applies.

(2) The individual may qualify for civil legal services only if the Director is satisfied that the application is not manifestly unfounded.

(3) 1986 c.55.

(4) 1989 c.41.

(5) Article 17(a) provides that in the case of all applications under the 2007 Hague Convention other than those under article 15 or 16 the provision of free legal assistance may be made subject to a merits test.

CHAPTER 7

Cross-border disputes

Criteria for determinations in relation to cross-border disputes

72.—(1) For the purposes of a determination for legal help in relation to any matter described in paragraph 44 of Part 1 of Schedule 1 to the Act (cross-border disputes), regulation 32 (criteria for determinations for legal help) does not apply and the criterion in paragraph (2) applies.

(2) An individual may qualify for legal help only if the Director is satisfied that the application is not manifestly unfounded.

(3) For the purposes of a determination for legal representation in relation to any matter described in paragraph 44 of Part 1 of Schedule 1 to the Act (cross-border disputes)—

- (a) the general merits criteria apply; and
- (b) if the general merits criteria are not met the Director must then consider whether legal representation should be granted in any event—
 - (i) in order to guarantee access to justice;
 - (ii) in order to ensure equality of parties; or
 - (iii) in view of the complexity of the case,and taking into account the importance of the case to the individual.

CHAPTER 8

Legal persons

Criteria for determinations in relation to legal persons

73. For the purposes of a determination in relation to an application for civil legal services by a legal person—

- (a) to the extent that it relates to legal help, regulation 32 (criteria for determinations for legal help) does not apply and the criteria in regulation 74 apply;
- (b) to the extent that it relates to legal representation, regulations 39 (standard criteria for legal representation), 40 (criteria for determinations for investigative representation) and 41 to 44 (criteria for determinations for full representation) do not apply and the criteria in regulations 74 and 75 apply.

Standard criteria for legal help and legal representation in relation to legal persons

74.—(1) A legal person may qualify for legal help or legal representation only if the Director is satisfied that it is reasonable, in all the circumstances of the case, for the legal person to be provided with legal help or legal representation.

(2) It is reasonable for the legal person to be provided with legal help or legal representation only if the Director is satisfied that—

- (a) the legal person 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 provision of legal help or legal representation, including, but not limited to, taking into account the financial capacity of the legal person's shareholders, partners or members;
- (b) there are no other persons, other than the legal person, including those who might benefit from the provision of legal help or the proceedings, who can reasonably be expected to be provided with legal help or to bring the case;

- (c) there is a need for legal help or legal representation in all the circumstances of the case; and
- (d) there is sufficient benefit to the legal person, having regard to all the circumstances of the case, to justify the provision of legal help or legal representation.

Criteria for determinations for legal representation in relation to legal persons

75.—(1) A legal person may qualify for legal representation only if the Director is satisfied that the following criteria are met—

- (a) the case is unsuitable for a conditional fee agreement;
- (b) the legal person has exhausted all reasonable alternatives to bringing proceedings including any complaints system, ombudsman scheme or other form of alternative dispute resolution; and
- (c) the proceedings are not likely to be allocated to the small claims track.

(2) A legal person may qualify for investigative representation only if the Director is satisfied that —

- (a) the criteria in paragraph (1) are met;
- (b) the prospects of success of the case are unclear and substantial investigative work is required before those prospects can be determined; and
- (c) 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 in paragraph (3)(b) and (c).

(3) A legal person may qualify for full representation only if the Director is satisfied that—

- (a) the criteria in paragraph (1) are met;
- (b) the likely benefit of the proceedings to the legal person and others justify the likely costs, having regard to the prospects of success and all the other circumstances of the case; and
- (c) prospects of success of the case are—
 - (i) very good, good or moderate; or
 - (ii) borderline and the case is of significant wider public interest.

(4) For the purposes of this regulation, regulations 4 (prospects of success) and 5 (prospects of success test) apply as if the references in them to individuals were references to legal persons.