

LSANI APPEALS AND REVIEWS/REDETERMINATIONS

Civil Legal Services (Appeal) Regulations (Northern Ireland)

2015

AND

Fees Reviews/Redeterminations

Guidance

Table of Contents

1	Purpose of the Document	5
2	The Scope of Civil Legal Services.....	6
3	The Civil Legal Services Appeal Panel.....	7
4	Introduction to Triage	8
4.1	Appeal Request – Triage Process	8
4.1.1	Date of receipt of an Appeal Request	8
4.1.2	Have the reasons for refusal been fully addressed?.....	9
4.1.3	Is the matter an emergency?	9
4.1.4	Is there a financial assessment on the file?.....	9
4.1.5	Has the limitation period expired?	10
4.1.6	Has the Appeal Request been properly completed?	10
4.2	Triage Process –Fees/Refusal to grant a certificate of exceptionality/Quantum of a Certificate of Exceptionality	11
4.2.1	The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015	11
4.2.2	The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005	12
4.2.3	The Legal Aid for Crown Court Proceedings (Cost) (Amendment No.2) Rules (Northern Ireland) 2016.....	12
4.2.4	The Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009.	12
4.2.5	The Magistrates’ Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016.	13
5	Re-determination of fees.....	14
6	Civil Legal Services Appeal.....	15
6.1	Appeal Preparation Process	15
6.1.1	Appeal Allowed	15
6.1.2	Original Decision Upheld	15
6.1.3	No Additional material submitted.....	15
6.1.4	Additional material submitted	16
6.2	Convening a Civil Legal Services Appeal Panel.....	17
7	Redetermination/Review Panel Applicable to Fees Reviews / Refusal to grant a certificate of Exceptionality / Quantum of a Certificate of Exceptionality	18
7.1	Appeal preparation and convening Redetermination/Review Panel	18

8	The Civil Legal Services Appeal Panel Convened.....	19
9	Post Civil Legal Services Appeal Panel.....	21
10	Annex 1.....	22
	10.1 The Scope of Civil Legal Services	22
	10.2 The Law of Northern Ireland.....	22
	10.3 Prescribed Courts and Tribunals	23
	10.4 Excluded Categories	23
11	Annex 2.....	26
	11.1 The Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015 (Extract)....	26
	11.2 PART 1.....	27
	11.2.1 Citation and commencement	27
	11.2.2 Interpretation.....	27
	11.2.3 Service of notices or documents	28
	11.3 PART 2 - RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS	29
	11.3.1 Decisions against which an appeal lies	29
	11.3.2 Decisions against which no appeal lies	29
	11.3.4 Notice of decisions against which an appeal lies.....	29
	11.3.5 Correction of accidental errors in adjudication decisions	29
	11.3.6 Time within which an appeal is to be brought.....	30
	11.3.7 Late appeals	30
	11.3.8 Making of appeals and applications	31
	11.4 PART 3 - CONSTITUTION OF APPEAL PANELS	33
	11.4.1 Persons appointed to the appeal panels	33
	11.4.2 Presiding members of appeal panels	33
	11.4.3 Other members of appeal panels	33
	11.4.4 Tenure of appeal panel members	33
	11.4.5 Composition of appeal panels.....	34
	11.4.6 Selection of members of an appeal panel	34
	11.4.7 Urgent appeals	34
	11.4.8 Unavailability of panel member	34
	11.4.9 Disqualification for membership of an appeal panel – generally	35
	11.4.10 Disqualification for membership of an appeal panel – individual appeals....	35
	11.4.11 Secretary to the appeal panels	35
	11.5 PART 4 - PROCEDURE OF APPEAL PANELS.....	36
	11.5.1 Appeals which may be struck out.....	36

11.5.2	Reinstatement of struck out appeals	36
11.5.3	Consideration and determination of appeals	36
11.5.4	Panels to sit in private	37
11.5.5	Determination without oral hearing.....	37
11.5.6	Powers of an appeal panel.....	37
11.5.7	Decisions of appeal panels	37
11.5.8	Correction of accidental errors in appeal decisions	38
12	Regulation 5	39
12.1	DECISIONS AGAINST WHICH NO APPEAL LIES	39
13	EXPLANATORY NOTE	40

1 Purpose of the Document

The purpose of this document is to provide guidance and regularise the procedures that are in place as to how an appeal submitted under the Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015 will be processed in line with the statutory provisions set out in the aforementioned Regulations.

2 The Scope of Civil Legal Services

The scope of Civil Legal Services is as follows:

- Representation in criminal proceedings funded as part of criminal defence services is excluded from civil funding.
[\(Paragraph 2.5\)](#)
- Funding must relate to the law of Northern Ireland
[\(Paragraph 2.2. thru 2.3\)](#)
- Only specific courts and tribunals are within the scope of civil funding
[\(Paragraph 2.4\)](#) and [\(Section 3\)](#)
- Certain legal subject areas are excluded from mainstream funding
[\(Paragraph 2.5\)](#)

3 The Civil Legal Services Appeal Panel

The Civil Legal Services Appeal Panel (CLSAP) is an independent appellate panel appointed by the Department of Justice to consider appeals that arise from decisions of the Legal Services Agency Northern Ireland (LSANI) in respect of matters that are in scope. The Panel is a creature of statute and derives its authority from [The Civil Legal Services \(Appeal\) Regulations \(Northern Ireland\) 2015](#).

The CLSAP is a separate and distinct legal entity to the LSANI.

The CLSAP will consist of 1 Presiding Member (PM) and 2 Other Members (OM).

The PM will be a solicitor or barrister of not less than 7 years' standing [Regulation 12\(2\)](#).

The OM will (between them) have experience in or knowledge of—

- (a) the provision of services which the Department can fund as civil legal services,
- (b) the work of the courts and tribunals, and
- (c) the provision of expert services or testimony in cases which can be funded by way of civil legal services. [Regulation 13\(2\)](#).

The LSANI will convene the CLSAP to deal with appeals as and when required pursuant to Regulation 21.

The CLSAP will have the same powers of the Director [Regulation 27\(1\)](#) and be able to:

- (a) dismiss the appeal;**
- (b) direct the Director to issue or amend a certificate subject to such terms and conditions as the panel think fit; or**
- (c) refer the matter or any part of it back for determination or report by the Director.**

The Director will have regard to all decisions and obey all directions of the panel [Regulation 27\(2\)](#).

The decision of the CLSAP will be final. [Regulation 27 \(3\)](#)

4 Introduction to Triage

An applicant has (via a supplier, a solicitor) a statutory right of appeal of a decision to refuse Civil Legal Services in relation to a matter that is within scope:

- as to whether to fund, or continue to fund, civil legal services for an individual by way of representation (higher courts);
- as to the level of representation authorised for that individual.

Each appeal must undergo an initial screening or triage to ensure that all essential information is included before the appeal can be accepted and listed before a Civil Legal Services Appeal Panel (CLSAP).

The triage process is designed to identify incomplete appeals.

4.1 Appeal Request – Triage Process

The following are the checks required to triage an **Appeal Request**.

4.1.1 Date of receipt of an Appeal Request

An Appeal Request requires to be received by the Agency *within 1 month of the date of notification of that decision*. [Regulation 8\(1\)](#) refers:

8.—(1) Subject to paragraphs (2) and (3), an appeal which lies from a relevant decision must be received by the Director within one month of the date of notification of that decision.

There should be no dispute as to the date a decision is notified to a Practitioner under LAMS as the decision will be sent via LAMS, therefore an Appeal Request requires to be received by the Director on the same day of the following month e.g. Funding refused 16 March the Appeal Request must be received on or before 16 April.

If there is a dispute the issue in question shall be referred to a Presiding Member (PM).

[Regulation 8\(2\)](#) refers:

Where a dispute arises as to whether an appeal was brought within the time limit prescribed in this regulation, the dispute shall be referred to, and determined by, a presiding member selected for that purpose by the Director.

4.1.2 Have the reasons for refusal been fully addressed?

Regulation 10(2) states:

(2) In respect of an appeal, subject to paragraph (3), the appellant's written representations must fully address the reasons given by the Director for the decision which is the subject of the appeal.

The Supplier is required to fully address the reasons for refusal advanced by the adjudicator in a notice of refusal of funding. It is also recommended that any additional reasons that are advanced by the adjudicator are also addressed in the Appeal Request. If the reasons for refusal are not fully addressed LSANI may return the Notice of Appeal to the supplier and same must be received back in the Agency within the original time frame.

Regulation 10(5) states:

(5) Where a form is returned to an appellant or applicant, as the case may be, in accordance with paragraph (4), it may be completed and resubmitted by the appellant or applicant provided it is received by the Director within the time limit prescribed in regulation 8.

4.1.3 Is the matter an emergency?

If the adjudicator has accepted that the application is an emergency but has refused funding on the merits the matter can be appealed.

If the adjudicator has refused the emergency element of the application this aspect cannot be appealed. *Schedule 2. A decision to refuse an application for an emergency certificate under the Civil Legal Services (General) Regulations (Northern Ireland) 2015.* The emergency element will be refused and the application will be reverted to the list of requests awaiting adjudication.

4.1.4 Is there a financial assessment on the file?

Staff should check to ensure the applicant is financial eligible under The Civil Legal Services Scheme with or without a contribution from income or capital or both. An appeal on the

merits can only proceed if the applicant is financially eligible or the adjudicator had refused funding but has accepted the matter is an emergency.

4.1.5 Has the limitation period expired?

Depending on the proceedings for which the application for funding relates the link below informs of relevant limitation periods. The limitation period specifies the time limit within which any contemplated proceedings require to be initiated.



Limitations.pdf

(F) Has the supplier submitted any documentary material with the appeal which the appellant did not provide to the Director at the time when the relevant decision was made?

The relevant decision is the decision of the adjudicator to refuse funding/further funding or the level of representation authorised.

A supplier is not allowed to submit any documentary material with the appeal which the appellant did not provide to the Director at the time when the relevant decision was made.

An appeal panel should determine the appeal on the same material as the original decision maker (adjudicator) had available to consider unless the Director is satisfied that the appellant could not with reasonable diligence have obtained that material prior to bringing the appeal. [Regulation 10\(3\)](#) states:

In any appeal brought under these Regulations, an appellant may not introduce or rely on any documentary material which the appellant did not provide to the Director at the time when the relevant decision was made, unless the Director is satisfied that the appellant could not with reasonable diligence have obtained that material prior to bringing the appeal.

4.1.6 Has the Appeal Request been properly completed?

If the Appeal Request has not been properly completed it may be queried with the supplier to properly complete. If the Appeal Request is queried it must be received again by the Director

within the original time limit i.e. 1 month of the date of the original refusal. If the query is not satisfactorily addressed within 1 month on the initial refusal notice the appeal can be withdrawn. Regulation 10(5) states:

(5) Where a form is returned to an appellant or applicant, as the case may be, in accordance with paragraph (4), it may be completed and resubmitted by the appellant or applicant provided it is received by the Director within the time limit prescribed in regulation 8.

4.2 Triage Process –Fees/Refusal to grant a certificate of exceptionality/Quantum of a Certificate of Exceptionality

Any appeal or request for redetermination/review of fees falls to be determined under:

- ***The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015***
- ***The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005***
- ***The Legal Aid for Crown Court Proceedings (Cost) (Amendment No.2) Rules (Northern Ireland) 2016***
- ***The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009.***
- ***The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016.***

as applicable.

The Department has a statutory responsibility to re-determine a legal representative's costs if he/she is dissatisfied with the calculation of the remuneration payable under.

Regulation 13 of The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 in respect of Advice and Assistance, Representation (Lower Courts), Representation (Higher Courts) and Inquests.

4.2.1 The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015

The Representative as an initial step may request the Department to give reasons in writing for its decision which the Department shall comply with –Regulation 12 refers.

Any request for redetermination shall be made within 21 days of notification of the costs payable –**Regulation 13 refers.**

Oral representations in respect of any redetermination of costs will be at the direction of the Department should it consider it necessary to receive oral same.

4.2.2 The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005

Where a legal representative is dissatisfied with remuneration under a Crown Court Criminal Aid certificate the relevant Regulation is Regulation 13 of The Legal Aid for Crown Court Proceedings (Costs) Rules (Northern Ireland) 2005.

Any such request shall be made within 21 days of notification of the costs payable.

Oral representations in respect of any redetermination of costs will be the choice of the legal representative and the Department shall notify the applicant of the date and time of any such hearing.

4.2.3 The Legal Aid for Crown Court Proceedings (Cost) (Amendment No.2) Rules (Northern Ireland) 2016

In Crown Court exceptionality cases a statutory right of Appeal lies with the Taxing Master. Regulation 11(D) of The Legal Aid for Crown Court Proceedings (Cost) (Amendment No.2) Rules (Northern Ireland) 2016 refers.

However, the Agency considers it best practice to review any application or claim for costs prior to a legal representative exercising the appeal mechanism.

4.2.4 The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009.

In Magistrates' Court cases a statutory right of Appeal lies with the Taxing Master. Regulation 13) of The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) Rules (Northern Ireland) 2009 refers.

However, the Agency considers it best practice to review any application or claim for costs prior to a legal representative exercising the statutory right of appeal.

4.2.5 The Magistrates' Courts and County Court Appeals (Criminal Legal Aid) (Costs) (Amendment) Rules (Northern Ireland) 2016.

In Magistrates' Court exceptionality cases a statutory right of Appeal lies with the Taxing Master. Regulation 10(D) of The Legal Aid for Magistrates Court Proceedings (Cost) (Amendment) Rules (Northern Ireland) 2016 refers.

However the Agency considers it best practice to review any application or claim for costs prior to a legal representative exercising the statutory right of appeal.

5 Re-determination of fees

Additional fees and Appeals are payable if the Legal Rep omitted to claim all fees in respect of one case (i.e. attach a disbursement claim, an additional hearing day) this can be separate request and payment will be processed in the same way.

If the Legal rep is not satisfied with the remuneration assessed by the agency they must submit a redetermination request within the relevant time frame (21 days) and provide reasons for the appeal.

Assessment staff will revisit the claim, view the payment history and if necessary, make an adjustment for an additional fee or it may be a case to refer to the appeals and review team.

6 Civil Legal Services Appeal

6.1 Appeal Preparation Process

A properly completed Appeal Request requires to be accepted in the first instance in accordance with Regulation 10(2). Any additional documentation should address the provision on Regulation 10(3). Any Oral Hearing Request should address the provision of Regulation 26. Only one request for appeal should be submitted in relation to any specific request on LAMS. (Please note not all decisions can be appealed). Civil Legal Services (Appeals) Regulations (Northern Ireland) 2015.

The appeal request will then be assigned to the original adjudicator, where possible, to consider the Appeal Request and any written representations made and or and additional material submitted. The adjudicator has the power to allow the appeal pursuant to [Regulation 10 \(6\)](#) which states:

Upon receipt of a form completed in accordance with this regulation, if the Director considers it appropriate to do so, having regard to the written representations made by the appellant, the Director may allow the appeal without it being referred to an appeal panel.

6.1.1 Appeal Allowed

If the adjudicator allows the appeal a certificate/offer will issue.

6.1.2 Original Decision Upheld

If the adjudicator upholds his/her original decision the matter will be progressed to a CLSAP.

6.1.3 No Additional material submitted

If there is no additional material submitted with the Appeal Request, the adjudicator will prepare the case note at this stage and thereafter assign the appeal request back to the ARAU section to list the appeal.

6.1.4 Additional material submitted

If the applicant has submitted additional material with the Appeal Request, the additional material must then be considered by the secretary to the CLSAP against the provision of [Regulation 10\(3\)](#) which states:

'In any appeal brought under these Regulations, an appellant may not introduce or rely on any documentary material which the appellant did not provide to the Director at the time when the relevant decision was made, unless the Director is satisfied that the appellant could not with reasonable diligence have obtained that material prior to bringing the appeal.'

When the secretary has made a decision in relation to any additional material submitted having regard to [Regulation 10\(3\)](#) the solicitor will be notified via a query on LAMS and given 2 options which reads:

"The additional documentary material submitted with your Appeal Request has not been admitted pursuant to Regulation 10(3) of the Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015. You now have 2 options open to you:

- ***The matter can proceed to appeal without the additional documentary material being presented to the Civil Legal Services Appeal Panel***

OR

- ***You may withdraw your appeal and make a fresh application request with the additional documentary material included."***

You are required to specify your preference within 10 working days from the date of the notification. In order to process the matter further you will need to respond to the query issued on LAMS.

The above notification may be amended to reflect the decision of the secretary to the CLSAP as required.

If a reply has been received the appeal request will be assigned back to the adjudicator to prepare a case note.

6.2 Convening a Civil Legal Services Appeal Panel

ARAU staff will then carry out the following steps:

1. Allocate cases to a CLSAP. This will be in date of receipt of the properly completed Appeal Request and subject to a prioritisation regime.
2. Convene a CLSAP pursuant to [Regulation 21](#) which states:

‘The Director shall assign a member of staff as secretary to the appeal panels and the person so assigned shall be responsible for summoning the persons selected by the Director to constitute an appeal panel in accordance with regulations 15 to 17.’

The CLSAP shall consist of 1 Presiding Member and 2 Other Members. Each PM and OM will have previously advised of any conflicts of interest they may have which will be held centrally by ARAU staff. When allocating cases to a CLSAP staff will have regard to the conflicts of interest register and ensure no member is compromised by listing a case in which he/she has a conflict before that individual.

3. CLSAP will sit on a weekly basis pursuant of Regulation 21.

There will be occasions due to workloads when additional CLSAP’s are required to sit.

7 Redetermination/Review Panel Applicable to Fees Reviews / Refusal to grant a certificate of Exceptionality / Quantum of a Certificate of Exceptionality

7.1 Appeal preparation and convening Redetermination/Review Panel

The following steps are followed

- Any request for a redetermination of costs will be dealt with initially by the Agency by way of letter of explanation as to the fees paid, which may obviate the necessity for a re-determination or appeal. The letter from the Agency will refer to the appropriate legislation and guidance as necessary.
- If the initial step does not resolve the issue the Agency will convene a panel to consider the matter. Sectional staff (assessor) will prepare the relevant material for the Panel's consideration. The complete case papers will be made available to the Panel.
- Any oral representations where provided for as a statutory right or considered necessary by the Department will be communicated to the legal representative as soon as is practicable and normally with at least 2 weeks' notice.
- The Panel will convene and consider the cases listed before it and hear any oral representations that are either requested by the representative or the Department. Decisions will be recorded and agreed by the panel before any communication issues to the representative.
- Any representative who is dissatisfied with the reconsideration/review decision may appeal to the Taxing Master within 21 days of receiving notification of the Agency's decision.
- Fees provided for under Schedules 2, 3 and 5 of The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015 cannot be appealed to the Taxing Master.
- If a request for review/redetermination is successful whether in whole or in part any additional fee payable will be paid at the first available opportunity.

8 The Civil Legal Services Appeal Panel Convened

The CLSAP will convene and sit in private as per [Regulation 25 \(1\)](#).

The CLSAP will consider the cases before it and will determine the matter and may:

- dismiss the appeal;
- direct the Director to issue or amend a certificate subject to such terms and conditions as the panel think fit; or
- refer the matter or any part of it back for determination or report by the Director.

The CLSAP shall provide reasons for its decision. The reason(s) shall be recorded by the PM and shall be recorded in a Decision Notice. [Regulation 28\(1\)](#).

The CLSAP shall take its decision on the papers before it save for certain circumstances. In these circumstances the PM has the power to direct an oral hearing before the CLSAP. [Regulation 26](#) provides for the circumstances of an oral hearing as follows:

26.—(1) An appeal panel shall take its decision on an appeal without hearing Oral representations, except as provided for in paragraphs (2) and (3).

(2) The presiding member shall direct an oral hearing if, and only if, they consider it necessary to receive oral representations in accordance with paragraph (3).

(3) Before allowing an oral hearing of an appeal under paragraph (2), the presiding member must be satisfied that the case which is the subject-matter of the appeal—

(a) would establish or uphold and develop new and important legal principles;
(b) would have an unprecedented impact in its consequences for the appellant and be of direct benefit to society at large; or

(c) is, in terms of its complexity and expected duration, distinct from other cases.(4) In this regulation, “decision” includes determinations embodied in or necessary to a decision.

The PM will contact ARAU via messaging on the panel event and advise if an oral hearing has been directed in any case after having considered the papers and the

provision of [Regulation 26](#) above. Having advised ARAU of an oral hearing the PM will advise of the time of same. Thereafter ARAU will inform the solicitor of the date and time of any oral hearing.

When the CLSAP convenes a decision will be recorded by the PM for each and every matter before the CLSAP along with reasons for that decision which will also include the reason(s) for allowing an oral hearing. This decision is final subject only to [Regulation 29](#) which states:

‘29.—(1) The secretary to the appeal panels or the presiding member may at any time correct accidental errors in the notice of any decision of an appeal panel.

(2) A correction to a decision notice shall be deemed to be part of the decision notice, and written notice of it shall be sent to the appellant and given to the Director as soon as practicable.

(3) There shall be no appeal against a correction made under this regulation or a refusal to make such a correction.

9 Post Civil Legal Services Appeal Panel

Any decision of CLSAP will have effect from the date of the decision of CLSAP. The decisions of the CLSAP are then processed on LAMS by ARAU staff and the applicant shall be informed as per [Regulation 28\(3\)](#) which states:

As soon as practicable after an appeal has been decided by an appeal panel, a copy of the decision notice shall be sent to the appellant and given to the Director.

The decision of the CLSAP will take the form of:

- a Civil Legal Services Certificate (either full or limited to take certain steps)
- an offer of a Civil Legal Services Certificate (either full or limited to take certain steps) subject to financial contribution from income, capital or both
- a refusal of Civil Legal Services via letter which sets out the decision and reasons as transcribed from the decision notice

The decision of the CLSAP is final pursuant to Regulation 27(3) which states

(3) Subject to regulation 29, the decision of an appeal panel shall be final.

10 Annex 1

PART A

THE CIVIL LEGAL SERVICES SCHEME

(Extract)

10.1 The Scope of Civil Legal Services

is constrained in four ways:

- Representation in criminal proceedings funded as part of criminal defence services is excluded from civil funding as explained above The legal scope of Civil Legal Services
- Funding must relate to the law of Northern Ireland
- Only specific courts and tribunals are within the scope of civil funding
- Certain legal subject areas are excluded from mainstream funding

10.2 The Law of Northern Ireland

The restriction of legal aid to matter of Northern Ireland law is contained in article 9 of the 2003 Order. It acts as an important limit on the giving of advice and assistance but is less likely to arise in practice in an application for Civil Legal Services. This is because Civil Legal Services is in any event limited to specific courts and tribunals within this jurisdiction which will inevitably be applying the law of Northern Ireland. Occasionally a point of foreign law might become relevant in proceedings in Northern Ireland, typically certain immigration, family or contract cases. In such cases the issue is treated as one of fact and is within the scope of funding.¹

Disputes may of course arise in the courts as to whether Northern Ireland is the appropriate forum for the proceedings. The Agency will expect solicitors to consider the question of jurisdiction prior to the submission of any application. This is most likely to be an issue in family proceedings concerning divorce, child custody or child abduction. The Brussels II regulation² deals with these conflicts of laws and may prohibit cases proceeding where the

¹ Article 9(1)

² (EC) No 2201/2003

issues have already been raised before the courts in another jurisdiction. If the Agency believe for any reason that potential proceedings are unlikely to be allowed to proceed in Northern Ireland, the application is likely to be refused on merits grounds. Note that the Agency is only concerned with the prospects of success of proceedings in this jurisdiction, not simply with the underlying merits of the case itself.

10.3 Prescribed Courts and Tribunals

Civil Legal Services is only available for proceedings before certain courts and tribunals set out in paragraph 2 of Schedule 2 of the 2003 Order.³ A detailed list is included in the next section of guidance. In summary, legal aid covers representation before:

- The main civil courts – county court (including the Family Care Centre), High Court and appeals to the Court of Appeal and Supreme Court (and any referrals from such courts)
- A range of civil proceedings before the magistrates' court – these predominantly cover the family jurisdiction of the magistrates
- Certain proceedings before the Crown Court relating for example to Protection from Harassment, Witness Anonymity and Proceeds of Crime
- The Mental Health Review Tribunal
- Certain proceedings before the First Tier and Upper Tribunal of the Asylum and Immigration Chamber
- Certain proceedings before the Parole Commissioners for Northern Ireland
- Specified proceedings before the Care Tribunal
- Certain other less common tribunals: the Special Immigration Appeals Commission; Proscribed Organisations Appeal Commission; Lands Tribunal of Northern Ireland;
- Certain other specified proceedings relating to devolution issues, anti-social behaviour, enforcement of judgments, prisoners and young offenders

10.4 Excluded Categories

Even where proceedings are before one of the listed courts or tribunals, they may still be excluded because of their subject matter. These exclusions are set out in Schedule 2 of the 2003 Order – paragraph 1 lists the exclusions from advice and assistance and paragraph 4 lists the exclusions from representation, the lists having significant differences.

³ As amended by the Civil Legal Services (Scope) Regulations (Northern Ireland) 2016 SI 2016 No 202 and other legislation

The types of case which may not be funded under Civil Legal Services are as follows:

- “(a) representation in proceedings in respect of which representation may be granted as a criminal defence service;
- (b) representation wholly or partly in respect of defamation;
- (c) representation in relator actions (*these are uncommon proceedings in which the Attorney General is seeking to enforce public rights*);
- (d) representation in relation to election petitions under the Representation of the People Act 1983F49 or the Electoral Law Act (Northern Ireland) 1962F50;
- (e) representation in proceedings for the recovery of a debt (including liquidated damages) which is admitted where the only question to be brought before the court is as to the time and mode of payment of that debt;⁴
- (f) representation in proceedings incidental to any proceedings mentioned in subparagraphs (a) to (e).”

The defamation and debt exclusions are the only important ones. The reference to actions “wholly or partly” in respect of defamation and the exclusion of “incidental” proceedings prevents legal aid being granted for any aspect of a defamation case, such as, for example, a dispute about costs. However an opponent of an assisted party cannot take a funded case out of scope simply by bringing a counterclaim for defamation – the defence of the counterclaim may be funded in those circumstances.⁵

In considering potential exclusions from scope the Agency will consider the substance and all the circumstances of the case, not just the legal cause of action put forward by the applicant for funding. A potential claim which is in substance about defamation is therefore unlikely to be funded, however carefully it is pleaded.

The final exclusion in Schedule 2 prohibits the funding of advice, assistance or representation to any guardian ad litem for the purposes of any proceedings under the Children (Northern Ireland) Order 1995.⁶ This exclusion does not prohibit the Agency from funding cases where a child is the client and the guardian ad litem is acting as such or as next friend to the child. However, if the guardian seeks advice, assistance or representation on their own behalf (it is sometimes possible for a guardian to be separately represented) such funding cannot be provided under the legal aid scheme.

⁴ This exclusion does not apply to proceedings referred to in paragraph 2(j) – proceedings in the Enforcement of Judgements Office

⁵ 2003 Order, Schedule 2 paragraph 5

⁶ Schedule 2 paragraph 6 as amended

Even where a case satisfies the scope rules, the individual applying must of course satisfy all applicable financial eligibility criteria and the case must satisfy the merits tests. Detailed guidance on the merits criteria is set out in sections 2 and 3 of this guidance.

11 Annex 2

11.1 The Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015 (Extract)



The Civil Legal
Services (Appeal) Re

(a) S.I. 2003/435 (N.I. 10). Article 20A was inserted by section 6 of, and paragraph 6(22) of Schedule 2 to, the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014

(b) 2014 c. 11 (N.I.)

(c) S.R. 2015 No. 195

11.2 PART 1

GENERAL

11.2.1 Citation and commencement

1. These Regulations may be cited as the Civil Legal Services (Appeal) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

11.2.2 Interpretation

2. In these Regulations, unless the context otherwise requires—

“appeal panel” means an appeal panel constituted under Part 3;

“appellant” means an individual who brings an appeal to an appeal panel under Part 2;

“applicant” means an individual who applies for civil legal services;

“civil legal services” has the meaning given by Article 10 of the Order;

“decision notice” has the meaning given by regulation 28;

“the Department” means the Department of Justice;

“the Director” means the Director of Legal Aid Casework designated by the Department under section 2 of the Legal Aid and Coroners’ Courts Act (Northern Ireland) 2014(b);

“list” means a list of persons appointed by the Department under regulation 12 or 13;

“the Order” means the Access to Justice (Northern Ireland) Order 2003;

“other member” means a person appointed by the Department to the list of persons to act as other members of the appeal panels under regulation 13;

“out of jurisdiction appeal” means an appeal brought against a decision prescribed in regulation 5 and the Schedule as a decision against which no appeal lies;

“presiding member” means a person appointed by the Department to the list of persons to act as presiding members of the appeal panels under regulation 12;

“relevant decision” means a Director’s decision as referred to in regulation 4;

“representation (higher courts)” has the meaning given by regulation 2 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015(c);

“secretary to the appeal panels” has the meaning given by regulation 21;

“supplier” means any person or other body who provides civil legal services funded by the Department to an individual.

11.2.3 Service of notices or documents

3.—(1) Any notice or document that is required to be sent to an appellant or applicant, as the case may be, under these Regulations may be sent—

(a) by post to the postal address given by the appellant or applicant as their address for service; or

(b) by electronic mail.

(2) Any document that is required to be sent to the Director under these Regulations may be sent—

(a) by post or by personal delivery to an address specified by the Director; or

(b) by electronic mail.

11.3 PART 2 - RIGHTS OF APPEAL AND PROCEDURE FOR BRINGING APPEALS

11.3.1 Decisions against which an appeal lies

4.—(1) This regulation applies to decisions made, by or on behalf of the Director, under Article

14(2)(a)(i) of the Order—

(a) as to whether to fund, or continue to fund, civil legal services for an individual by way of representation (higher courts);

(b) as to the level of representation authorised for that individual.

(2) Where an applicant is dissatisfied with the Director’s decision, the applicant may appeal that decision to an appeal panel.

11.3.2 Decisions against which no appeal lies

5.—(1) No appeal lies to an appeal panel against a decision, made by or on behalf of the Director, set out in the Schedule to these Regulations.

(2) In paragraph (1) and the Schedule, “decision” includes determinations embodied in or necessary to a decision.

(3) An appeal brought against a decision specified in paragraph (1) may be struck out in accordance with regulation 22.

11.3.4 Notice of decisions against which an appeal lies

6. An individual with a right of appeal under these Regulations against any decision of the Director shall be given—

(a) written notice of the decision against which the appeal lies, together with a written statement of the reasons for that decision; and

(b) written notice of their right of appeal against that decision.

11.3.5 Correction of accidental errors in adjudication decisions

7.—(1) Accidental errors in a relevant decision, or in the record of such a decision, may be corrected by the Director at any time.

(2) A correction made to a relevant decision, or to the record of such a decision, shall be deemed to be part of that decision, or of that record and the Director shall give written notice of the correction to the applicant as soon as practicable.

(3) In calculating the time within which an appeal may be brought under regulation 8(1), there shall be disregarded any day falling before the date on which notice was given of a correction of the decision, or to the record thereof, under paragraph (2).

11.3.6 Time within which an appeal is to be brought

8.—(1) Subject to paragraphs (2) and (3), an appeal which lies from a relevant decision must be received by the Director within one month of the date of notification of that decision.

(2) Where a dispute arises as to whether an appeal was brought within the time limit prescribed in this regulation, the dispute shall be referred to, and determined by, a presiding member selected for that purpose by the Director.

(3) The time limit prescribed in this regulation for bringing an appeal may be extended in accordance with regulation 9.

11.3.7 Late appeals

9.—(1) Subject to paragraphs (2) to (10), the time limit prescribed in regulation 8 may be extended only if the conditions set out in this regulation are satisfied.

(2) No appeal shall be brought more than three months after the expiration of the last day for appealing under regulation 8.

(3) An application for an extension of time within which an appeal may be brought (“an application”) shall be determined by a presiding member, selected for that purpose by the Director, except that where the Director is satisfied the conditions in paragraphs (5)(b) to (7) are satisfied the Director may grant the application.

(4) An application shall contain particulars of the grounds on which the extension of time is sought, including details of any relevant special circumstances for the purposes of paragraph (7).

(5) An application for an extension of time shall not be granted unless—

(a) the presiding member is satisfied that, if the application is granted, there are reasonable prospects that the appeal will be successful; or

(b) the presiding member or, as the case may be, the Director is satisfied that it is in the interests of justice for the application to be granted.

(6) For the purposes of paragraph (5)(b), it is not in the interests of justice to grant the application unless the presiding member or, as the case may be, the Director is satisfied that—

(a) any of the special circumstances specified in paragraph (7) are relevant to the application,

or

(b) some other special circumstances exist which are exceptional and relevant to the

application,

and, as a result of those special circumstances, it was not practicable for the appeal to be made within the time limit prescribed in regulation 8.

(7) For the purposes of paragraph (6)(a), the special circumstances are—

(a) the applicant has suffered serious illness; or

(b) a partner or dependant of the applicant has died or suffered serious illness.

(8) An application under this regulation which has been refused may not be renewed.

(9) The presiding member who determines an application shall record a summary of the reasons in such written form as has been approved by the Director.

(10) As soon as practicable after the decision is made, a copy of the decision shall be sent to the applicant.

11.3.8 Making of appeals and applications

10.—(1) An appeal or application for an extension of time must—

(a) be in writing on a form approved for the purpose by the Director or in such other format as the Director may accept;

(b) be signed by the appellant or applicant, as the case may be, or the supplier;

(c) be sent, in accordance with regulation 3(2), to the Director;

(d) contain particulars of the grounds on which it is made, together with the written representations relied upon by the appellant or applicant, as the case may be.

(2) In respect of an appeal, subject to paragraph (3), the appellant's written representations must fully address the reasons given by the Director for the decision which is the subject of the appeal.

(3) In any appeal brought under these Regulations, an appellant may not introduce or rely on any documentary material which the appellant did not provide to the Director at the time when the relevant decision was made, unless the Director is satisfied that the appellant could not with reasonable diligence have obtained that material prior to bringing the appeal.

(4) A form which is not completed in accordance with the instructions on the form does not satisfy the requirements of paragraphs (1) and (2), and may be returned by the Director to the appellant or applicant, as the case may be, for completion in accordance with those instructions.

(5) Where a form is returned to an appellant or applicant, as the case may be, in accordance with paragraph (4), it may be completed and resubmitted by the appellant or applicant provided it is received by the Director within the time limit prescribed in regulation 8.

(6) Upon receipt of a form completed in accordance with this regulation, if the Director

considers it appropriate to do so, having regard to the written representations made by the appellant, the Director may allow the appeal without it being referred to an appeal panel.

11.4 PART 3 - CONSTITUTION OF APPEAL PANELS

11.4.1 Persons appointed to the appeal panels

11. For the purposes of Article 20A of the Order, the appeal panels shall consist of presiding members and other members appointed by the Department in accordance with this Part.

11.4.2 Presiding members of appeal panels

12.—(1) Subject to paragraph (2) and regulation 19(1) and (2), the Department shall appoint a list of persons to act as presiding members of the appeal panels.

(2) A person may be appointed as a presiding member only if that person is a barrister or a solicitor of not less than seven years' standing.

11.4.3 Other members of appeal panels

13.—(1) Subject to paragraph (2) and regulation 19(1) and (2), the Department shall appoint a list of persons to act as other members of the appeal panels.

(2) In appointing persons under paragraph (1) the Department shall have regard to the desirability of securing that the list of such persons includes members who (between them) have experience in or knowledge of—

- (a) the provision of services which the Department can fund as civil legal services,
- (b) the work of the courts and tribunals, and
- (c) the provision of expert services or testimony in cases which can be funded by way of civil legal services.

11.4.4 Tenure of appeal panel members

14.—(1) Subject to paragraphs (3) and (4), any person appointed to a list under regulation 12 or 13 shall hold office in accordance with the terms of their appointment.

(2) But a person shall not be appointed by the Department for a period of more than five years.

(3) (a) A person appointed to a list under regulation 12 or 13 may resign by giving notice in writing to the Department.

(b) A person who ceases to be a member of a list shall be eligible for re-appointment.

(4) The Department may terminate the appointment of a person to a list if satisfied that the person—

- (a) has become bankrupt or made a composition or arrangement with their creditors,
- (b) is unable to carry out their duties as a member of an appeal panel by reason of illness,

- (c) has been convicted of a criminal offence,
- (d) has been absent from meetings of an appeal panel for a period longer than six consecutive months without the permission of the Department, or
- (e) is otherwise unable or unfit to discharge the functions of an appeal panel member.

11.4.5 Composition of appeal panels

15. Subject to regulations 16, 17, 18 and 19(3), an appeal panel shall consist of—

- (a) a presiding member, selected by the Director in accordance with regulation 16 from the list of persons appointed by the Department under regulation 12; and
- (b) two other members, selected by the Director in accordance with regulation 16 from the list of persons appointed by the Department under regulation 13.

11.4.6 Selection of members of an appeal panel

16. In selecting the members of an appeal panel under regulation 15, the Director shall have regard to the desirability of securing that the panel members (between them) have sufficient experience in or knowledge of the types of cases which are liable to be brought by way of appeals under Part 2.

11.4.7 Urgent appeals

17.—(1) This regulation applies where an appeal has been brought in connection with proceedings (or proposed proceedings) which are to be heard imminently, and the Director considers that it is not reasonably practicable to convene a full appeal panel in accordance with regulation 15 to determine the appeal.

(2) The Director may arrange for that appeal to be considered by a presiding member selected for that purpose by the Director from the list of persons appointed under regulation 12, and that presiding member sitting alone shall have the powers of an appeal panel to determine the appeal.

11.4.8 Unavailability of panel member

18.—(1) Where one of the persons selected for an appeal panel in accordance with this Part is not available, the panel may consist of the two other persons selected and those other persons may discharge the business before the panel where they are in agreement, but in the absence of agreement the matter in question shall be referred to a panel of three persons.

(2) Where the presiding member selected for an appeal panel in accordance with this Part is not available, the Director shall either—

- (a) select another presiding member from the list of persons appointed by the Department under regulation 12 to be the acting presiding member for that panel; or

(b) if that is not reasonably practicable, select one of the other panel members to be the acting presiding member for that panel, provided that panel member is either a solicitor or a barrister.

11.4.9 Disqualification for membership of an appeal panel – generally

19.—(1) A solicitor who is for the time being prohibited from providing civil legal services by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976(a) shall be disqualified for membership of an appeal panel.

(2) A barrister who is for the time being prohibited from providing civil legal services by any determination of the General Council of the Bar of Northern Ireland, or by any determination of any such committee as may be established by that Council to determine charges preferred against barristers, shall be disqualified for membership of an appeal panel.

(3) A solicitor who is under investigation by the Law Society, or a barrister who is under investigation by the General Council of the Bar of Northern Ireland, for alleged professional misconduct shall notify the Director forthwith and shall be disqualified for membership of an appeal panel pending the outcome of that investigation.

11.4.10 Disqualification for membership of an appeal panel – individual appeals

20.—(1) Without prejudice to regulation 19, a person shall be disqualified for membership of an appeal panel in relation to its determination of any individual appeal if that person (or, in the case of a solicitor, that person's firm) has at any time advised or prepared a report in respect of—

(a) the appellant;

(b) any other person who is (or is liable to be) a party to the relevant proceedings; or

(c) any other person who is liable to be called as a witness in those proceedings.

(2) Where the subject-matter of an appeal relates to proceedings (or proposed proceedings) which are to challenge a decision of an appeal panel made under these Regulations, a person who was a member of that panel shall be disqualified for membership of any panel which may be convened to determine an appeal brought in relation to an application for funding in respect of those proceedings (or proposed proceedings).

11.4.11 Secretary to the appeal panels

21. The Director shall assign a member of staff as secretary to the appeal panels and the person so assigned shall be responsible for summoning the persons selected by the Director to constitute an appeal panel in accordance with regulations 15 to 17.

11.5 PART 4 - PROCEDURE OF APPEAL PANELS

11.5.1 Appeals which may be struck out

22.—(1) Subject to paragraphs (2) and (3), an appeal may be struck out by the secretary to the appeal panels where—

- (a) it is an out of jurisdiction appeal and the appellant has been notified by the Director that an appeal brought against such a decision may be struck out; or
- (b) it is not brought within the time limit prescribed in regulation 8.

(a) S.I. 1976/582 (N.I. 12), as amended by S.I. 1989/1343 (N.I. 14), S.I. 2003/435 (N.I. 10) and 2014 c. 11 (N.I.)

(2) Where the secretary to the appeal panels strikes out an appeal, they shall notify the appellant that the appeal has been struck out and of the procedure for reinstatement of the appeal as specified in regulation 23.

(3) The secretary to the appeal panels may refer any matter for determination under this regulation to a presiding member, selected for that purpose by the Director, for decision by that presiding member rather than the secretary.

11.5.2 Reinstatement of struck out appeals

23. A presiding member, selected for that purpose by the Director, may reinstate an appeal which has been struck out in accordance with regulation 22 where—

(a) the appellant has made representations or, as the case may be, further representations in support of the appeal with reasons why they consider that the appeal should not have been struck out by the secretary to the appeal panels, in writing within one month of the order to strike out the appeal having issued, and the presiding member is satisfied in the light of those representations that there are reasonable grounds for reinstating the appeal; or

(b) the presiding member is satisfied that the appeal is not an appeal which may be struck out under regulation 22.

11.5.3 Consideration and determination of appeals

24.—(1) All matters relating to the procedure of an appeal panel shall, subject to regulation 10(3) and the following provisions of this Part, be such as the presiding member shall determine.

(2) In this Part “the presiding member” includes an acting presiding member as referred to in regulation 18(2).

11.5.4 Panels to sit in private

25.—(1) Subject to paragraphs (2) and (3), appeal panels shall sit in private.

(2) Where it is necessary or expedient for the efficient and effective working of the panels, the secretary to the appeal panels may also be present during the hearing of any appeal.

(3) Where oral representations are being allowed under regulation 26, the appellant and their representative shall also be entitled to be present during the hearing of the appeal.

11.5.5 Determination without oral hearing

26.—(1) An appeal panel shall take its decision on an appeal without hearing oral representations, except as provided for in paragraphs (2) and (3).

(2) The presiding member shall direct an oral hearing if, and only if, they consider it necessary to receive oral representations in accordance with paragraph (3).

(3) Before allowing an oral hearing of an appeal under paragraph (2), the presiding member must be satisfied that the case which is the subject-matter of the appeal—

(a) would establish or uphold and develop new and important legal principles;

(b) would have an unprecedented impact in its consequences for the appellant and be of direct benefit to society at large; or

(c) is, in terms of its complexity and expected duration, distinct from other cases.

(4) In this regulation, “decision” includes determinations embodied in or necessary to a decision.

11.5.6 Powers of an appeal panel

27.—(1) An appeal panel shall have the same powers as the Director under Article 14(2)(a)(i) of the Order and, without prejudice to the generality of the foregoing, may—

(a) dismiss the appeal;

(b) direct the Director to issue or amend a certificate subject to such terms and conditions as the panel think fit; or

(c) refer the matter or any part of it back for determination or report by the Director.

(2) It shall be the duty of the Director to have regard to all such decisions and to obey all such directions, if any, as may be given by the appeal panel pursuant to paragraph (1).

(3) Subject to regulation 29, the decision of an appeal panel shall be final.

11.5.7 Decisions of appeal panels

28.—(1) Every decision of an appeal panel (including any decision by the presiding member to allow oral representations) shall be recorded by the presiding member, together with the reasons for that decision, and shall be referred to as a decision notice.

(2) The decision notice specified in paragraph (1) shall be in such written form as shall have been approved by the Director and shall be signed by the presiding member.

(3) As soon as practicable after an appeal has been decided by an appeal panel, a copy of the decision notice shall be sent to the appellant and given to the Director.

11.5.8 Correction of accidental errors in appeal decisions

29.—(1) The secretary to the appeal panels or the presiding member may at any time correct accidental errors in the notice of any decision of an appeal panel.

(2) A correction to a decision notice shall be deemed to be part of the decision notice, and written notice of it shall be sent to the appellant and given to the Director as soon as practicable.

(3) There shall be no appeal against a correction made under this regulation or a refusal to make such a correction.

Sealed with the Official Seal of the Department of Justice on 26th March 2015

David Ford

Minister of Justice

12 Regulation 5

12.1 DECISIONS AGAINST WHICH NO APPEAL LIES

- 1.** A decision on an application for an extension of funding by way of advice and assistance under the Civil Legal Services (General) Regulations (Northern Ireland) 2015(a).
- 2.** A decision to refuse an application for an emergency certificate under the Civil Legal Services (General) Regulations (Northern Ireland) 2015.
- 3.** A decision as to whether to fund, or continue to fund, civil legal services by way of representation (lower courts) under the Civil Legal Services (General) Regulations (Northern Ireland) 2015, including a decision as to the level of representation authorised.
- 4.** A decision on the application of the financial eligibility tests prescribed under the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015(b), including the assessment of any contributions payable by the applicant and the exercise of any discretion granted under those Regulations in respect of the application of the financial eligibility tests.
- 5.** A decision on an application for authorisation to instruct an expert witness or to obtain an expert report under the Civil Legal Services (General) Regulations (Northern Ireland) 2015.
- 6.** A decision not to make an exceptional case determination under Article 12A(2)(b) of the Order, or a decision to withdraw such a determination.
- 7.** A decision under Article 12A(7) of the Order to make an exceptional case determination and to apply (with or without modification) any of the provisions in Articles 14 to 20 of the Order to any civil legal services funded.
- 8.** A decision not to make a wider public interest determination under Article 12A(4)(b) of the Order, or a decision to withdraw such a determination.
- 9.** A decision under Article 12A(7) of the Order to make a wider public interest determination and to apply (with or without modification) any of the provisions in Articles 14 to 20 of the Order to any civil legal services funded.
- 10.** A decision as to the level of representation authorised by way of exceptional funding under Article 12A of the Order.
- 11.** A decision on the application or enforcement of the statutory charge under the Civil Legal Services (Statutory Charge) Regulations (Northern Ireland) 2015(c).
- 12.** Subject to regulation 4, any other decision taken in the exercise of functions conferred or imposed on the Director by or under Articles 12A to 20 of the Order.

(a) S.R. 2015 No. 195

(b) S.R. 2015 No. 196

(c) S.R. 2015 No. 200

13 EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the constitution and procedure of appeal panels, and for appeals to such a panel against prescribed decisions. An individual applying for funding under the Access to Justice (Northern Ireland) Order 2003 can appeal decisions made by the Director of Legal Aid Casework as to whether to fund, or continue to fund, representation (higher courts) by way of civil legal services under that Order. An individual applying for such funding can also appeal decisions as to the level of representation authorised.

Part 1 contains provisions relating to the citation, commencement and interpretation of the Regulations, and for the service of notices or documents.

Part 2 concerns rights of appeal and the procedure for bringing appeals. It provides for decisions where there is a right of appeal and for those decisions where there is no right of appeal. It also provides procedural rules for bringing appeals.

Part 3 provides for the constitution of the appeal panels. It provides for the Department of Justice to appoint persons to act as presiding members and other members of the appeal panels. It also provides for the composition of an appeal panel, with the Director of Legal Aid Casework to select a presiding member and two other members. Provision is also made for disqualification for membership of an appeal panel.

Part 4 of the Regulations provides for the procedure of the appeal panels.

The Regulations come into operation on 1st April 2015.
