

LSANI Guidance Note - Closed Material Procedure in Legacy and Collusion Cases

The Legal Services Agency (LSA) has issued this guidance note to provide clarity on the authority to participate in the closed material procedure under the Justice and Security Act 2013 as a step in the discovery process in legacy/collusion cases.

1. The Legal Services Agency (LSA) is aware that in many legacy cases, collusion cases and cases involving allegations against the State and armed forces, it is common for the closed material procedures in the Justice and Security Act 2013 to be invoked.
2. Section 6 of the Justice and Security Act 2013 allows any party to relevant civil proceedings to apply for a declaration that proceedings are proceedings in which a closed material application may be made by the court. Whilst the closed material disclosure process itself is dealt with by Special Advocates, the declaration is often sought by the plaintiff in proceedings.
3. The method of applying for such a declaration is by summons and in the past practitioners have applied for specific authority to commence the declaration process. The closed material procedure is by its nature part of the discovery process. Any certificate granted under this case type, limited up to discovery, will include any steps required to be taken by an assisted party in the closed material procedure including an application under section 6 of the Justice and Security Act 2013, therefore, a separate authority request will not be required.
4. If an applicant is granted a full Legal Aid Certificate, all steps in the discovery process and stages of the closed material process an assisted party is involved in, will be covered.
5. Decisions on closed material may on occasion be sought to be appealed. LSA is aware the process of appeal involves the Special Advocates advising the

open representatives if they consider there are grounds to appeal and it is for the open representatives to lodge and serve a notice of appeal. In these circumstances, LSA would require an authority request to be submitted on LAMS with the correspondence from the Special Advocates, advising grounds of appeal, uploaded.

6. This guidance note has the effect of streamlining the discovery process in relevant civil proceedings, seeks to avoid delay and to minimize the administrative burden by avoiding the necessity of applying for specific authority to carry out steps required of an assisted party in the closed material process.

LSANI

27 October 2023