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Dear Mr Randall

Re Consultation on proposed amendment to the Lord Chancellor's authorisation on the scope of legal aid - business cases

Thank you for your letter of 21 February 2007 in response to this consultation. We were very grateful for your input.

After careful consideration, it remains the view of the Department, and the Legal Services Commission, that 'Ankara Agreement' cases fall into the 'business' rather than 'immigration' category. Given this, we have decided to proceed with the amended authorisation as drafted. I attach a copy of the revised wording for your information. This will come into force on 9 April 2007.

Yours sincerely,

David Stokes
Senior Policy Advisor



INVESTOR IN PEOPLE

3.3 LORD CHANCELLOR'S AUTHORISATION

1. This is an authorisation by the Lord Chancellor under Section 6(8) of the Access to Justice Act 1999 authorising the Legal Services Commission to fund in specified

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circumstances services generally excluded from the scope of the Community Legal Service Fund by paragraph 1 of Schedule 2 to the Act. In this authorisation "excluded services" means services which would, but for this authorisation, be excluded under that paragraph.

2. In this authorisation descriptions of types of case and other terms should be interpreted in accordance with definitions contained in the Act and in the Funding Code. For convenience, separate rules are given below in relation to the main levels of service under the Code. For the avoidance of doubt, nothing in this authorisation authorises the Commission to fund conveyancing services or the making of wills save where the authorisation specifically authorises this. Applications for funding under this authorisation must still satisfy all relevant criteria in the Funding Code and regulations.

3C-013

Part 1 – Legal Help And Help At Court

Conveyancing

3. The Lord Chancellor authorises the Commission to fund conveyancing services as part of Legal Help where this is necessary to give effect to a court order made in proceedings in respect of which the Commission funded services, or to an agreement reached, with the help of funded services, to settle or avoid family proceedings.

Wills

4. The Lord Chancellor authorises the Commission to fund Legal Help in relation to the making of wills where the client is:
 - (a) aged 70 or over; or
 - (b) a disabled person within the meaning of section of the Disability Discrimination Act 1995; or
 - (c) the parent of a disabled person (as defined in (b) above) who wishes to provide for that person in a will; or
 - (d) the parent of a minor who is living with the client but not with the other parent, and the client wishes to appoint a guardian for the minor in a will,

5. In paragraph 4, “parent” includes a guardian appointed under section 5 of the Children Act 1989 and any other person with parental responsibility for the child.

Criminal Injuries

6. The Lord Chancellor authorises the Commission to fund Legal Help in relation to applications to the Criminal Injuries Compensation Authority.

Excluded Proceedings brought within Scope

The Lord Chancellor authorises the Commission to fund Legal Help or Help at Court in relation to proceedings or potential proceedings falling within paragraphs 8 to 10, 12 or 15 to 17 below (types of case for which Legal Representation may be provided).

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3C-014

Part 2 – Legal Representation

Case Categories

8. The Lord Chancellor authorises the Commission to fund Legal Representation, including excluded services, in any of the following types of case:
 - (a) Proceedings under section 7 of the Code (Judicial Review), subject to the restrictions set out at paragraph 9 below.
 - (b) Proceedings under section 8 of the Code (Proceedings against public authorities concerning serious wrongdoing, abuse of position or power, or significant breach of human rights).
 - (c) Proceedings under section 10 of the Code (Housing) subject to the restrictions set out in paragraph 10 below.
 - (d) Proceedings under section 11 of the Code (Family Proceedings).
 - (e) Proceedings under section 14 of the Code (Quasi-Criminal Proceedings).
 - (f) Professional negligence proceedings, save where the alleged negligence relates to services provided in relation to the client’s business.
 - (g) Personal insolvency proceedings.
 - (h) Proceedings arising out of allegations of the abuse of a child or vulnerable adult;
 - (i) Proceedings arising out of allegations of sexual assault;
 - (j) Proceedings under the Proceeds of Crime Act 2002.

9. Paragraph 8 (a) above does not authorise the Commission to fund judicial review proceedings which fall within paragraph 1(h) of Schedule 2 (business cases) unless those proceedings concern the serious wrongdoing, abuse of position or power or significant breach of human rights by a public authority.
10. Paragraph 8 (c) above does not authorise the Commission to fund housing proceedings relating to business tenancies or otherwise falling within paragraph 1(h) of Schedule 2 (business cases), save where possession of the client's home is in issue in those proceedings.

Public Interest Cases

11. The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation in proceedings which have a significant wider public interest, other than proceedings which fall within paragraph 1(h) of Schedule 2 (business cases).

Liberty of the client

12. The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation in relation to hearings at which the liberty of the client is in issue.

Scope of specific exclusions

13. The following paragraphs limit the scope of specific subparagraphs of paragraph 1 of Schedule 2 of the Act. Cases which benefit from paragraphs 14 to 17 below may still be excluded under any other subparagraph of paragraph 1 of Schedule 2. For example, a case concerning a constructive trust would still be excluded if the case arose out of the carrying on of a business.
14. Paragraph 1(b) *conveyancing*. Where the Commission is funding Legal Representation in proceedings, the Lord Chancellor authorises the Commission to fund conveyancing services as part of Legal Representation where this is necessary to

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give effect to a court order made in those proceedings. Where the Commission is funding Legal Representation in family proceedings the Lord Chancellor authorises the Commission to fund conveyancing services as part of Legal Representation where this is necessary to give effect to an agreement reached, with the help of funded services, to settle or avoid those proceedings.

15. Paragraph 1(e) *matters of trust law*. The Lord Chancellor authorises the Commission to fund services relating to matters of trust law as part of Legal Representation where the matters of trust law concern implied, resulting or constructive trusts, trusts arising when a person dies intestate or where matters of trust law arise in cases under section 14 of the Trusts for Land

and Appointment of Trustees Act 1996 concerning the ownership or possession of the client's home.

16. Paragraph (g) *matters of company or partnership law*. The Lord Chancellor authorises the Commission to fund services relating to matters of partnership law as part of Legal Representation where the Commission is satisfied that the client needs to rely on partnership law only in order to dispute whether a partnership existed, for example in order to contest liability on the grounds of undue influence.
17. Paragraph (h) *other matters arising out of the carrying on of a business*. The Lord Chancellor authorises the Commission to fund services in relation to matters arising out of the carrying on a business as part of Legal Representation where the Commission is satisfied that the client is reasonably disputing whether he or she was carrying on a business or intending to do so, for example where the client is contesting liability on the grounds of undue influence.

Mixed Cases

18. The Lord Chancellor authorises the Commission to fund excluded services in Legal Representation when the excluded services relate to issues which are only minor or incidental to the main purpose of the proceedings.
19. The Lord Chancellor authorises the Commission to fund Legal Representation in *partially excluded proceedings* where any of the following conditions apply:
 - (a) The client is a defendant or third party in proceedings brought against him or her by an opponent.
 - (b) The excluded issues were introduced into existing proceedings by an opponent.
 - (c) The client is bringing the proceedings but it is or would have been impracticable for the client to bring proceedings without also covering the excluded services.
20. In paragraph 19 above "partially excluded proceedings" means proceedings which (apart from this direction) are mostly within scope but which also include specific issues or causes of action which are excluded under paragraph 1 of Schedule 2 of the Act.

3C-015

Part 3 – Family Services

21. The Lord Chancellor authorises the Commission to fund excluded services as part of General Family Help, Help with Mediation or Family Mediation. In relation to General Family Help and Help with Mediation this may include conveyancing services which are necessary to give effect to a court order or to an agreement reached, with the help of funded services, to settle or avoid family proceedings.

3C-016