



Contracting Briefing no. 13
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A Practitioner's Guide to Controlled Work Part 1

This briefing applies to holders
of Legal Aid Contracts

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Making the best use of this briefing

We are aware that some of our briefings are fairly lengthy documents. Please do not feel that you are obliged to read the whole briefing from cover to cover – the headings on our contents page will point you towards the major themes under discussion.

The term “Legal Aid” is used generically in this briefing to cover all/any civil and family legal advice/assistance paid via the CLS Fund. The term “contract work”, unless otherwise qualified, refers only to work carried out under the General Civil Contract, rather than other contract types such as mediation or methods of delivery contracts.

Further sources of support and guidance

If you need further guidance on any of the issues covered in this briefing, please contact your network, the Legal Services Commission or the CLS Support consultancy line – see the pages at the back of this briefing for contact details.

You may come across the telephone symbol  at various points in the text which deal with what we regard to be a complex issue. The symbol is there to remind you that we are able to provide further clarification and/or guidance if you need it.

Please note that the What’s New pages on ASA’s website www.asauk.org.uk/whatsnew provide guidance that highlights and clarifies both new and existing requirements for Quality Mark and General Civil Contract holders.

Disclaimer

This briefing is not a substitute for reading the relevant documentation in full nor does it constitute legal advice. Where the Legal Services Commission (LSC) has commented on our interpretation of rules and requirements this will be clearly identified within the text of the document itself. Where no LSC input is identified then it is our own interpretation. The Unified Contract is an evolving document. Organisations should get further up-to-date advice on specific topics covered in briefings either from their network, their LSC regional office or CLS Support.

CLS Support is an Advice Services Alliance project. ASA is the representative body for national advice networks in the UK.

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1 Introduction

- 1.1 This briefing is Part 1 of a two-part guide to the Specification section of the Unified Contract (Civil) as it applies to Controlled Work, ie Legal Help and Help at Court and Controlled Legal Representation. Part 2 is published as a separate briefing. We refer to both parts collectively as “the Guide”.
- 1.2 Both parts of the Guide focus on the General Provisions (parts 1 to 9 of the Specification) that apply to **all civil categories** of law. This Part 1 of the Guide will also look at key aspects of the Category-Specific Provisions of the Specification in relation to debt, employment, housing and welfare benefits.
- 1.3 Developing Community Legal Advice (CLA) services, including centres and networks, may face amended and/or additional requirements.

The Guidance contained within Part 2 of the Guide

- 1.4 Please see Part 2 of the Guide for guidance on the following topics:
 - describing chargeable activities accurately;
 - General Rules, eg location of work, clients misrepresenting information and what to do if another supplier asks for information about your client;
 - allocation of New Matter Starts and self-authorisation;
 - application procedures, eg postal applications and preliminary telephone advice;
 - key Funding Code criteria: sufficient benefit, scope and means assessment;
 - previous Legal Help;
 - refusing Controlled Work;
 - joint applications.

A note on terminology used

- 1.5 Throughout this Guide, and when referring to parts of the Specification, we have maintained the same method of indexing that the Specification itself uses to refer to its constituent rules, requirements and guidance, ie we have referred to them as “paragraph(s)”, followed by the appropriate paragraph and sub-paragraph number wherever appropriate.
- 1.6 Where documents other than the Specification are referred to, eg the Funding Code and the Specialist Quality Mark (SQM), they are identified clearly and will include their own appropriate text reference.
- 1.7 We use the terms “supplier” and “organisation” to mean any body that holds a contract with the Legal Services Commission (LSC), whether a private practice or Not-for-Profit (NfP) organisation.
- 1.8 “NMS” means New Matter Start(s).

2 The Unified Contract Specification

Essential reading and reference

- 2.1 It is vital that each caseworker has access to a copy of the Specification and is familiar with its contents.

Purpose of the Specification section

- 2.2 The Specification may be seen as the *operational* part of the Contract – the part that lays down all the rules and requirements that caseworkers must observe on a day-to-day basis when providing publicly funded work to and on behalf of clients.
- 2.3 The effect of the Specification is that for the first time former Solicitor and NfP General Civil Contract holders are now working to the same requirements and being paid for output of work on the same basis, subject to any transitional provisions that may apply, eg the “Not-for-Profit Unified Contract Transition Process”.
- 2.4 Further information on the documents which make up the Contract may be found on the LSC website, for example: “Summary of Contract Documents and FAQ”, published February 2007:
http://www.legalservices.gov.uk/docs/civil_contracting/unified_contract_summary_and_faq.pdf

Priority of provisions within the Specification

- 2.5 Where there is any conflict between the General and Category-Specific Provisions within the Specification, the Category-Specific Provisions take precedence (see the introduction to the General Provisions: “Part A Preliminary, Structure of the Civil Specification”).

3 Opening New Matter Starts for new clients

A note on “cherry picking”

- 3.1 Paragraph 7.15 is clear that you “should not specifically target certain sorts of clients or types of cases in order to have the effect of maximising cases of lower complexity.” That is, you should not “cherry-pick”.
- 3.2 However, paragraph 7.15 continues by stating: “...subject to the provisions of [Paragraph] 2.41 you may change your case mix within a category of law by accepting a broader range of cases, reflecting the types of cases arising locally in this category of law, than previously.”

What to do if a client raises more than one issue at the first attendance

- 3.3 It is not uncommon for a client to raise more than one issue within the first interview. It is your responsibility to filter the issues presented to you, make your decision on how many matters should be opened, and explain this to the client, most likely at the point you ask them to sign more than one application for Legal Help.
- 3.4 This means that you do not *automatically* open a NMS for each issue or aspect of a client’s enquiry, eg a client with twenty debts does not automatically mean twenty NMS with twenty Legal Help forms needing to be completed.
- 3.5 Paragraph 5.12 states:
“Where the Client raises several issues at the first meeting, a single Matter Start should be completed to identify the issues and provide general, preliminary advice. If one legal issue is identified then the original, single Matter Start should be used for the provision of further Controlled Work.”

However, more than one Matter Start may be opened at the initial meeting where this is justified under paragraph 5.8.”

A one-off interview with no further help necessary

- 3.6 Paragraphs 5.8 and 5.12 do not prohibit you from opening more than one NMS at the first meeting even if it is only a one-off attendance. You may still open more than one NMS at this meeting (providing paragraph 5.8 and any Category-Specific Provisions are satisfied) even where you do not propose any further work in respect of the NMS you have opened other than writing to the client summarising your advice.

First: check the Category-Specific Provisions

- 3.7 The Category-Specific Provisions contain rules relating to that category of law only. Although the rules in respect of some categories are more extensive than others, it is vital that you are fully aware of those that apply to the particular category of law you provide specialist advice in.
- 3.8 The Category-Specific Provisions take precedence over the General Provisions where there is any apparent conflict between them. If the Category-Specific rules say you should not open a NMS in certain circumstances then you should not open one, whatever the General Provisions say.
- 3.9 For example, the General Provisions would on the face of it suggest that it might be possible to open separate NMS for a client in the debt category where creditors require separate communication (paragraphs 5.8 and 5.9). However, the debt Category-Specific Provisions at paragraph 13.2 preclude this by setting out conditions that must be satisfied when considering whether to split a case in the debt category into more than one matter.

Second: check whether it is explicitly excluded by the General Provisions

Situations where you should not open further NMS

You should <i>not</i> open a NMS in any of the following situations		
	Situation	Paragraph reference
1	Providing information which is not advice on a legal problem to any person contacting your organisation	5.19(a)
2	Providing a new supplier with a former client’s file or a copy, or information about why you closed that client’s case	5.19(b)
3	All work carried out on the day of the grant of Licensed Work funding may be claimed under the resulting certificate. This does not prevent a NMS where Legal Help is required on matters not covered by the certificate	5.19(c) and 5.19(d)
If you’ve already provided Controlled Work you should <i>not</i> open a NMS in any of the situations below		
4	Controlled Work in relation to an interim remedy in a matter on which Controlled Work has already been provided	5.20(a)
5	Controlled Work in relation to enforcement, a review, or an appeal (including an application for a Licensed Work Certificate) in a matter on which Controlled Work has already been provided (but see 3.10 below for an important exception to this)	5.20(b)

6	If a client seeks advice as to whether s/he should change supplier from a supplier already providing Controlled Work, the provisions on “Previous Controlled Work from another Supplier” apply (see Part 2 of the Guide)	5.20(c)
7	Providing Controlled Legal Representation in a matter for which you have been providing Legal Help	5.20(d)
8	Providing Help at Court in a matter for which you have been providing Legal Help	5.20(e)
9	If you instruct an agent in respect of a matter, any work they perform forms part of the matter you already have open	5.20(f)

3.10 Despite situation 5 in the table above, Legal Help *may* be provided under a additional NMS, as per paragraph 5.20, where:

- *“The client faces enforcement proceedings because s/he is alleged to have breached the terms of a suspended or postponed order eg where a client now faces eviction action following being assisted previously to come to an arrangement for a suspended possession order in the County Court; or*
- *Is alleged to have breached the terms on which proceedings were adjourned.”*

3.11 Where this is the case, you can open a NMS and close and report the original NMS if you have not already done so.

Third: if you are thinking about opening an additional NMS for the same client, check paragraph 5.14

3.12 Paragraph 5.14 states:

“The fact that circumstances have changed or developments have occurred as the case has progressed will not mean that a separate Matter Start is required if the Controlled Work continues to be provided on the same overall legal issue.”

3.13 Example

A debt specialist has opened a NMS and is assisting Ms Green with her debts. Following the initial interview, the specialist is now in the process of agreeing revised repayment terms with Ms Green’s creditors. Ms Green contacts the specialist and says that she has now decided that she would like to go bankrupt as she has had a further drop in income and believes she will not be able to address her liabilities in the foreseeable future.

The debt specialist agrees to assist her further in relation to the bankruptcy. On considering whether s/he can open a NMS the debt specialist checks paragraph 5.14 and decides that s/he should not open a NMS to deal with the bankruptcy as the work is still being provided “on the same overall legal issue”. The change in how the case is being approached and the tactics to be employed do not in themselves allow a NMS to be opened.

3.14 If, however, the original NMS had been *closed* and the client returned at a later point for advice in relation to “the same overall legal issue”, then the provisions relating to returning clients would apply (see section 6, “Clients who return after their previous matter was closed”).

4 Multiple matters for the same client

- 4.1 Please see Appendix 1, “The Flowchart” (originally published as CLS Support Email Bulletin no. 7 (February 2008)), which provides a one-page, “quick check” summary of how to work through the requirements that apply when considering whether to open an additional NMS for the same client.

When might I open an additional NMS for the same client?

- 4.2 You might open an additional or further NMS for a client either:
- **at the outset:** the first attendance with that client where you identify that two or more NMS should be opened rather than just the one; or
 - **whilst an existing matter is already in progress:** during the course of dealing with one matter you identify further legal issues that you feel merit the opening of further NMS; or
 - **after the client’s case has been closed** but they return for further advice in relation to that case or a new legal problem: see section 6, “Clients who return after their previous matter was closed”.

How do I open an additional NMS for the same client?

A new matter means a new means assessment

- 4.3 This would mean that the new matter would itself be subject to all the application procedures detailed in Part 2 of the Guide. This includes the need for a full assessment of means and completion of a new application form, ie the Legal Help and Help at Court form (CW1), including the client’s signature.

Can I photocopy completed Legal Help forms for the other matter starts?

- 4.4 Where you complete a full means assessment application then you may photocopy this form to the number of matters you are opening at this first meeting with the client.
- 4.5 The client must then *sign each one of them*, ie it is *not* acceptable to photocopy the client’s signature as well, only the assessment calculation itself.

What about evidence of means for additional matters?

- 4.6 Where you open more than one matter start *at the same attendance*, which would mean that the computation period for each of them is the same, then you may use the same evidence of income for each matter start, eg it would be acceptable to photocopy it and keep it on each file where you have separate physical files.
- 4.7 However, where you open an additional matter at a later stage you must consider whether you need new evidence of income relating to the new computation period as the evidence you hold for the previous matter may not be adequate for this one.

Do I need to open a separate file for the new matter?

- 4.8 It depends on what you mean by a “separate file”. You would need to give the new matter its own NMS reference so that it can be tracked and input it onto your computerised system as an individual matter so that all time claims and costs in relation to it would be unique and applicable to this matter only. It would also need to have its own running record of costs and be reported

separately on closure with its own end point codes and net profit costs figure, for example.

- 4.9 In addition, you would still have to write an outset letter to the client detailing all the information contained within the Specialist Quality Mark (SQM) requirement at F1.2.
- 4.10 However, if you decide, eg, to open two NMS at the first attendance you might incorporate the information on both matters into just the one outset letter, perhaps using headings in bold to identify the different legal issues you are advising on. If you keep a separate physical file for each of the matters, keep a copy of the letter on each file and apportion the time spent on preparation of the letter across both matters.
- 4.11 You could also choose to incorporate advice and information in respect of different matters at later stages in the cases.
- 4.12 It is a balance between applying common sense to complying with SQM client care principles and meeting the requirements of the Contract. The key things to ensure are that:
- you are complying with the relevant SQM requirements on advising your client in writing at the outset of a case in respect of each matter (SQM F1.2); and
 - there is a timed and dated attendance note in relation to any activity carried out in respect of either matter; and
 - work in relation to any additional matter is able to be identified as such and is unique in terms of its own running record of costs, end-point and outcome code; and
 - you believe it makes the most sense both practically and in terms of ease of understanding for the client for you to do it the way that you choose.
- 4.13 For further guidance, eg how to claim/charge for a letter or an attendance where you are advising one client on more than one matter, please see CLS Support Email Bulletin no. 3 (December 2007), "Multiple Matters Multiple Letters".

What does the Specification say about multiple matters?

- 4.14 Paragraphs 5.6 to 5.22 of the Specification General Provisions relate to multiple matters and the boundaries that exist between them – they are applicable to *all* subject categories of work but subject to any relevant Category-Specific Provisions.

Each legal problem (each matter) must be separate and distinct

- 4.15 Paragraph 5.8 says that you must not open an additional NMS for the same client unless each of the legal problems is *separate and distinct*. It states that legal problems will "generally" be separate and distinct where:

"(a) they necessarily fall under different SQM categories; or

(b) both

- (i) If legal proceedings were started, or other appropriate remedies pursued, for each problem it would be appropriate for such proceedings to be both issued and heard, or for other remedies to be dealt with, separately; and*

(ii) *Each problem requires substantial legal work which does not address the other problem(s).*"

- 4.16 From this it is clear that there are two possible routes to opening a NMS under this paragraph, through either 5.8(a) or 5.8(b).

Route 1 (5.8(a)): the “different SQM category” route

- 4.17 Where each of the legal problems *necessarily* falls under different SQM categories, then you may view them as separate and distinct and open them as separate matters assuming the client was eligible for assistance and that each matter met the Sufficient Benefit Test (SBT) and any other relevant Contract requirements, eg the application procedures considered in Part 2 of the Guide.

- 4.18 The Category-Specific Provisions should then be applied according to the subject category they were opened in.

Sometimes it is very clear they fall under different SQM categories

- 4.19 If you were assisting a client with a Housing Benefit appeal in the welfare benefits category who then asked you to provide assistance about being dismissed from work, the distinction would be very clear: providing specialist advice in relation to an employment matter is clearly not something that would be expected to fall within the welfare benefits category of law.

Check the SQM category definitions in the LSC Manual

- 4.20 Where it isn't as clear as this you should check the *LSC Manual: Volume 2E – Specification: Appendix C SQM Category Definitions*, which provides information on the boundaries of each subject category with a description of types of work expected to fall into each category.

- 4.21 This is because certain legal issues may be dealt with under more than one subject category, so it may not therefore be legitimate to separate out the proposed new matter on the basis of it being in a different subject category.

4.22 An example of subject category overlap (debt and housing)

Mr Red goes to see a *debt* specialist about his debts, including mortgage arrears. In respect of the mortgage arrears, Mr Red wants assistance negotiating a suitable repayment with his lender in order to avoid repossession action. The debt specialist wants to maximise his/her organisation's NMS so is wondering whether s/he could refer the mortgage arrears part of the client's case to the housing specialist.

On checking the *debt* category definitions at 2E-045 in the *LSC Manual* however, the debt specialist notes that: "Legal Help may be provided in relation to, and all proceedings for the payment of monies due or the enforcement of orders in such proceedings, *including those arising out of the occupation of premises...*" [our emphasis].

Given the latter part of this sentence the Debt specialist knows that s/he is unable to refer the mortgage arrears aspect of the client's case to the housing specialist, as helping negotiate a suitable repayment schedule with the mortgage lender does not "necessarily fall under a different SQM category", ie s/he would be expected to deal with this as a debt issue.

- 4.23 This does not necessarily mean that a separate NMS cannot be opened; it is just that the first route or option within paragraph 5.8 is unavailable and you would now have to consider whether the second route might apply; see 4.29 below.

Subject category boundaries

4.24 Even whilst there may be some overlap between subject categories, the nature of the case and work anticipated may mean it necessarily falls under only one. For example, whilst in the example above it is clear that assistance in relation to negotiating affordable repayment of mortgage arrears falls into both the debt and housing categories, if proceedings had been issued *and* they involved a contested counterclaim (*or* the client had a defence to proceedings) this would be outside the remit of the debt category and the matter should be referred to a housing specialist to be opened as a housing matter.

4.25 An example of subject category boundaries (debt and housing)

Ms Blue goes to see a *debt* specialist about her debts, including mortgage arrears. In respect of the mortgage arrears, Ms Blue wants assistance defending the mortgage lender's claim, as she says she never signed any such mortgage agreement and believes her ex-partner signed it without her knowledge. The debt specialist wants to maximise his/her organisation's NMS so is wondering whether s/he could refer the mortgage arrears part of the client's case to the housing specialist.

On checking the *debt* category definitions at 3E-021 in the *LSC Manual*, the debt specialist notes that they exclude: "...any possession proceedings involving a contested counterclaim and any case where possession is sought on grounds additional to those relating to non-payment of monies due or where the occupant has a defence to possession."

Given that the client wants to dispute/defend the mortgage lender's claim, and it is clear to the debt specialist that this type of assistance is excluded from the debt category, s/he refers the client to the housing specialist for further assistance whilst opening a NMS to deal with the remaining debts.

Which specialist saw the client first may have an impact

4.26 In both of the examples above the clients saw a debt specialist first. As the examples involved a client presenting with debts, then irrespective of the nature of those debts this meant that the debt specialist was obliged to make decisions on whether the matters necessarily fell into separate subject categories according to the *debt* category definitions in the *LSC Manual* (*LSC Manual 3E-021*).

4.27 However, if a housing specialist had been the one to see the clients first then the situations could have been quite different. The housing specialist, presented with a housing problem (rent or mortgage arrears), would apply the housing category definitions, not those for debt. See example below.

4.28 An example of subject category boundaries (housing and debt)

Mr Red goes to see a *housing* specialist about his mortgage arrears and other debts. In respect of the mortgage arrears, Mr Red wants assistance negotiating a suitable repayment with his lender in order to avoid repossession action. The housing specialist wants to maximise his/her organisation's NMS so is wondering whether s/he could refer the other debts to the debt specialist.

On checking the *housing* category definition at 3E-016 in the *LSC Manual*, the housing specialist notes that s/he is able to deal with the mortgage problem as the housing category includes: "Legal Help on matters and all proceedings which concern the possession, status, terms of occupation, repair, improvement, eviction from or quiet enjoyment of, or payment of rent

or other charges for premises...”. However, advice in relation to the other debts is not included within the housing category definition.

From an initial discussion, the housing specialist decides that there is merit in opening a housing matter for the mortgage problems. S/he also decides that given the nature of Mr Red’s debts, he would benefit from specialist debt advice and so refers him to the debt specialist, who in turn makes a decision that dealing with the other debts merits its own NMS.

Route 2 (5.8(b)): the “substantial legal work” route

- 4.29 There are two tests that need to be satisfied under this route (paragraph 5.8(b) is reproduced in full at 4.15 above).

Is it appropriate for the proceedings or remedies to be dealt with separately?

- 4.30 Here you should make as objective a decision as possible, based on your experience of the type of legal problems being presented and how they are most likely to be dealt with.
- 4.31 In particular, you need to ask: would any court or tribunal or any third party involved deal with the issues separately or otherwise see them as different, eg are they in relation to different benefits or different proceedings where each will have its own judgment/decision?

Does each matter require *substantial legal work*?

- 4.32 You also need to be satisfied that each of the problems will require substantial legal work that will not address the other problem(s).
- 4.33 Paragraph 5.9 states that “substantial legal work” (for the purpose of paragraph 5.8) *must* consist of *at least*:
- (a) 30 minutes’ preparation or advice; *or*
 - (b) separate communication with third parties on legal issues.
- 4.34 The 30 minutes’ minimum preparation or advice need not happen there and then in the interview with the client. The time spent can be cumulative.
- 4.35 For example, you might spend ten minutes advising on a particular legal problem presented, ten minutes drafting advice in relation to it within a letter confirming advice, one unit (six minutes) discussing it briefly in a subsequent telephone conversation and finally, one or two units detailing the outcome of this matter in a concluding letter.
- 4.36 Please note that paragraph 5.9 states that *either* (a) or (b) need to be met. It does not say that both need to be met although, if they were, you might be more confident that your decision would stand up to scrutiny.
- 4.37 Separate communication with third parties on legal issues does not necessarily mean that the communication should be with different third parties. Instead, it could be that the communication was with the same third party but in respect of different legal issues.
- 4.38 This will be common when assisting a client where the third party is a local authority, which typically has a number of separately enforceable agreements with any one individual, administered by different departments, any one of which could necessitate advice and their own separate NMS, eg rent, Council Tax, Housing Benefit, Council Tax Benefit.

Do all matters need to be at least 30 minutes long?

- 4.39 No, only ones where you are relying on them taking at least 30 minutes in order to evidence that they have involved “substantial legal work”. Where you rely on part (b) of paragraph 5.9 there is no lower limit on the amount of work you would need to do.
- 4.40 Whilst this might allow you to open and close a matter in, eg, fifteen minutes, it would be quite unusual that this would occur in practice. The fact that you would have to take instructions from the client in relation to this particular problem, give advice on it, complete an application for Controlled Work in respect of it and confirm your advice in writing would mean that it would be unusual if a matter did take less than 30 minutes.

Does the work on one matter address the other(s)?

- 4.41 You should also make a decision as to whether the work on one matter will “address” the substance of the legal problem on any other matter (paragraph 5.8(b)(ii)).
- 4.42 If it is clear that work on one matter will address the other then a separate matter should not be opened as both of the matters are inextricably linked – working to conclude one will have the effect of concluding the other.
- 4.43 Example

Mr Violet comes to see you asking for assistance regarding his rent arrears, which have accumulated since he stopped receiving Housing Benefit two months ago. You establish that the rent arrears are solely due to non-payment of Housing Benefit for this period and that he stopped getting the benefit when he failed to complete a review form.

You have two legal problems: on the one hand the rent arrears and potential legal action and on the other, the Housing Benefit, its possible re-award and backdating, and potential appeal against the decision if necessary. You are a housing specialist so know that both of the two legal problems may at this stage be dealt with in the housing category. This means that you cannot rely on paragraph 5.8(a) as they do not “necessarily fall into separate SQM categories”. This means that you need to consider whether you can separate them on the “substantial legal work” route.

Both of the issues – speaking and negotiating with the local authority’s rent department/solicitors and the authority’s benefit department – constitute “substantial legal work” as they are likely to satisfy both the first part of paragraph 5.9 (at least 30 minutes’ preparation or advice) and the second part (separate communication with other parties on legal issues). However, you know that your tactic will be to make the rent department aware that your client is entitled to full Housing Benefit and that he will now make this claim, that you are requesting (and will appeal if necessary) the backdated monies owed, and that this will pay off the rent arrears.

Therefore, since dealing with the Housing Benefit aspect of the client’s case will resolve the rent arrears aspect, you decide that you are unable to separate out the two problems into two separate matters, and therefore they must both be dealt with as one NMS.

Can the LSC use the benefit of hindsight?

- 4.44 Where an adviser separates out two or more legal problems into individual NMS but then in dealing with one of them unexpectedly resolves another, this does not mean s/he was necessarily wrong to open separate matters at the

point s/he originally made the decision. The benefit of hindsight should not be used for determining compliance with the rule, although an auditor or costs assessor would look closely at the information that was available at the time of the original decision in order to see whether it was reasonable or not.

What does the word “address” really mean in this context?

- 4.45 Firstly, you must ask yourself whether dealing with one problem will have an effect on the other.
- 4.46 Secondly, you need to consider the *extent* to which the work you propose on one matter might address another. In the example above at 4.43 it was clear to the adviser that the rent arrears was equivalent to the amount of unpaid Housing Benefit, and so it was equally clear that resolving the Housing Benefit issue would address completely the rent arrears problem. This may not always be the case however.
- 4.47 For example, if the unpaid Housing Benefit in the example was equivalent to only 50 percent of the rent arrears and the client would not be entitled to full Housing Benefit in future, the position is not so clear. Yes, resolving the Housing Benefit will help the client’s case in respect of the rent arrears in any court hearing, but it certainly would not resolve and therefore address it by itself. It would not make the rent arrears problem go away.
- 4.48 It will always be in your interests to record your reasons for separating out any additional NMS on file so any auditor or assessor will be able to more easily identify the strands of your reasoning. A brief note or sentence on why you thought it appropriate will help avoid any misunderstandings.

5 Ending Controlled Work and closing the case

- 5.1 Your organisation’s account with the LSC is only credited with the fee payable in respect of a NMS when it is *closed* and properly *reported* on the Consolidated Matter Report Form (CMRF). It is vital therefore that matters are not left open when they are for all intents and purposes complete, and that, if a case has been closed, it is promptly reported to the LSC.
- 5.2 Paragraph 5.33 sets out six circumstances in which it would be legitimate to close a matter and make a claim for payment by reporting it. Paragraph 2.41 adds to this by describing closing cases where there is “good cause”.

1 The client decides or indicates that they do not want to proceed

- 5.3 Paragraph 5.33(a) states that a matter may be closed and reported where “the Client decides not to proceed, or indicates that they wish to take the matter forward themselves.”
- 5.4 Whether a client tells you orally or in writing that they do not want to proceed with their case, you should close your matter and report it. If the client tells you orally then a note of this instruction should be made on file and it should also be clear from your outcome letter to the client that this was the reason the case has been closed.
- 5.5 A client may also *indicate* that they do not want to proceed by taking some action, eg instructing another supplier in relation to the same legal problem. Equally, they may do it by omitting to take an action, eg by not getting back in touch with you despite reasonable requests for them to do so.

5.6 **We asked the LSC:**

If a client does not respond to a letter asking them to get in touch within X days or their case will be closed, can we take their lack of response to mean that the matter can be closed as they have indicated that they wish to take the matter forward themselves (so satisfying paragraph 5.33(a))?

The LSC responded:

“Yes, this would appear to be a reasonable approach”.

2 Where a client fails to give instructions for three months

5.7 Paragraph 5.33(b) states that a matter may be reported where “the Client fails to give instructions for three months (unless the matter is on hold, for example, because you are waiting for a third party to act or you have agreed this with the Client).”

5.8 This does *not* mean that if a client fails to get back in touch that you have to wait three months before closing their case.

5.9 **We asked the LSC:**

Paragraph 5.33(b) says that it is acceptable to close a matter where the client has failed to give instructions for three months. It would be highly unusual for a matter to be left to drift for three months and much more likely that an adviser would close a matter where a client was not responding to requests for instructions earlier. Can we clarify then, that the purpose of this (three month) option in 5.33 is to pick up those matters that might have “slipped off the radar” but be picked up by complying with SQM requirement E1.2 (e): “Monitoring files for inactivity at predetermined intervals”? This SQM requirement says that any file monitoring interval of greater than three months must be justified to the LSC – the two seem to fit together nicely and this perhaps was the intention, ie if you do find a file that has been inactive for three months when complying with the SQM requirement, then you are able to close it as per 5.33(d)?

The LSC responded:

“Yes, this is to comply with the SQM requirements regarding inactivity. You would be surprised how often cases are left to drift for longer than three months. Our audit experience tells us that it is far from being ‘highly unusual’.”

3 The matter proceeds to Legal Representation or other funding

5.10 Paragraph 5.33(c) states that a matter may be closed and reported where “funding is granted under Rule C of the Funding Code procedures (unless further Legal Help is required on matters not covered by the Certificate) or the matter begins to be funded outside this Contract.”

5.11 This means that if you decide to continue with a matter under other funding then you should close and report the Legal Help matter at the point you decide to do this. This may of course impact on the end-point codes you will use to report that matter.

5.12 Where you close a matter because it has proceeded to Legal Representation or to other funding you should still notify your client in writing that this has happened, that they are no longer in receipt of Legal Help, how their case will now be funded and of any other arrangements that need to be made.

Solicitor suppliers subsequently deciding to act in the same matter privately

- 5.13 If you are a private-practice supplier then you cannot act for the same client in the same matter under the Contract and on a privately paying basis at the same time, subject to the rules about the statutory charge (see paragraph 7.4).
- 5.14 Where you have been performing Controlled Work on behalf of a client you should not accept instructions to then act privately in the same matter unless you have *first* advised the client in writing of:
- the consequences of ceasing to be in receipt of services; and
 - the further services which may be available under the CLS, whether from them or another supplier, including the possibility of an application for Legal Help and an extension of the Legal Help financial limits if you are entitled to receive payment by hourly rates (paragraph 7.2).
- 5.15 Where you do accept instructions privately then a copy of the letter dealing with the matters under paragraph 7.2 must be kept on file (paragraph 7.3).
- 5.16 You should not ask clients to instruct you on this basis because your costs on the case have reached the level of the fixed or graduated fee payable for the case on which you are acting (paragraph 7.2).
- 5.17 However, you can do so if the client wishes to instruct you to do work that is out of scope, eg tribunal representation. Some private practice solicitors, for example, provide representation at Employment Tribunals on a “no win, no fee” basis.

4 You consider the matter is completed

- 5.18 Paragraph 5.33(d) states that a matter may be closed and reported where “you consider that the matter (having regard to paragraphs 5.6 to 5.22 and any Category-Specific rules on commencing Matter Starts) is completed.”
- 5.19 **We asked the LSC:**
- If a client does not respond to a letter asking them to get in touch within X days or their case will be closed, can we take their lack of response to mean it is acceptable for the adviser to consider the matter completed as the client never got back in touch and so no further work is anticipated or planned (so satisfying 5.33(d))?

The LSC responded:

“Yes, this would appear to be a reasonable approach.”

- 5.20 Note the overlap with 1 above at 5.3 (“The client decides or indicates that they do not want to proceed”). The same scenario may allow you to close a file under paragraph 5.33(a) *and* (d).

5 The Funding Code is no longer satisfied

- 5.21 Paragraph 5.33(e) states that a matter may be closed and reported where “you have informed the Client that the provision of Controlled Work is no longer justified having regard to the applicable Funding Code Criteria.”
- 5.22 This would mean, for example, that you should close your case when:
- you determine that the SBT is no longer satisfied, or
 - that the further work necessary would be out of scope, or

- on reassessment of means the client is no longer eligible for assistance, taking account of guidance on the changes to the means assessment regulations that came into force on 7th April 2008.

6 Conflict of interest or other reason of professional conduct

- 5.23 If you identify that you have a conflict of interest within a client's case then you must act to remove yourself from that position of conflict as soon as possible. If this means closing that client's case to avoid being in this position then this is what you must do, directing the client to another source of assistance. You would of course have to comply with all the usual requirements on closing a case, eg putting your reasons for closing the case into a letter to the client.
- 5.24 "Other reason of professional conduct" would include, eg, a client wanting you to misrepresent information or to lie for them in order to progress a particular course of action. Note that you also have to comply with any applicable professional rules that may apply to you, eg those of the Solicitors Regulation Authority.

7 Where there is "good cause" to close and report it

- 5.25 As well as the six circumstances in which a matter can be closed and reported at paragraph 5.33, paragraph 2.41 includes that you may close a matter when there is "good cause" to do so.
- 5.26 Paragraph 2.41 is largely concerned with refusing work at the outset, although paragraph 2.41(b)(ii) does include situations where you have already provided Controlled Work and so may still have a matter open. It states that "(you may for another good cause) ...in the case of Controlled Work having accepted an application, decline to carry out *or to continue to carry out* work."
- 5.27 Paragraph 2.42 states:
Good cause for refusing Contract Work under paragraph 2.41 *includes*:
- (a) where you lack appropriate Matter Starts under your Schedule to take on the case or matter;
 - (b) where you do not have the capacity to take on the case or matter;
 - (c) where you do not have the necessary skill or expertise to take on the case or matter; or for
 - (d) other professional conduct reasons such as actual or potential conflict of interest.
- 5.28 The wording of paragraph 2.42 indicates that you might have other "good cause" to discontinue Contract work for a client other than those in the list. For example, you might choose not to advise, and to exclude in future, a client who acted violently toward a staff member. Whatever reason you rely on, it should be clear from your file why the matter was closed and reported.

6 Clients who return after their previous matter was closed

- 6.1 Paragraph 5.15 **applies to**:
- a client who returns for advice on the same legal problem,
 - which they have already received publicly funded assistance on,

- from either you or another specialist providing Controlled Work in your organisation, and
- they return after the previous NMS has been concluded and reported to the LSC.

6.2 Paragraph 5.15 **does not apply:**

- if the previous work was not publicly funded, eg where they were assisted by a generalist adviser or as part of a local authority funded project; or
- if the legal problem they present with is different to the one they previously received help with; or
- if no claim for Controlled Work was made in respect of the original request for assistance or any advice or assistance provided by you;
- where the client returns because s/he is facing enforcement action because s/he is alleged to have breached the terms of a suspended or postponed order or is alleged to have breached the terms on which proceedings were adjourned and, where your previous matter was in relation to obtaining that suspension postponement or adjournment (see paragraph 5.20).

6.3 In order to open a NMS for a returning client, in relation to the same legal problem on which your organisation has already provided Legal Help, at least one of three exceptions must apply.

The exceptions

(a) A period of at least six months has elapsed since you submitted your claim for that Controlled Work matter

6.4 If at least six months have elapsed since you submitted your claim for that matter, ie reported it on a CMRF, you may open a NMS for that client in relation to the same legal problem.

6.5 However, given that the client has already received public funding for this matter your application of the SBT is likely to be stricter. Questions you might ask yourself when deciding whether or to what extent you assist the client again might include: why has the client had to come back, what went wrong, was the advice/assistance effective or not, has the client kept to any agreements made and if not why not?

6.6 It should be clear from your file, whether through a file note or letter to the client or both, why you have taken this client on again and why you are providing assistance on a matter you have already helped them with previously.

6.7 You are allowed to tell a client to return at a later date where this might be advantageous to them, eg where they turn up five months and three and a half weeks following the closure and reporting of their last matter, you might tell them to return in one week's time.

(b) A period of at least three months has elapsed since you submitted your claim and there has been a material development or change in the client's instructions

6.8 Here you would need to be satisfied *both* that at least three months had elapsed since you had reported the previous matter *and* that there had been some material development or change in the client's instructions.

6.9 Paragraph 5.16 highlights what would *not* constitute a material development or change: where the client is getting back in touch after failing to give

instructions previously (which led to you closing the previous matter) or “any decision or other response from another party to any correspondence, application, appeal or review or other request that was made in the course of the original Controlled Work matter.”

- 6.10 Examples of likely material developments or changes in the client’s instructions that would be satisfactory are:
- a client returns wanting to go bankrupt where previously you had assisted them to negotiate affordable repayments to creditors (in the debt category); or
 - a client returns wanting to appeal a decision not to award a Council Tax single-person discount for a previous period as the authority has now decided s/he was also not entitled to it for a further extended period (in the welfare benefits category)
- 6.11 Please note: sections 6.5 (sufficient benefit) and 6.6 (evidence of your decision) above similarly apply. In addition, section 6.7 above similarly applies, which means that you may choose to postpone an application for help from a client where it is in the client’s interests to do so, eg where the three-month exception would apply or where the six-month exception would apply rather than the three-month one.
- (c) The assistance provided on the problem formed only a minor part of the previous matter, such that the problem did not qualify as a separate and distinct legal problem under paragraph 5.8.**
- 6.12 Here it does not matter how little time has elapsed. The client could return a couple of days after his or her previous matter had been reported and within which you had given some advice on this particular legal problem.
- 6.13 The point is that when you advised on this issue, as part of the initial matter, it was *peripheral to the main legal problem being dealt with*, ie it did not merit a NMS in its own right under paragraph 5.8.
- 6.14 Example
- Mrs Blue comes to you for assistance with her appeal against a decision on Disability Living Allowance. Whilst advising her on this you also identify she isn’t getting Council Tax Benefit when she should be entitled to it. You open a NMS to deal with the Disability Living Allowance appeal in this first interview and undertake to help her further with it. You also tell her to complete the application for Council Tax Benefit and to make her claim, telling her to let you know if any problems come up.¹ You claim the time spent on this discussion on Council Tax Benefit against the NMS that you have opened for the Disability Living Allowance appeal.
- Two weeks later Mrs Blue rings you and tells you that she has been refused Council Tax Benefit as the local authority thinks her ex-partner still lives with her. They also seemed to suggest that there were other reasons for the refusal when Mrs Blue rang trying to straighten things out. You decide to open an additional and separate NMS for the Council Tax Benefit issue so that you can investigate and assist Mrs Blue further.
- Given that the Council Tax Benefit issue did not merit its own NMS originally, you are able to do this irrespective of the time that has passed (as per 5.15(c)).

¹ As per paragraph 16.2: “You must not open a Matter Start where the matter could have been easily dealt with by the client, such as by an enquiry to the relevant benefits authority.”

7 Category specifics: debt

Applying for a Representation Order in certain debt proceedings

7.1 This first part of the debt Category-Specific Provisions (paragraph 13.1) states that you are able to provide representation under Rule 14 of the Access to Justice Act 1999 in civil proceedings in the Magistrates Court only if:

- *“the representation arises out of a breach of a financial order of that court; and*
- *there is a risk of imprisonment; and*
- *it is in the interests of justice to provide representation; and*
- *you have an Authorised Litigator who is able to go on the Court record.”*

7.2 As you must have an Authorised Litigator to be able to conduct such proceedings and to apply for a Representation Order this option is not therefore available for lay advocates.

7.3 Representation under this paragraph is part of the Criminal Defence Service (even though provided for under the Civil Contract) so may also be performed by those with a General Criminal Contract. Please see paragraphs 13.1(b) and (c) for guidance on how to apply for a Representation Order.

7.4 Please note, any Representation under paragraph 13.1 will constitute a separate NMS and should be reported using Matter Type “DMCA” (paragraph 13.1(d)).

Matter Start boundaries

7.5 The second part of the debt Category-Specific Provisions is concerned with whether you are able to separate out different debts into separate NMS.

7.6 Generally, advice and assistance in relation to a client’s indebtedness is expected to fall within one NMS. However, paragraph 13.2 identifies three circumstances where separate NMS may be justified:

- “(a) *more than one debt is disputed on separate, substantive grounds;*
- “(b) *proceedings have been issued in respect of more than one debt (for the avoidance of doubt, an application for a liability notice in respect of Council Tax arrears will constitute the issue of proceedings); or*
- “(c) *the client faces separate enforcement of more than one debt, whether or not arising from a judgment in civil courts”.*

More than one debt is disputed on separate substantive grounds

7.7 Firstly, be clear that the paragraph says “*more than one*”. This means that at least two debts need to be disputed in order to deal with them as separate NMS.

7.8 Even where two debts are being disputed, they must be disputed on separate substantive grounds.

An example of when it would not apply

Mr Purple is disputing that he owes Council Tax and rent for a local authority tenancy, as he did not take up the tenancy until two months after the local authority believes he did. He is disputing both debts on the basis that he was not resident at the time and that the signed tenancy did not include the period

in question. However, Mr Purple is using the **same** argument to dispute both of the debts. This means that only one NMS should be opened.

- 7.9 Please note that the basis of the dispute must also be “substantive”, that is, the dispute is tangible and something the legal adviser believes objectively is a reasonable legal argument to put forward.

An example of when it would apply

Ms Orange presents three debts at the first interview: two credit debts and a Council Tax debt from a previous property. She wishes to dispute two of them: firstly, the Council Tax debt, because she was not resident at the property billed for the period in question, and was in fact paying Council Tax in respect of a different property to a different authority; and secondly, one of the credit debts, because she says she never signed any agreement and the debt is now statute barred in any event.

Both of the debts are being disputed. The grounds on which they are being disputed are separate. Both arguments are substantive and have a basis in law. Two NMS may be opened.

- 7.10 This would mean the two disputed debts could be dealt with under separate NMS. The additional credit debt would not form a NMS in its own right – it should be dealt with as part of whichever of the two NMS you had opened that you considered to be appropriate.

Proceedings have commenced in respect of more than one debt

- 7.11 Again, be clear that the requirement is that it must be “more than one”. If only one debt is subject to proceedings it remains one NMS.

- 7.12 Proceedings have only commenced where a third party has instituted actual proceedings, eg by issuing a claim in the County Court. The mere threat of court action or even defaulting an agreement under Consumer Credit Legislation does not constitute the commencement of proceedings.

- 7.13 See Appendix 2 for a case study illustrating how paragraph 13.2(b) might be applied.

An example of when it would not apply

Mrs Olive has eight credit debts and wants help negotiating affordable repayments with her creditors. One of the creditors has commenced proceedings in the County Court. You open one NMS as only one of the debts has commenced proceedings – this is not “more than one”.

An example of when it would apply

It is some weeks later and you are in the midst of negotiating the repayments for Mrs Olive. A further creditor commences proceedings, as they want to try secure higher repayments than those you have offered. You now have two creditors who have commenced proceedings, which is “more than one”. You may now open an additional NMS for the most recent proceedings, leaving the initial NMS dealing with the other creditors, including the one that had originally commenced proceedings.

The client faces separate enforcement of more than one debt, whether or not arising from a judgment in the civil courts

- 7.14 Again, be clear that the requirement is that it must be “more than one”. This means that the client must face enforcement in respect of at least two debts.

An example of when it would not apply

You are assisting Mr Black with his debts. He has defaulted on a County Court judgment and the creditor has made an application for an attachment of earnings order. Another of his creditors has sent him a letter saying that if he does not pay forthwith then they will enforce the debt through the County Court.

You open one NMS only as Mr Black is facing enforcement of only one debt – the one applying for an attachment of earnings. The creditor threatening enforcement action hasn't actually obtained a judgment to enforce as yet – they haven't even commenced proceedings.

An example of when it would apply

Mr Blue has three debts: an overdraft, a credit card debt which is subject to a judgment requiring him to pay £5 per month, and a suspended possession order on his home. Mr Blue comes in to see you and tells you that he has stopped paying the credit card judgment debt and this creditor has now applied for an attachment of earnings order. He also tells you that he has not been paying his rent arrears either and his landlord has now obtained an eviction warrant with a date for eviction in seven days' time.

You decide that the client is facing enforcement of more than one debt: the eviction is clearly the enforcement of a debt, as is the application for enforcement through the County Court in respect of the credit card debt. You open two NMS, separating out the two debts being enforced, with the overdraft debt going with one of them, ie not forming its own individual NMS.

- 7.15 It is important to remember that paragraph 13.2(c) includes "...whether or not arising from a judgment in civil courts." This means that the enforcement of Council Tax and other debts, which are typically administered outside of the civil courts, are also included, eg unpaid fines and parking tickets.

Mixed circumstances

- 7.16 Where you have a client who faces enforcement of one debt and proceedings have been commenced in respect of another, this would satisfy 13.2(b) and still allow you to open two NMS. This is because although the client doesn't face enforcement of more than one debt (so doesn't satisfy 13.2(c)), proceedings have still commenced in respect of more than one debt, so satisfying 13.2(b).
- 7.17 Looking at Mr Blue's situation above, this would mean if the credit card company had not actually begun enforcing the defaulted judgment, then even though only one debt was actually being enforced (rent arrears), it would still constitute two NMS under 13.2(b) as proceedings had still commenced in respect of both of them.
- 7.18 You will occasionally be presented with situations that are not as clear-cut as this. For example, your client may have one debt s/he wishes to *dispute* on substantive grounds and another that is being *enforced* by bailiffs, ie one debt falls within 13.2(a) and another within 13.2(c).
- 7.19 In this situation it would only be appropriate to separate out the two problems if the debt that was being disputed was also subject to proceedings or the client faced it being enforced, ie it would only be two NMS if either 13.2(b) or 13.2(c) applied. It could not be two NMS under 13.2(a) as it is only one debt that is being disputed.

There must be sufficient benefit in what you propose

- 7.20 You should only separate out more than one debt into separate NMS when you believe that there is sufficient benefit in each matter to justify you doing so.
- 7.21 This means that you must actually be proposing to do some work on each of the NMS – ie you are going to help dispute *both* of the debts, or you are going to complete court papers for *both* of the claims, or you are going to help deal with *both* sets of enforcement individually.

The effect of tactics on sufficient benefit and separating debt matters

- 7.22 Even if the Category-Specific Provisions would allow you to separate out the debts into different matters, the strategy you intend to implement could affect whether you do this or not.
- 7.23 Example

Mrs Indigo has four debts and you assess the situation. Two have commenced proceedings. Mrs Indigo also faces enforcement of the two other debts: Council Tax by attachment of earnings order and a credit debt that is now with County Court bailiffs. You know that the debt Category-Specific Provisions would allow you to open four NMS, one for each of the debts, assuming you had work planned in respect of each of them.

However, Mrs Indigo decides in this initial interview that she would like to go bankrupt and wants advice and help on her petition. As the bankruptcy will deal with all of the four debts, there is no merit in you opening individual NMS in respect of them – one NMS is sufficient.

Guidance on other common debt category issues

Couples in debt

- 7.24 If a couple present with debts, then whether you can open more than one NMS for them depends on who is liable for the debts. Please see CLS Support Email Bulletin no. 15, “*Couples in Debt – Danny Double Debt and the Four Scenarios*”, where this issue is discussed in detail. A summary table is included below for your information.

Who is liable for the debts	How many NMS should be opened	Other considerations
Joint debts only and both parties liable	1 NMS	This is the maximum you would open at the outset assuming that the debt Category-Specific Provisions were not satisfied. If they were, eg more than one creditor had commenced proceedings, then additional NMS may be opened, whether at the outset or later.
Joint debts with one of the couple having some sole debts	1 NMS	
Joint debts with both of the couple having sole debts	2 NMS	
No joint debt but both have sole debts	2 NMS	

Another creditor issues proceedings within three months of the matter closing

- 7.25 When considering whether you are able to open a NMS in respect of a legal problem with which you have already helped a client, you should begin by looking at paragraph 5.15 (see section 6 above, “Clients who return after their previous matter was closed”), which identifies only three circumstances where you may do so.
- 7.26 Where you have closed a debt matter and the client returns within three months of it being reported, wanting further advice in relation to one or more of the debts originally dealt with, then you would not be able to open a further NMS under paragraph 5.15(a) or 5.15(b), since not enough time would have elapsed since you closed the file.
- 7.27 However, it may be possible to open a further NMS as per paragraph 5.15(c), which states that you may do so where:
- “the assistance provided on the problem formed only a minor part of the previous matter, such that the problem did not qualify as a separate and distinct legal problem under paragraph 5.8.”*
- 7.28 For example, if the work done in respect of one of the creditors in the original matter would not have merited its own NMS under paragraph 5.8 (Category-Specific Provisions aside), then should the client return wanting assistance with court proceedings in respect of this creditor after the first matter had been closed, it may be acceptable to commence a NMS as per 5.15(c) in order to deal with it.
- 7.29 In this situation it would not have mattered whether the original matter had included a creditor who had started proceedings. The issue is that dealing with the creditor that has now issued them did not merit its own NMS within the original matter as per paragraph 5.8.
- 7.30 **Example**
- A client comes to see you about a possession summons issued against his/her home. You assist the client in the hearing, where a suspended possession order is made. The client also has two credit debts, on which you make pro-rata offers that are subsequently accepted. You do not even consider opening additional NMS in respect of these credit debts, as they did not meet any of the conditions in paragraph 13.2. In any event, you would still not have opened them as separate NMS (even if you hadn’t have needed to comply with 13.2) as the work involved was minimal and wouldn’t have merited separating them out into NMS in their own right (they would not have met the SBT). You close the matter and report it.
- Two months later the client returns, saying that one of those two creditors has now issued proceedings in the County Court and s/he wants assistance with the court process and securing affordable repayment terms. You have already advised the client in respect of this debt so look at paragraph 5.15: it is only two months later so neither 5.15(a) or (b) can apply (six or three months respectively since the matter was reported). However, as this debt had not merited opening a NMS in its own right originally, you believe that 5.15(c) applies.
- You open a NMS to deal with the creditor that has now issued proceedings.
- 7.31 A note of caution: in the example here the adviser had rightly thought the previous matter concluded and so closed it. That is, s/he did not close it

prematurely, ie before a tangible conclusion had been reached in respect of *all* the debts. The LSC would be unlikely to accept the validity of further NMS being opened in this situation where it appeared it had only arisen because the work done on a previous matter was incomplete and it had been closed prematurely.

8 Category specifics: employment

8.1 The Category-Specific Provisions in respect of employment are considerably briefer than any other category of law.

8.2 The full extent of the provisions, at paragraph 14.1, are:

“Where one set of circumstances give rise to a number of statutory claims (for example, unfair dismissal, sex discrimination, deduction from wages) and contractual claims (for example, wrongful dismissal) these should all be treated as one Matter Start under Legal Help.”

8.3 This:

(a) makes separating matters under the provisions difficult, and

(b) raises the question of what “one set of circumstances” means.

8.4 This is, for example, an issue in discrimination cases when you may have an argument as to whether a number of incidents spread over time amount to a continuing course of discrimination or not. However, where incidents were treated separately they are likely to be out of time in terms of making a claim, so this may not help create extra NMS.

9 Category specifics: housing

9.1 The following table has been adapted from information kindly provided by Shelter during the drafting of the Guide.

Issue/scenario	Information	Specification paragraph(s)
Disrepair: expert reports and pre-action disrepair protocol	Must comply with the protocol (set out in Civil Procedure Rules (CPR)) when commissioning an expert report unless certain conditions apply	See 15.1 for conditions
Disrepair: Legal Representation to conduct pre-action disrepair protocol	You may apply for Legal Representation to conduct the pre-action protocol providing Funding Code Criteria (particularly 10.4) are satisfied	15.2
Representation Orders or Advocacy Assistance involving anti-social behaviour orders (ASBOs)	Special conditions apply if applying for one	See 15.3 for conditions including payment rates and reporting code

Issue/scenario	Open a separate matter?	Specification paragraph(s)
<p>Remedies under Environmental Protection Act (EPA) 1990</p>	<p>Investigation of Civil and Magistrates' Court action – one NMS. Only open an additional NMS where pursuing EPA action and assisting the client with a case allocated to the small claims track</p>	<p>See 15.4 for conditions</p>
<p>Changes and developments</p> <p>Occurring as the case progresses but on the same overall legal issue</p>	<p>No</p> <p>However, there is an exception to this: where the client has breached a previous order or terms on which it was made and faces enforcement – see “Breach of order” scenario below</p>	<p>5.14</p> <p>5.20</p>
<p>More than one client</p> <p>Acting for more than one client on same general legal problem</p> <p>Example: <i>students sharing a dwelling but with separate tenancy agreements may be allowable depending on meeting 5.18</i></p>	<p>Yes, but only:</p> <p>(a) if proceedings were issued each client would be party to those proceedings; (b) each client has a separate legal interest in the problem or issue; and (c) there is sufficient benefit for each client in receiving Legal Help, having regard to the help provided to each other client</p>	<p>5.18</p>
<p>Breach of order</p> <p>Client has breached a previous order or terms on which it was made and faces enforcement</p> <p>Example: <i>client had PPO/SPO adjourned on terms but has breached it. Client returns as landlord is now going back to court on the breach, probably seeking eviction warrant</i></p>	<p>Yes</p>	<p>5.20</p> <p>See the last subparagraph of 5.20, written as a proviso to 5.20(b)</p>

Homelessness	Open a separate matter?	Specification paragraph(s)
<p>Changes and developments</p> <p>Occurring as case progresses but same overall issue</p> <p><i>Example: assisting a client with a homelessness application that then goes to a review after a negative s.184 letter is received should be one matter</i></p>	No	See 15.6 on general approach to be taken on separate matters in homelessness applications
<p>Following a request for s.202 review, the local authority (LA) remits the decision for further investigation or consideration</p>	No	15.6(b)
<p>Following a request for s.202 review, the LA upholds the original decision, confirms a previous decision regarding referral to another LA or fails to notify decision within period specified by s.203(7)</p>	Conditional See below: 15.6(c) (i – v)	15.6(c)
<p>Where you are considering an appeal under s.204 following an adverse s.202 review</p>	<p>Not under Legal Help – the s.204 appeal may be done under certificate</p> <p>You may pursue or grant an immediate emergency grant of Legal Representation if: (a) prospect of success satisfies Funding Code Criteria (FCC) 7.4.5, or (b) you can justify obtaining counsel’s opinion under FCC 5.6.4</p>	15.6(c)(i)
<p>Decision remitted post s.204 appeal</p> <p>Following the issue of a s.204 appeal the decision is remitted for reconsideration by the LA by order or agreement</p>	Conditional Subject to 15.6(c)(v): where a s.204 appeal is in the interim compromised on the basis that the LA completes its review and notifies its review decision	15.6(c)(iii) and 15.6(c)(v)

<p><i>Example: you would be entitled to open a NMS if court ordered LA to reconsider whether client is in priority need based on evidence presented in court, which was not previously available to the LA. The only proviso to this would be if the LA has, in the interim, reconsidered and made a fresh decision</i></p>		
<p>s.204 decision varied and assistance needed on enforcement of LA duties</p> <p>Where on appeal under s.204 the decision of the LA is varied by order or agreement, and Legal Help is required in relation to enforcement of any duty arising from the new decision</p>	<p>Yes</p>	<p>15.6(c)(vi)</p>
<p>Review of accommodation offered to client by LA</p> <p>Assisting the client in requesting a review, under s.202(f), of accommodation offered by a LA (unsuitability of accommodation)</p>	<p style="text-align: center;">Yes</p> <p>However: subject to the SBT</p> <p>Note: NMS would not be justified if it were to provide general advice as to the risks of refusing an offer of accommodation or the client's rights in relation to requesting a review of such an offer</p> <p>However, NMS would be justified if, for instance, you were challenging the affordability/location etc of temporary accommodation</p>	<p>15.6(d)</p> <p>See also 15.10 on hourly rates to be claimed for the purposes of calculating the claim</p>
<p>LA fails to comply with its duties after matter closure</p> <p>Where a matter was reasonably closed and the LA subsequently fails to comply with its duties under a s.184 or s.202 decision</p>	<p style="text-align: center;">Conditional</p> <p>Should usually be dealt with under the existing NMS. However, if the case was "reasonably" closed as it appeared the LA were complying (or had stated how it would comply) then may</p>	<p>15.6(e)</p> <p>See also 5.33 on general provisions governing matter closure</p>

	open further NMS if significant legal work is justified as a result of LA's persistent failure to comply	
<p>Protection of client's property under s.211 and s.212</p> <p><i>Example: dispute over charges for storage, failure to store property, or client goes to pick up property from store and property is damaged</i></p>	<p>Yes, but only:</p> <p>(a) if general provisions on additional matters are satisfied, and (b) if SBT is met</p>	<p>15.7</p> <p>See also 5.6 to 5.22 on opening additional matters plus the Flowchart at Appendix 1 of the Guide</p>
<p>Client's occupation of accommodation provided under Part VII of the Housing Act 1986</p>	<p>Conditional</p> <p>Advice relating to the terms and conditions of such occupation (particularly rent arrears) should <i>not</i> be carried out under NMS relating to the client's homelessness application <i>unless</i> it concerns a question of suitability or the discharge of an interim duty of the LA</p>	<p>15.8(a)</p>
<p>Where the LA has decided it has discharged its duty under s.193(6) or s.195(4) and/or a subsequent fresh homelessness application is being made</p>	<p>Yes</p>	<p>15.8(b)</p>
<p>Applying for accommodation under Part VI at same time as homelessness application under Part VII</p>	<p>Yes, but only:</p> <p>(a) if "substantially different issues arise" so satisfying 5.6 to 5.22, <i>and</i> (b) there is sufficient benefit in carrying out work on two applications at the same time</p>	<p>15.9</p> <p>See also 5.6 to 5.22 on opening additional matters plus the Flowchart at Appendix 1 of the Guide</p>

10 Category specifics: welfare benefits

10.1 The welfare benefits Category-Specific Provisions are split into three parts:

- Scope of welfare benefits Legal Help
- Representation
- Separate Matters and category boundaries

Scope of welfare benefits Legal Help

Benefit checks (paragraph 16.1)

10.2 You should not be opening NMS simply to perform benefit checks.

10.3 Paragraph 16.1 states:

“A welfare benefits check may only be provided under Legal Help if you identify it as being necessary from the presenting problem and it is required in order to aid resolution of the problem that has been identified.”

10.4 For example, if a client presents asking for advice on the financial impact of a relative coming to live with them, or accepting a potential job offer, then a benefits check is likely to be appropriate. The problem that must be resolved involves assisting the client to make the best decision(s) in their particular circumstances.

10.5 Nothing within this paragraph 16.1 precludes welfare benefit checks being performed as part of income maximisation within a debt matter, providing it is secondary to the main legal problem that has been presented ie a client needing assistance with their debts, and is part of the strategy for doing this.

Easily dealt with by the client (paragraph 16.2)

10.6 Paragraph 16.2 states:

“You must not open a Matter Start where the matter could have been easily dealt with by the client, such as by an enquiry to the relevant benefits authority.”

10.7 There is no merit in opening a matter to make what is a straightforward enquiry on behalf of a client where there is no apparent legal problem or issue at stake. For example, you should not open a NMS if a client wanted to find out how much Housing Benefit they were getting; you should tell the client to contact their local authority and ask.

10.8 Just because you deal with numerous welfare benefit problems on behalf of clients does not mean that you should take an automatic and pre-emptive liaison role on behalf of each and every person who contacts you in respect of a benefit. Similarly, you should bear in mind that not every application for benefit is unsuccessful, even though your own client group may largely be made up of individuals whose applications have not succeeded.

10.9 If what a client really needs is support, as opposed to legal advice, then you should try to identify an appropriate source of such support, eg a generalist advice service which could help him or her contact third parties or a relevant support group. Again, you would not open a NMS to do this.

Completing forms (paragraph 16.3)

10.10 Paragraph 16.3 states:

“Legal Help should not [be] used to assist the Client in completing forms

unless an issue of law arises and it is important that the form is completed in the appropriate legal terms, for example certain sections of the application form for Disability Living Allowance.”

- 10.11 This applies whether you are faced with a form as part of an open matter or at the outset when it is the substance of the enquiry, eg a client coming to see you for help with a form.
- 10.12 It is vital that advisers properly record the work that they do in the course of an interview with a client and do not “under-sell” themselves by describing complex and involved interviews too simplistically and only recording one of the activities they undertook, eg an attendance note simply saying “I filled in the form”. This is because it would be highly unusual for an adviser simply to fill in a form without any *other* activities occurring, which were in themselves perfectly legitimate Legal Help work and appropriate use of NMS.

10.13 Example

You should *not* open a NMS to complete a basic form that in itself did not require completing in appropriate legal terms. However, whatever the type of form you completed, if it was necessary for you to provide advice to a client on entitlement, make a preliminary assessment of the likelihood of their success with an application, and briefly go through appeal rights, including timescales and deadlines, then this is legal advice for which you could normally open a NMS and make a claim. Just make sure it is clear from your file that this is what you actually did!

Attending interviews under caution (paragraph 16.4)

- 10.14 You are not allowed to attend an interview under caution in the welfare benefits category. Such work can only be carried out under a Criminal Contract (as opposed to Civil) so you should refer your client to a solicitor able to conduct this type of work wherever the need arises.

Representation (paragraph 16.5)

- 10.15 You are not allowed to open a NMS solely to represent a client at an appeal tribunal hearing, unless the tribunal is within the scope of Controlled Work (primarily mental health and immigration). Equally, you are not allowed to charge for the time spent at the same where it is done as part of a matter you opened in order to assist the client to apply or make written representations to that tribunal prior to attending.
- 10.16 Where you are not allowed to claim for time spent at an event, eg a tribunal hearing, then you are similarly not allowed to claim any time or disbursement costs in relation to travelling to or waiting outside that event.
- 10.17 In very exceptional circumstances, however, you might be able to charge for attending a tribunal where you attend as a McKenzie adviser. Please note, however, that the LSC states that “Matters where your attendance as a McKenzie adviser leads to your claiming as an Exceptional Case will be monitored.”

What is a McKenzie adviser?

- 10.18 The Unified Contract does not describe a McKenzie adviser. The following extract is reproduced from the General Civil Contract (Not-for-Profit) 2003, and should be useful as guidance when considering whether to attend any hearing in this capacity.

- 10.19 *“Legal Help as a McKenzie adviser will only be justified where*
- (a) the unusual complexity of the case, and/or*
- (b) the client’s material disability or insufficient knowledge of English means that the services of a legal adviser at the hearing is necessary, and in either case the importance of the matter to the client justifies the cost of attending the hearing.*
- 10.20 *Unusual complexity of the case means significantly more complex than the average case of that type.*
- 10.21 *In terms of the client, a material disability or insufficient knowledge of English will not suffice, on their own, to justify a McKenzie adviser being provided. Legal Help must be justified, rather than the help that could be provided for example by family, friends, an interpreter or a social worker.*
- 10.22 *The case must be of sufficient importance that a fee-paying client of moderate means would fund the attendance. You should always consider whether some other more cost effective method of dealing with the issue would be sufficient, such as writing a letter to the court or tribunal.*
- 10.23 *Attending hearings as a McKenzie adviser will therefore be the exception rather than the norm.*
- 10.24 *As the role of a McKenzie adviser is to provide legal assistance to the client without actually representing him/her, the client must be present at the hearing.*
- 10.25 *You must not instruct counsel or an agent to act as a McKenzie adviser.”*
- 10.26 **The DOs and DON'Ts of being a McKenzie adviser**
- DO: think about running it past your Account Manager first – present your reasons and try to get permission.
 - DO: make sure it is clear from your notes on file why you felt it appropriate to attend in this capacity.
 - DO: make sure that it is an exceptional situation – it is the rare case where you feel the client really needs your assistance and it would be quite unreasonable for them not to receive your assistance in the tribunal.
 - DO: make sure your involvement as a specialist legal adviser is necessary in order to get the best result for the client.
 - DON'T: attend and claim for it just because you think you should be entitled to do so as not to do so would be unfair on the client.
 - DON'T: go just to ‘hold the client’s hand’ – if the client says they won’t go if you don’t go with them then that is their decision.
 - DON'T: do it regularly; frequent attendances in this capacity will likely indicate that you are not applying the rules properly.
 - DON'T: promise clients at the outset that you will attend if there is a chance you might not – be realistic.

Separate Matters and category boundaries

Reviews and appeals (paragraph 16.6)

- 10.27 Paragraph 16.6 states:
- “Legal Help on a welfare benefit review and any request for a revision or supersession or appeal constitutes the same matter as previous advice in relation to the relevant benefit (see Paragraph 5.8 (b)).”*

- 10.28 You should not split different stages in a case into separate matters, opening a NMS for each stage, in any subject category (see paragraph 5.14). Paragraph 16.6 explicitly states that you should not do this in relation to different stages in achieving a benefit award ie any request for a revision or supersession or appeal constitutes the same matter as previous advice in relation to the relevant benefit.
- 10.29 The reference within paragraph 16.6 to paragraph 5.8(b) in the General Provisions is to further highlight this point. Paragraph 5.8(b)(ii) in particular, concerned with opening additional matters whilst one matter is open, says that this should not be done where dealing with one matter would address the other. Clearly dealing with a later stage in a legal process such as here, securing a benefit award, would have the effect of addressing an earlier stage in that same process.
- 10.30 This means that welfare benefits cases should usually be kept open pending the decision of the relevant department and up to the point where you do not anticipate any further work in terms of any appeal against that decision.
- 10.31 Where a client is unsuccessful at an appeal and the matter closed, but the client subsequently returns with a change in circumstances which might mean a new application for the benefit would be more likely to succeed, then this would constitute a NMS providing the conditions on returning clients at paragraph 5.15 were met.

Clients who change their mind

- 10.32 Of course, a client may not want to continue with any appeal or otherwise in a benefits matter, and may instruct you to close his or her case (which would fit with closing a case under paragraph 5.33(a)). Whilst you would point out to the client the potential effects of not pursuing a particular course of action, you cannot keep a matter open if instructed not to do so.
- 10.33 However, given that clients do change their minds occasionally, you might agree with your client that you will keep their case open for a further short period, eg a week or two, to allow them to think it over. This would go some way to avoiding you having to re-open a matter if the client changed their mind, and the administrative problems that this would involve.
- 10.34 Example

You assist Mr Grey with a Disability Living Allowance claim and he is refused. You advise him on his appeal rights as part of the same matter. You determine and tell him that you think he has reasonable prospects of success. Mr Grey, however, decides he doesn't want to appeal or take the matter any further so you close the case.

However, Mr Grey then returns within the appeal deadline and says he has changed his mind and now wants to appeal. If the matter has not been reported then you should re-open it and continue with it, charging any further work to the original matter. If you had reported the matter, see 10.35 below.

- 10.35 The scenario at 10.34 above was adapted from LSC training given to suppliers in 2007 and reproduced here with LSC permission. The answer provided at that training, if you had reported the matter, was:
- "If the matter was closed and reported following the client's clear instructions that he or she did not require further advice, a New Matter Start will be required with the client completing a fresh Legal Help form and their means will need to be assessed and evidenced again (see paragraph 5.33(a)). Such*

circumstances should be exceptional and the client should be firmly advised regarding an appeal.

Cases where the matter is closed and a fresh Legal Help form required for an appeal should be exceptional. If an adviser appears to be conducting cases in this way as a matter of routine, it is likely that New Matter Starts for appeals will be disallowed on audit as unreasonable.”

10.36 We clarified this with the LSC, asking how this sat with the Category-Specific Provision at 16.6 and the General Provision at 5.15 (returning clients). This is a summary of the answers received:

- If a matter has been closed correctly at the time, but the client comes back, a new NMS can be opened if means and merits are satisfied providing the conditions at 5.15 are met.
- If the client comes back within three months, the previous matter can be re-opened and it is not a NMS.
- The objective of the case study example was to provide guidance rather than be prescriptive for every case scenario; it is for the organisation to make a judgment call.
- In most cases advice on a welfare benefit review and appeal constitutes the same matter as previous advice in relation to the relevant benefit.

Different benefits (paragraph 16.7)

10.37 Where a client approaches you for advice in relation to more than one benefit, and you are thinking whether to open a NMS in respect of each benefit, then you should apply the requirements at paragraphs 5.6 to 5.22 of the General Provisions.

10.38 For guidance on applying the General Provisions, see section 4 above (“Multiple matters for the same client”) and Appendix 1, “The Flowchart”.

Getting further help

Network contacts

<p>Management Helpline DIAL UK St Catherine's Hospital Tickhill Road, Balby Doncaster DN4 8QN Tel: 01302 310123</p>	<p>James Kenrick Youth Access 1-2 Taylors Yard 67 Alderbrook Road London SW12 8AD Tel: 020 8772 9900</p>	<p>Noeleen Adams & Lynn Evans Law Centres Federation 293-299 Kentish Town Rd London NW5 2TJ Tel: 020 7428 4400</p>
<p>Development Team Consultancy Line advice^{uk} London Region 12th Floor New London Bridge House 25 London Bridge Street London SE1 9ST Tel: 020 7407 6622</p>	<p>Phil Jew & Chilli Reid advice^{uk} national 12th Floor New London Bridge House 25 London Bridge Street London SE1 9ST Tel: 020 7407 4070</p>	<p>JJ Costello Shelter Cymru 25 Walter Road Swansea SA1 5NN Tel: 01792 469400</p>
<p>Citizens Advice Myddleton House 115-123 Pentonville Road London N1 9LZ Bureau Management Consultancy Line Tel: 0845 120 2035 CLS Consultancy Line Tel: 020 7833 7134, 01873 810101 or 01664 822492</p>	<p>Business Support Team Shelter Aegon House 30 Poole Hill Bournemouth Dorset BH2 5PS business_support@shelter.org.uk</p>	<p>John Edwards Age Concern England Astral House 1268 London Road London SW16 4ER Tel: 020 8765 7468</p>

Legal Services Commission Regional Office contacts

You can also contact your regional LSC office. If you aren't sure which area you are in, any regional office should be able to direct you to the one for your area.

London

Exchange Tower
2 Harbour Exchange Square
London E14 9GE
Tel: 020 7718 8466

Brighton

3rd and 4th Floors, Invicta House
Trafalgar Place, Cheapside
Brighton BN1 4FR
Tel: 01273 878800

Reading

80 King's Road
Reading RG1 3BJ
Tel: 0118 955 8600

Bristol

33-35 Queen Square
Bristol BS1 4LU
Tel: 0117 302 3000

Chester

Pepper House Pepper Row
Chester CH1 1PF
Tel: 01244 404 500

Manchester

2nd Floor, Lee House
90 Great Bridgewater Street
Manchester M1 5JW
Tel: 0845 602 1400

South Tyneside

Berkley Way
Viking Business Park
Jarrow
Newcastle NE31 1SF
Tel: 0191 428 3600

Liverpool

Cavern Walks
8 Mathew Street
Liverpool L2 6RE
Tel: 0151 242 5200

Leeds

Harcourt House, Chancellor Ct.
21 The Calls
Leeds LS2 7EH
Tel: 0113 390 7300

Birmingham

Centre-City Podium
5 Hill Street
Birmingham B5 4UD
Tel: 0121 665 4700

Nottingham

2nd Floor, Fothergill House
16 King Street
Nottingham NG1 2AS
Tel: 0115 908 4200

Cambridge

62-68 Hills Road
Cambridge CB2 1LA
Tel: 01223 417860

Cardiff

Marland House
Central Square
Cardiff CF10 1PF
Tel: 0845 608 7070

**The Office of the Immigration
Services Commissioner**
5th Floor, Counting House,
53 Tooley Street, London, SE1 2QN
Tel: 020 7211 1500
Fax: 020 7211 1553
www.oisc.gov.uk

**The Office of the Information
Commissioner**
Wycliffe House, Water Lane,
Wilmslow, Cheshire SK9 5AF
Tel: 01625 545 745
Fax: 01625 524510
www.ico.gov.uk



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CLS Support operates a telephone and e-mail consultancy service, providing help on the Unified Contract, Quality Marks and other aspects of the Community Legal Service.

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We try to tailor our support as closely as possible to the needs of individual organisations. We answer enquiries at first contact wherever possible. If we need to carry out further research in order to answer your enquiry, we will tell you when we can get back to you and will contact you at that time even if a full response is not yet possible. If we need to send you written information, we will normally do so within five working days.

Alternatively, if you are a subscriber you can email us on **cls.support@asauk.org.uk** with your enquiry. Please include a contact telephone number so that we can call you back to discuss the details of your enquiry. We aim to respond to e-mail enquiries within five working days.

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Note that organisations requesting a block-booking course are responsible for practical arrangements, eg booking a venue, publicising the course and taking bookings.

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- 12 The CLS Quality Mark: Getting the Most Out of General Help
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