

Appendix F

Public funding for defendants

Criminal public funding is available for any proceedings under sections 1 and 4 of the Crime and Disorder Act (CDA) 1998 relating to ASBOs, including interim orders, where they are made in the magistrates' court or where an appeal is made in the Crown Court.

Advocacy assistance is available for an ASBO, an interim order under section 1D of the CDA, variation or discharge of an ASBO, or an appeal against the making of an ASBO under section 4 of the CDA, in accordance with the Criminal Defence Service General Criminal Contract. Solicitors can self-grant advocacy assistance for these matters. There are no financial criteria for the grant of advocacy assistance. Advocacy assistance may not be provided where it appears unreasonable that approval should be granted in the particular circumstances of the case, or where the interests of justice test, set out in Schedule 3 of the Access to Justice Act 1999, is not met. In applying this test, there is an additional factor of whether there is a real risk of imprisonment if an ASBO is made and subsequently breached.

A representation order may be sought on application to the Legal Services Commission in respect of these proceedings. Provision for representation is made under Regulation 3(2)(criminal proceedings for the purposes of section 12(2)(g) of the Access to Justice Act 1999) of the Criminal Defence Service (General)(No.2) Regulations 2001, and Regulation 6(3) of the same regulations.

An application to the Commission must be made on form CDS3. An application will be determined in accordance with the interests of justice criteria. The availability of advocacy assistance will be a relevant factor which the Legal Services Commission will take into account when considering the grant of representation.

Where an application for a representation order is refused, the Legal Services Commission shall provide written reasons for the refusal and details of the appeal process. The applicant may make a renewed application in writing to the Funding Review Committee, which may grant or refuse the application.

Advocacy assistance is available for proceedings in the Crown Court, where an appeal is made under section 4 of the CDA. The merits test is slightly different from that on application for an interim or a full ASBO. It is based only on the general reasonableness test. Advocacy assistance may not be granted if it appears unreasonable that approval should be granted in the particular circumstances of the case. The prospects and merits of an appeal should be taken into account as well as whether the individual has reasonable grounds for taking the proceedings. Representation is also available for an appeal against an order under section 4 of the CDA. An application should be made to the Legal Services Commission which will consider grant against the availability of advocacy assistance.

Any challenge against the ruling of the Crown Court to the High Court by way of case stated or by application for judicial review falls outside the scope of criminal funding. Legal representation would have to be applied for in accordance with the Funding Code procedures to the Legal Services Commission. This work is funded through the Community Legal Service although it falls within the scope of the General Criminal Contract.

Advocacy assistance is available for a breach of an interim order or full ASBO. Representation is also available for breach proceedings on application to the Commission as above.