

LSANI Representation Lower Guidance

To request certification of counsel for Public Law cases in the Family Proceedings Court

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LSANI Representation Lower Guidance – To request certification of counsel for Public Law cases in the Family Proceedings Court

1. Purpose

- 1.1 This guidance sets out how practitioners should submit requests for counsel for Public Law cases in the Family Proceedings Court (FPC) as part of the Pilot: Public Law FPC Certification of Counsel.

2. Background

- 2.1 Regulatory and procedural changes have resulted in a significant reduction in the authorisation of counsel in FPC matters. While a reduction was intended, feedback from practitioners and internal review indicates that the current approach may have limited access to advocacy support in some complex cases.
- 2.2 At present, decisions are made without a published framework, leading to uncertainty in applications. The proposed public law pilot seeks to address this by introducing a structured but flexible framework within a defined scope.

3. Process to request counsel

- 3.1 The normal process on LAMS should be followed to request counsel as set out at [LAMS Supplier Manual](#). Solicitors should indicate in the supplier notes, against the date on the relevant claim, that this is a **RL Public Law Pilot** case.
- 3.2 It is expected that the factors below with a complexity above the norm would be indicative of the need for counsel representation within the pilot; this list is not

exhaustive. These factors are intended as guidance only and will not limit the Agency's discretion to consider other relevant circumstances.

- **Complex mental health issues**
Mental health conditions or addiction issues of an especially complex or atypical nature, where they materially affect the management or conduct of proceedings.
- **Litigants in person**
Where the absence of representation creates significant procedural or evidential complexity.
- **Serious domestic, physical or sexual abuse allegations**
Including cases involving criminal proceedings or convictions.
- **Public law complexity**
Including serious safeguarding concerns, non-accidental injury allegations, or extensive evidential material.
- **Emergency and urgent applications**
Including emergency protection orders, particularly where urgent removal of a child or significant human rights considerations arise.
- **Parental Alienation**
Where the absence of counsel would be detrimental to the conduct of the proceedings.

3.3 Currently, if a solicitor is seeking certification of counsel in an FPC case, it is the solicitor who must clearly demonstrate that the case (or part of the case which is the subject matter of the application) could not be adequately conducted without the higher level of representation applied for. Solicitors must personally address this issue and should not seek to rely solely on counsel's opinion.

3.4 This is equally true of this pilot in that it is for the solicitor to make the case for certification of counsel. It is not sufficient to state simply that the case is complex.

3.5 It is unlikely that the following factors would support granting of counsel:

- Proceedings involving multiple children
- Second or subsequent proceedings in the same cause

- Level of representation of other parties in the case
 - If a non-molestation or criminal case is running in tandem, this does not automatically warrant certification of counsel
 - Involvement of a court children's officer
 - Article 56 investigations prior to public law proceedings.
- 3.6 Each case will be considered on its own merits with full regard to the information provided in the application, it is incumbent on the **requesting solicitor** to make out the case for counsel certification.
- 3.7 Representatives, solicitor and certified counsel, will submit their claim for payment in the usual way on LAMS, as set out at [LAMS Supplier Manual](#).
- 3.8 Should the request for counsel be unsuccessful, the solicitor may decide to proceed to instruct counsel to deal with the case. In this scenario, where counsel is engaged and is briefed to act in place of the solicitor then counsel is **uncertified**. Remuneration in this specific scenario is set out at '[LSANI Representation Lower guidance – To submit a request for payment for uncertified counsel](#)'.

LSANI
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