

NOVEMBER 2009 GUIDANCE: CW1 CLIENT CERTIFICATION AND PARTNER'S SIGNATURE.

Reason for change

In order to meet National Audit Office requirements and to address concerns raised by the Law Society about the form of client declaration on the CW1 (in particular the signing of consent by the client for third party organisations to release information in respect of their partner), we have altered the Controlled Work CW1 form covering Legal Help, Help at Court and Family Help (Lower).

The client must complete the CW1 form as he / she does currently, providing details (and evidence) of both their and their partner's resources where an aggregated assessment is appropriate. However, CW1 *version 16*, which is due to come into force in November, sees an adjustment to the client declaration and the inclusion of a new partner declaration section.

What are the changes to the client certification section?

There are minor amendments to the wording of the section. The client continues to provide consent for third parties to release any information requested about their financial circumstances. However all references to the client providing consent for third parties to release information about their partner's financial circumstances have been removed.

Is the client required to sign the CW1 client declaration?

Yes. There is no change to the guidance in this respect. If the CW1 form is not completed or signed as required by the Unified Contract, the Commission shall not pay for the services supplied to that client.

Is the new partner's declaration to be completed in all circumstances, what about cases where the partner is the opponent?

No. There is no need to obtain the partner's signature where the partner is the opponent or otherwise the client has a contrary interest to their partner in the proceedings. In these circumstances the client's resources should not be aggregated with that of their partner and there is no need for the partner to sign the form.

For example, where a victim of Domestic Violence or abuse seeks legal help in respect of that issue, there is no need to aggregate their resources with their partner or obtain the partner's signature.

Are there other exemptions for completing the partner's declaration?

In addition for the vast majority of cases where the client attends the office, completion of the partner's signature has **not** been made compulsory at present. Paragraph 2.11 of the Unified Contract Civil Specification ("the Contract") states that the assessment of means section and the Client's details must be fully completed and the form signed by the Client in your presence subject to the exceptions set out in the Funding Code. Thus generally, the client is required to attend the office with evidence of income (including evidence for his/her partner's income) and that evidence must be retained on the file along with the completed form. There is no need in these circumstances to require the partner to attend the office to sign the form or to send the client home with the form to obtain their partner's signature.

In the rare instances where the client attends the office but the solicitor undertakes work for the client in the absence of means evidence, it must be in accordance with the specific circumstances set out at paragraph 2.5 of the Contract and justifiable upon audit.

When should the partner declaration be completed?

The change is aimed primarily at those clients who obtain **telephone advice** and are sent the CW1 for signature and return in accordance with paragraph 2.21 of the Contract; and in addition **postal applications** (paragraph 2.14 (a) – (d) of the Contract sets out those circumstances constituting ‘good reason’ for acceptance of a postal application) or where an application is accepted (in accordance with paragraph 2.14) from someone in **attendance on a client’s behalf**.

When the CW1 is sent to the client following telephone advice work, and for postal applications / attendance on a client’s behalf i.e. where the client does not attend the office, the CW1 should be returned with both the client and partner declarations completed. (NB Where the ‘authorised person’ attending on behalf of the client is **not** the client’s partner, he / she will need to arrange for the partner to sign the form). This will allow for further checks to be made upon audit as necessary.

What happens if the partner refuses to sign or otherwise there are difficulties in obtaining the partner’s signature?

For those clients where the partner’s declaration should be completed (in accordance with the guidance above), but in a particular case either the partner refuses to sign the form or otherwise there is advised to be difficulty in obtaining the partner’s signature – e.g. the client advises that they are afraid of the consequences if their partner were to find out about a debt problem they were seeking advice about – a note should be made as to the reasoning for not obtaining the partner’s signature and retained on file for audit purposes.

The LSC may monitor the number of cases that fall into this category and discuss any issues that may arise with provider firms. Evidential requirements set out in paragraph 2.4 and 2.5 still apply.