

Lord Chancellor's Exceptional Funding Guidance (Non-Inquests)

1. This guidance is issued by the Lord Chancellor to the Director of Legal Aid Casework under section 4(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act'). The Director must have regard to this guidance in determining whether civil legal services are to be made available under section 10(2) and (3) of the Act¹. As, in practice, applications will be considered by caseworkers on the Director's behalf, this guidance is addressed to caseworkers.
2. This guidance sets out some of the factors that caseworkers should take into account in deciding exceptional funding applications under section 10(2) and (3) of the Act. It is not intended to be an exhaustive account of those factors. In particular, it is not intended to replace the need for consideration of representations in individual cases and new case law that arises. Applications should be considered on a case by case basis.

Exceptional Case Determinations

3. Sections 10(2) and (3) of the Act can be viewed here: <http://www.legislation.gov.uk/ukpga/2012/10/section/10>
4. An exceptional case determination is a determination made under section 10(3)(a) or 10(3)(b) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the Act').

Section 10(3)(a)

5. Section 10(3)(a) allows civil legal services other than those described in Part 1 of Schedule 1 to the Act to be made available where it is necessary to do so because the failure to provide such funding would be a breach of:
 - (i) the individual's Convention rights (within the meaning of the Human Rights Act 1998), or;
 - (ii) any rights of the individual to the provision of legal services that are enforceable EU rights.

Section 10(3)(b)

6. Section 10(3)(b) does not provide a general power to fund cases that fall outside the scope of legal aid. It is to be used for rare cases and provides that an exceptional case determination may be made where the risk of the breach of the rights set out in section 10(3)(a) is such that it is appropriate to fund.

¹ This guidance does not, however, cover determinations under section 10 of the Act in relation to representation at inquests. Specific guidance in relation to inquests has been published separately.

7. The purpose of section 10(3) of the Act is to enable compliance with ECHR and EU law obligations in the context of a civil legal aid scheme that has refocused limited resources on the highest priority cases. Caseworkers should approach section 10(3)(b) with this firmly in mind. It would not therefore be appropriate to fund simply because a risk (however small) exists of a breach of the relevant rights. Rather, section 10(3)(b) should be used in those rare cases where it cannot be said with certainty whether the failure to fund would amount to a breach of the rights set out at section 10(3)(a) but the risk of breach is so substantial that it is nevertheless appropriate to fund in all the circumstances of the case. This may be so, for example, where the case law is uncertain (owing, for example, to conflicting judgments).

Means and merits criteria

8. All exceptional funding applications are also subject to the legal aid means and merits criteria (section 10(2)(b) and 10(4)(c)). Therefore, in order for an exceptional case to be funded under section 10, the applicant must also qualify for legal aid under the financial eligibility criteria set out in regulations made under section 21 and the merits criteria set out in regulations made under section 11. The merits criteria include, for example, an assessment of the availability of alternative funding.

A. The right to legal aid under the ECHR

9. Whereas Article 6 ECHR provides a specific right to legal assistance in the context of criminal proceedings, the Convention contains no such specific right in relation to civil proceedings, Rather, the ECtHR has recognised that there are very limited circumstances in which the failure of the State to provide civil legal aid may amount to breach of an individual's rights under the European Convention on Human Rights.
10. Caseworkers will need to consider, in particular, whether it is necessary to grant funding in order to avoid a breach of an applicant's rights under Article 6(1) ECHR. As set out below, the threshold for such a breach is very high.

Application for funding under Article 6 of ECHR: questions for caseworkers to consider.

1. Does the case involve the determination of civil rights or obligations
 - **If yes, go to Q2.**
 - **If no, funding should not be granted under Article 6.**

2. Will withholding of legal aid make assertion of the claim practically impossible or lead to an obvious unfairness in the proceedings? (see the factors at paragraphs 20-25)
 - **If yes, go to Q3.**
 - **If no, funding should not be granted under Article 6.**

3. What are the minimum services required to meet the legal obligation to provide legal aid?

Article 6(1) ECHR

11. Article 6(1) ECHR states that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]”

12. Article 6(1) guarantees the right to a fair hearing and the right of access to the court for the purposes of the determination of a person’s civil rights and obligations. In certain very limited circumstances, legal aid may be required in order to guarantee the effective right of access to a court in civil proceedings.

Civil rights and obligations

13. An obligation to provide legal aid under Article 6(1) ECHR can only arise where the case involves a determination of a person’s civil rights or obligations.
14. In deciding whether the case involves the determination of civil rights or obligations, caseworkers must consider the nature of the proceedings in question.
15. Most claims in the civil courts (e.g. breach of contract, statutory claims, tort, family proceedings) will involve the determination of civil rights and obligations.

16. Some proceedings have been held not to involve the determination of civil rights and obligations, for example:

- tax disputes²;
- immigration proceedings relating to the determination of an individual's entry, stay, residence or deportation³;
- cases concerning 'discretionary' welfare benefits, i.e. where 'the award of services or benefits in kind is not an individual right of which the applicant can consider himself the holder, but is dependent upon a series of evaluative judgments by the provider as to whether the statutory criteria are satisfied and how the need for it ought to be met'⁴.

17. Caseworkers should always consider whether the proceedings in question actually involve the determination of any of the substantive issues in a case. It will also be relevant to consider whether the question at issue in the set of proceedings under consideration will be directly decisive, or will substantially influence or affect other proceedings which determine civil rights and obligations. Caseworkers should note that a tenuous connection or remote consequences with those other proceedings will not suffice (for example, internal school disciplinary hearings have been found not to engage Article 6(1) because they do not have sufficient influence or effect on proceedings before the Independent Safeguarding Authority⁵).

Will there be a breach of Article 6(1)?

18. Assuming that the proceedings in question involve the determination of a civil right or obligation, caseworkers should then go on to consider whether the failure to provide legal aid would be a breach of the applicant's rights under Article 6(1) ECHR.

The overarching question to consider is *whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings.* This is a very high threshold.

19. The following factors should be taken into account. No one of these factors is necessarily determinative and each case needs to be assessed on its particular facts and in the light of representations made by applicants.

² Jussila v Finland (2007) 45 EHRR 39

³ Maaouia v France (2001) 33 EHRR 42; Eskelinen v Finland (2007) 45 EHRR 43

⁴ Tomlinson v Birmingham City Council [2010] UKSC 8

⁵ R (G) v The Governors of X School [2011] UKSC 30, [2012] 1 AC 167

(a) How important are the issues at stake?

20. Caseworkers should consider the importance or seriousness of what is at stake in the proceedings. Applicants will often naturally feel that their case is an important one. However, caseworkers need to consider whether the consequences of the case at hand are objectively so serious as to add weight to the case for the provision of public funds.

For example:

- *What are the consequences to the applicant of not bringing/not being able to defend proceedings?*
- *Does the case merely involve a claim for money, or does the claim relate to current (as opposed to historic) issues of life, liberty, health and bodily integrity, welfare of children or vulnerable adults, protection from violence or abuse, or physical safety?*
- *If the claim is financial, what are the sums at stake?*
- *Does the claim relate to adjustments, care provision or medical equipment without which the applicant cannot live an independent life?*

(b) How complex are the procedures, the area of law or the evidence in question?

21. Caseworkers should consider whether the proceedings in question involve unusually complex issues of fact, procedure or law.

For example:

Factual complexity

- *Does the case turn on issues of fact that lie within the applicant's own knowledge?*
- *Will there be a significant number of witnesses or a large volume of evidence?*
- *To what extent have the facts in the case already been explored? (for example, has the case already been through other tribunals or hearings, and have the issues been fully explored and the key point or points to be determined clearly identified?).*
- *Will expert evidence (e.g. complex medical evidence) have to be obtained and tested in cross-examination? If so, will multiple experts be required? How relevant is the expert evidence to the case itself? Has the court given permission for expert evidence to be submitted under the relevant rules, for example FPR 25.4(1)?*

Procedural complexity

- *How complex is the procedure in the forum where the case takes place? How clear and straightforward are the relevant rules of procedure?*
- *Is the case before a court or higher court? If so, are the rules of procedure in that court nonetheless clear and unambiguous?*
- *Is the case before a tribunal that possesses specialist or expert knowledge which can assist the applicant?*

Legal complexity

- Does the case in question involve any particularly complex issues of law?

(c) How capable is the applicant of presenting their case effectively?

22. Caseworkers should consider whether the applicant would be incapable of presenting their case without the assistance of a lawyer. When considering this factor, caseworkers will need to bear in mind their assessment of case complexity, as this may affect the weight that needs to be given to some of the matters listed below.
23. In doing so, caseworkers should bear in mind that:
- there is no requirement to provide legal aid to ensure total equality of arms between an applicant and opponent, so long as each side is afforded a reasonable opportunity to present their case under conditions that don't place them at a substantial disadvantage compared to the opponent⁶;
 - most courts and, in particular, tribunals are well used to assisting unrepresented parties in presenting or defending their cases against an opponent who has legal representation.

For example:

⁶ De Haes and Gijssels v Belgium (1998) 25 EHRR 1

- *How complex is the case? (see above)*
- *Has the individual received prior assistance from a lawyer? (Although such assistance should not be treated as an absolute bar; it will depend on the particular circumstances of the case, the nature and extent of the assistance afforded)*
- *How long is the case likely to last?*
- *What is the applicant's level of education?*
- *Is the degree of emotional involvement that the applicant is likely to have in the issues in the case incompatible with the degree of objectivity expected of advocates in court?*
- *Does the applicant have any relevant skills or experience (either in the area of law or the factual subject matter)?*
- *Will the case be heard in a tribunal or other venue that is well used to dealing with litigants in person?*
- *Is there a Mackenzie friend who could be granted permission to speak on behalf of a party to proceedings?*
- *Does the applicant have English as a first language? If not, what is the applicant's level of skill in English? Will the court or tribunal be able to assist with interpretation and/or the translation of documents? Could family or friends who do not have an interest in the case provide interpretation/translation?*
- *Does the applicant have any special caring responsibilities which may present a genuine barrier to the presentation of the case?*
- *Does the applicant or their carers/dependents have any relevant disabilities? Would the absence of legal representation put a disabled person at a disadvantage vis-à-vis their opponent?*

24. In the case of a child applicant, the following questions may be relevant:

Child applicants

- *What role, if any, is CAFCASS playing in this case?*
- *Where a litigation friend has been appointed by the court, or is acting under a certificate of suitability under rule 21.4(3) of the Civil Procedure Rules:*
 - *How capable is the litigation friend of presenting the case on the applicant's behalf?*
- *Where a litigation friend is not acting for the child:*
 - *How likely is it that a suitable litigation friend will be available? (Having regard to the factual situation of the applicant and any relevant Court Rules and Practice Directions including those in the Family Procedure Rules (FPR) and the Civil Procedure Rules (CPR), especially FPR Part 16 and CPR Part 21.)*
- *Where no litigation friend is available or likely to be available, and the child would otherwise have to present the case themselves:*
 - *How old is the child?*
 - *Does the child have sufficient maturity or intelligence to understand the nature and implications of the proceedings?*
- *Are there any other relevant Court rules and Practice Directions that have a bearing on the child's situation?*

25. Where the applicant is an adult who lacks capacity within the meaning of the Mental Capacity Act 2005, the caseworker should consider the following questions:

Adult applicants who lack capacity

- *Having regard to s.2(3) of the Mental Capacity Act 2005, what is the nature of the potential lack of capacity (e.g. to what does it relate? Is it temporary or permanent?)*
- *Is the applicant a protected party within the meaning of the Civil Procedure Rules? If so:*
 - *Will a litigation friend be acting for the applicant? How capable is the litigation friend of presenting the case on the applicant's behalf?*
 - *Will the Official Solicitor be acting for the applicant?*
 - *Does the applicant have the assistance of an attorney or deputy?*
 - *If no litigation friend is available, this will be an important factor to consider in relation to this aspect of the Article 6 test.*
- *Does the subject matter of proceedings have a special relevance to an applicant who lacks capacity (for example, do the proceedings concern important matters, such as the applicant's life, health or personal safety)?*
- *Are there any other relevant Court rules and Practice Directions that have a bearing on the applicant's situation?*

Article 8 ECHR

26. Applicants may seek to argue that the provision of legal aid is necessary in order to avoid a breach of the applicant's rights under Article 8 ECHR (right to respect for private and family life).
27. In the cases of *Airey v Ireland*⁷ and *P, C and S v United Kingdom*⁸, the ECtHR found that the lack of an accessible legal procedure in certain types of family law proceedings did amount to a breach of Article 8 ECHR. Although caseworkers should consider each application on its individual facts, it would normally only be in circumstances closely analogous to these cases that the failure to provide legal aid would amount to a breach of Article 8 ECHR.
28. In those cases, the ECtHR also found that the failure to provide legal aid amounted to a breach of Article 6(1) ECHR. It is likely that cases in which an applicant seeks to rely on Article 8 would therefore fall more naturally to be considered under the Article 6(1) heading.

⁷ (1979-80) 2 EHRR 305

⁸ (2002) 35 EHRR 31

Article 13 ECHR

29. Caseworkers should note that Article 13 ECHR has not been incorporated into domestic law by the Human Rights Act 1998. Nor does it give rise, in any event, to a freestanding right to legal aid. Article 13 ECHR is not therefore a right in respect of which exceptional funding may be provided under section 10 of the Act.

B. Enforceable EU rights to the provision of legal services

30. An individual may argue that civil legal services should be made available by virtue of Article 47 of the EU Charter of Fundamental Rights ('the Charter').
31. Where such an argument is made, caseworkers should take into account the Explanations to the Charter, which provide that the content of Article 47 is the same as that of Article 6(1) ECHR (although the scope of Article 47 is not restricted to disputes relating to civil rights and obligations).
32. Caseworkers will therefore first need to be satisfied that the proceedings in question have as their purpose the determination of rights guaranteed by or otherwise falling within the scope of EU law.
33. Where an applicant has shown that the proceedings fall within the scope of EU law, caseworkers should go on to apply the substantive Article 6(1) ECHR test described above.
34. The vast majority of matters that give rise to a right to legal aid under Article 47 of the Charter will also give rise to such a right under Article 6(1) ECHR, due to the significant overlap between the two provisions. Article 47 of the Charter is therefore only likely to have any relevance in those extremely limited circumstances where: (i) there is no determination of civil rights and obligations within the meaning of Article 6(1) ECHR, and: (ii) the right is guaranteed by or otherwise falling within the scope of EU law.

Application for funding under Article 47 of the Charter: questions for caseworkers to consider.

1. Does the case involve the determination of civil rights or obligations?
 - **If yes, apply substantive Article 6(1) test in accordance with factors set out above.**
 - **If no, go to Q.2**

2. Does the case determine the rights guaranteed by or otherwise falling within the scope of EU law?
 - **If yes, apply substantive Article 6(1) test in accordance with factors set out above and (if the test is met) go to Q3.**
 - **If no, funding should not be granted under Article 47.**

3. What are the minimum services required to meet the legal obligation to provide legal aid?

Extent of services to be provided

35. Where caseworkers conclude that legal aid is required to be provided under section 10, this should be limited to the minimum services required to meet the obligation under ECHR or EU law. For example, it could be through providing assistance in the form of specific levels of service, or through limitations placed on funding certificates.

36. For example, Legal Help allows for a range of services to be provided, including the giving of oral and written advice and assistance, such as writing letters on behalf of the client, or negotiating with, for example, a local council or health authority. Legal Help can also be used to assist a client in setting out legal arguments for an appeal application (for example, to a tribunal).

37. Where an individual makes an application for full representation, caseworkers should therefore consider whether, in the particular circumstances of the case, it is really necessary to provide full representation or whether it would suffice to provide civil legal services in the form of Legal Help – for example, to provide advice and assistance in the preparation of a written claim in a welfare benefits tribunal.

38. Where an individual makes an application for Legal Help alone, caseworkers should consider particularly carefully whether the section 10(3) criteria are met. It will not be sufficient that such assistance is merely helpful for the presentation of the case. The failure to provide Legal Help will in itself only very rarely amount to a breach of Article 6(1)

ECHR or enforceable EU rights to legal aid. In particular, an obligation to provide legal aid under Article 6(1) can only arise where there is a 'determination' of an individual's civil rights and obligations. Caseworkers should consider whether an application for Legal Help alone does in fact relate to such a determination (see paragraph 17).

C. Specific case types

39. The Annex sets out further guidance in relation to certain specific types of case that may arise in applications for exceptional funding.

Annex

Specific Case Types

40. The sections below give an indication, to caseworkers, of the sorts of considerations that may be particularly relevant in certain types of case⁹.
41. In all of these specific areas however caseworkers must constantly refer back to the overarching question of whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings. Caseworkers should bear in mind that this threshold is very high.

Private Family Law

42. Private family law proceedings, in particular those concerning the right of contact with and residence of the applicant's child or the division of matrimonial assets, will generally involve the determination of civil rights and obligations.
43. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above. The following matters may be particularly relevant:
 - Are the proceedings likely to be unusually emotive for the applicant? All private law proceedings are likely to be emotive for the applicant to some degree but this factor alone will very rarely be sufficient to demonstrate that legal aid is required to avoid a breach of Article 6.
 - In relation to the complexity of the proceedings: how complex are they in comparison to the complexity of the proceedings in *Airey v Ireland*¹⁰? Caseworkers should take into account that large numbers of litigants in England and Wales represent themselves in family proceedings every year and that, although the family justice system may not always be easy to navigate, it is rarely likely to exhibit the degree of complexity seen in the *Airey* case.
 - In relation to legal and factual complexity: for example, does the case involve unusually complex questions of trust law?

⁹ The considerations referred to in the individual types of case are not an exhaustive list and are not necessarily determinative. Each case needs to be carefully considered on its individual facts. The types of cases listed are not intended to refer to categories of law in legal aid contract Category Definitions but are simply descriptive categories of kinds of cases.

¹⁰ (1979) 2 EHRR 305. In that case (which concerned an application for judicial separation from the applicant's husband) the case took place in the Irish High Court, the applicant had to prove the grounds for a decree of separation under relatively complex law and procedure for which every previous applicant in the preceding six years had been represented.

- What support (other than legal representation) is the applicant likely to receive? Caseworkers should take into account that judges are used to dealing with unrepresented parties in family proceedings and the court may be supported by, for example, CAFCASS in reaching a decision.

Business Cases

44. Private law claims involving the determination of rights or obligations under a contract will generally involve the determination of civil rights and obligations. However, non-criminal tax proceedings do not generally involve the determination of civil rights and obligations.
45. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above.

Clinical negligence

46. Clinical negligence claims will generally involve the determination of civil rights and obligations.
47. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above. The following matters may be particularly relevant:
 - In relation to the complexity of the case, how complex is the case at hand bearing in mind the complexity and volume of any medical expert evidence and any medico-legal arguments in issue in the case?
 - In relation to the ability of the applicant to present their own case, how able is the applicant or litigation friend to do this:
 - bearing in mind any caring responsibilities they have due to caring for a disabled child or family member?
 - bearing in mind any disabilities or medical problems they have?
 - In relation to the importance of the matter at stake, is the applicant a disabled person who is seeking to recover damages which would, in whole or in part, cover adjustments, adaptations, equipment and care?

Debt

48. Claims under a contract will generally involve the determination of civil rights and obligations.
49. A significant proportion of debt work does not involve a substantive legal dispute as to liability, but rather enforcement of admitted liabilities or management of admitted liabilities. It will only be in those circumstances where enforcement proceedings are considered to be part of the same proceedings for the purposes of Article 6(1) ECHR¹¹ that an obligation to provide legal aid may potentially arise (for example, in respect of a debtor who is faced with enforcement proceedings).
50. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above.

Education

51. Education claims involving substantive civil law remedies determined in the civil courts (such as breach of contract or tort) will generally involve determination of civil rights and obligations.
52. A decision of an Independent School Appeal Board to permanently exclude a pupil does not involve the determination of civil rights and obligations¹².

Employment

53. Claims relating to rights under a private contract of employment will generally involve the determination of civil rights and obligations. Professional disciplinary proceedings will involve the determination of civil rights and obligations where the outcome of the proceedings will have a substantial influence or effect on the determination of the applicant's civil right to practice his or her profession.
54. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above.

¹¹ See, for example, *Immobiliare Saffi v Italy*, (2000) 30 EHRR 756

¹² *R (V) v The Independent Appeal Panel for Tom Hood School* [2010] EWCA Civ 142

Housing

55. Claims between parties about housing issues, in contract or tort, are generally likely to involve the determination of civil rights and obligations.
56. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above.
57. In applications relating to out of scope housing disrepair claims the following matters may be particularly relevant:
 - Where the applicant is seeking to claim damages, what is the level of damages sought? Do they include damages to compensate for items of particular importance to the applicant, such as damage to important medical equipment?
 - To what extent is expert evidence necessary to resolve disputes concerning the allegations of disrepair, the medical effects of disrepair or the nature of remedial work required?

Human Rights

58. Claims under the Human Rights Act 1998 do not involve a determination of civil rights and obligations simply by virtue of the fact that another Convention right is involved. For example, the fact a person may be arguing in immigration proceedings that an immigration decision interferes with their right to family life does not mean that the immigration proceedings therefore involve the determination of civil rights and obligations.

Immigration

59. Proceedings relating to the immigration status of immigrants and decisions relating to the entry, stay and deportation of immigrants do not involve the determination of civil rights and obligations¹³.
60. The Lord Chancellor does not consider that there is anything in the current case law that would put the State under a legal obligation to provide legal aid in immigration proceedings in order to meet the procedural requirements of Article 8 ECHR.

Welfare Benefits (including asylum support)

61. Where an individual is claiming a discretionary benefit, rather than a legal right, a decision on the claim will not involve a determination of the

¹³ Maaouia v France (2001) 33 EHRR 42; Eskelinen v Finland (2007) 45 EHRR 43

individual's civil rights and obligations¹⁴. Accordingly, cases concerning the award of services or benefits in kind which is not an individual right of which the applicant can consider themselves the holder, but is dependent upon a series of evaluative judgments by the provider as to whether the statutory criteria are satisfied and how the need for it ought to be met, will not involve a determination of the individual's civil rights and obligations¹⁵.

62. In cases relating to non-discretionary benefits, Article 6 will only be engaged at the point where there is a determination of a dispute or '*contestation*' in relation to the relevant welfare benefit. It will not therefore arise prior to that point, for example at the point of an application being made for these benefits.
63. Where a case involves the determination of civil rights and obligations, caseworkers should consider whether the withholding of legal aid would make the assertion of the claim practically impossible or lead to an obvious unfairness in proceedings, having regard to the general factors described above. The following matters may be particularly relevant:
 - In relation to the complexity of the case, is the case simply about satisfying entitlement rules or straightforward factual issues such as an alleged delay in making an application? On the other hand, does the case concern complex legal issues about the interaction of EU and domestic law or complex immigration matters?
 - In relation to the importance of the issue at stake, what is the level of the benefit at stake? Does it relate to a one-off payment or an ongoing award? Does the case concern payment of benefits that will be used to pay, for example, rent arrears and may mean the difference between the applicant remaining in their home or not?
 - In relation to the ability of the client to present their own case, is the client disabled, elderly or vulnerable? Does the applicant have education issues or learning difficulties?

¹⁴ R (A) v London Borough of Croydon [2009] UKSC 8

¹⁵ Tomlinson v Birmingham City Council [2010] UKSC 8