



Legal Aid
Agency

HCF – Solicitors Information Pack (Non-Family)

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1. Overview

This Information Pack sets out the Agency's procedures for individual very high cost cases. It sets out what actions you, the solicitor, should take when you take on a new case which is going to be very high cost, or when an existing case increases in cost to become very high cost. These cases are subject to individual contracts known as the '2013 Individual Case Contracts (High Cost Civil)', and this pack provides guidance on the operation of the contract. There is a separate Pack dealing with Family and Children cases.

2. The Background

Part 6 of The Civil Legal Aid (Procedures) Regulations "Special Case Work" – sets out the extra conditions and controls applicable to very high cost civil cases. In particular, funding will be conditional on proposals put forward by you to progressing the litigation in a satisfactory manner. Once referred to the Exceptional and Complex Cases Team, there must be a proper Costed Case Plan and proposal for a Key Stage. Scope amendments or work on a stage in the case plan cannot commence until that work/stage has been approved. Each case will have an individual contract based on the agreed Costed Case Plan and the price for each Key Stage. The contract will allow progression of the case stage by stage, with an agreed price for each stage. The Costed Case Plan will change as the case develops; It is accepted that in the early stages of a case, future events will be more difficult to predict and will generally contain fewer details.

Details of what must be included in a Costed Case Plan and a Key Stage, and how they should be used, are set out later in the pack. Procedures for funding very high cost cases are set out in The Civil Legal Aid (Procedures) Regulations Part 6 and in Lord Chancellor's Guidance issued under Section 4 of LASPO.

The Agency has established an Exceptional and Complex Cases Team (ECCT) to manage these cases, based in the London and Brighton Office. If appropriate the ECCT will assign an individual case to one of its Case Managers.

Multi-Party actions are subject to separate contract arrangement. This document deals only with individual cases or community actions referred to the HCC team.

3. What are these cases?

The criteria are set out in the Civil Legal Aid (Procedure) Regulations Reg 54(3). In summary this is where the Director has reasonable grounds to believe that:-

- (a) the actual or likely costs of the case exceed £25,000;
- (b) if the case were to proceed to –
 - (i) a trial or final hearing; or
 - (ii) in the case of appeal proceedings before the Court of Appeal, the conclusion of that appeal,the likely costs would exceed £75,000;
- (c) the application relates to a multi-party action or potential multi-party action;
- (d) the application relates to an appeal or proposed appeal to the Supreme Court;
- (e) it is necessary to decide whether—
 - (i) the case is of significant wider public interest; or
 - (ii) the substance of the case relates to a breach of Convention rights (within the meaning of the Human Rights Act 1998),in order to determine whether the individual qualifies for civil legal services in accordance with the criteria set out in regulations made under section 12(f) the Act;
- (f) the application relates to a case which satisfies the effective administration of justice test; or
- (g) the application relates to a community action.

For the purposes of the above rules the Agency may treat different proceedings as if they were a single case if the Director decides that the proceedings are closely connected or are being heard together by the court.

All figures exclude VAT. Typically, these cases will be clinical negligence, actions against public bodies, and judicial review cases. Only a few hundred cases each year will be subject to these provisions.

All figures in this document exclude VAT.

Please also note that any case where the Solicitor does not hold either a contract with the agency or the appropriate franchise and wishes to apply for an individual case contract should be sent to the ECCT.

For Family and Children Act cases there is a separate information pack.

4. When does the Contract start?

The contract starts when the ECC team first limits the certificate to the work set out in the Key Stage of the Costed Case Plan. It stays in force while the certificate is in force. Once the contract has started, the case will be managed through a series of Key Stages until it ends. Each Key Stage will state the cost of the stage broken down into disbursements, profit costs and advocacy costs on an hourly basis. Once approved, the costs limitation on the certificate will be increased to reflect the cost of the approved stage.

5. Claiming for pre-contract costs

It will often be the case that at the time a contract is entered into, particularly in the circumstances in Regulation 54(3)(b), as set out in Section 3 above, work has been undertaken under the certificate. Either after approval of your contract or with your application you will need to submit a claim for the pre-contract work to the Case Manager for assessment under the Civil Legal Aid (Remuneration) Regulations as amended or include the pre-contract stage in your case plan for assessment. In both cases the costs will be assessed and an appropriate cost limitation applied to the certificate for that work and any stages approved. This can take the form of time recording records with a clear explanation of the work undertaken and a summary of the costs claimed, or an assessed bill on form CIVCLAIM1 for cases pre CCMS or via CCMS. We are keen to simplify payment for this work and avoid the need for a costs draftsman to prepare a detailed bill. If you are dissatisfied with the assessment of your bill there will be a right of appeal to an Independent Cost Assessor. The

costs, once agreed, will be paid by the Agency within 28 days. After costs have reached £25,000 a different approach will be adopted in 'party & party' costs cases, see below.

6. What forms are used to make an application for full representation?

If you identify a case as potentially very high cost at the start for any of the reasons set out in Section 3 above, and seek Legal Representation, you should apply to the ECC team on CCMS. If you identify it when a certificate for Investigative Representation or Full Representation has already been issued, usually for the reason in Regulation 54(3)(b) set out in Section 3 above, you should still apply for an amendment on CCMS or sending in a Civ App8 amendment form for cases issued pre CCMS. You must in all cases provide an estimate of costs to settlement or other disposal, and trial and include a Costed Case Plan with a proposed Key Stage.

A main office receiving an application will refer the case to the ECCT team. The case will then be allocated to a Case Manager. Case Managers have the power to use special case management tools. They may obtain an independent counsel's opinion, seek representations from opponents against funding, attend conferences with counsel and experts and require specific issues to be covered in instructions to them.

7. What decisions are made?

First, the Case Manager will decide, applying the Civil Legal Aid (Merits Criteria) Regulations, whether the case justifies funding or further funding. The Case Manager then applies the conditions in Civil Legal Aid (Procedures) Regs 55 & 56. If the application is refused there is a right to have the case reviewed by the Independent Funding Adjudicator(s) or the Special Controls Review Panel. Guidance on the procedures and criteria for qualifying for legal aid is set out in the Lord Chancellor's Guidance issued under Section 4 of LASPO.

Second, if the case qualifies for legal aid, the Case Manager will consider your Costed Case Plan and proposed Key Stage and seek to agree these with you. If agreed, an appropriate costs limitation will be placed on the certificate. The agreed price for the work will be based on the appropriate charging rates, see Section 14 below.

8. Using a case plan

After completing the application form the most important action is to produce a credible Costed Case Plan. A Case Manager will consider your justification of the case, the legal and factual issues to be investigated and resolved, and the personnel you have selected and their ability to complete the work successfully, particularly counsel and any experts.

There are standard Costed Case Plan formats attached to this pack which are designed to assist you in producing a plan appropriate to your case. They set out a description of the case, your assessment of its prospects, the legal and factual issues to be investigated and resolved, details of costs to date, and the selection of counsel and experts to use on the case. They include examples of Key Stage plans for the next stage of work to be undertaken.

The standard Costed Case Plan formats are for use in the following types of case:

- Investigative Representation funding cases.
- Full Representation funding cases.

Because of the potential impact of the Statutory Charge it is essential that clients are sent copies of Costed Case Plans and Key Stages and given an explanation how they might be affected, even if 'party & party' costs are ordered in part, how any monetary award might be reduced by the amount payable to you under the contract in addition to costs recovered from the other side, see Section 25 below.

9. Using a funding checklist

The ECC team has developed a Funding Checklist in some categories of law. These replace the fully Costed Case Plan for the majority of cases. Only cases that exceptionally do not fit the checklist will require a fully Costed Case Plan. They are set out in separate standard documents available on the website. The Checklists cover:

- Clinical Negligence cases.
- Prison Law public law cases.
- Police Damages cases.

- Immigration cases.

10. What stages will normally be applied?

Clearly, the stages must reflect the type of case, the usual case management requirements of the courts and the opportunities for continuation of funding to be considered. Attached at Annex 3 you will find the Agency's normal stages to be applied to a contract. You can propose other stages where you consider there are exceptional reasons, for example, exceptionally detailed investigation work at the start of a case, to justify its funding.

Normal stages are set out for the common categories of very high cost cases:

- Judicial Review cases.
- Appeal cases.
- Clinical Negligence, Damages Claims against public bodies, Personal Injury cases and other similar cases.
- Immigration cases.

11. Cases seeking Investigative Representation funding

Investigative Representation funding is typically needed in Clinical Negligence cases. There are two significant issues to be recognised. First, when an application is made for funding there may be insufficient information to plan the full investigation. This preliminary investigation will be funded under a standard cost limitation. A

Costed case plan and Key Stage plan will then be required to complete any investigative activities identified.

Second, before completion of the investigation, the plans for future stages are less reliable. The Costed Case Plan beyond the investigative stage would be expected to include options for the outcome, the major steps in the litigation and the likely costs. In these sorts of cases, options for concluding the case may be settling on acceptance of liability, proceeding to a hearing on quantum alone, or proceeding to a full hearing with disputed liability. You should estimate the costs for these options by reference to the cost of previous similar cases, providing evidence by way of bills in those cases.

Any applications for Investigative Representation in clinical negligence cases should be submitted to the ECC team.

12. When do contract rates apply?

Whether or not it is done under a contract, work up to the first £25,000 (excluding VAT) of solicitors' costs, disbursements and counsel's fees under the certificate are payable at the Civil Legal Aid (Remuneration) Regulations as amended i.e. as if the contract had not been in force. If that first £25,000 includes less than £5,000 (excluding VAT) in counsel's fees, further work by counsel - up to a total value under the certificate of £5,000 (excluding VAT) - is payable at the rates applicable if the contract had not been in force. If there are two counsel instructed the 'ring -fence' will be shared £2,500 to each counsel with authority from the agency. We will not authorise successive ringfences to each new counsel without first examining the reasons for doing so. For example if a new counsel had to be instructed the day before a hearing we would not pay any extra hours requested at prescribed rates as the risk should have been assessed at that stage. Exactly the same rule will apply to solicitors; if the first £25,000 of costs includes less than £5,000 in solicitors' costs, the work done by solicitors up to £5,000 (excluding VAT) will still be payable as if the contract had not been in force.

These thresholds are set at the point at which the solicitor and counsel are expected to accept part of the financial risk of pursuing the case in cases where 'party & party' costs are likely to be recoverable. They allow the solicitor and counsel to be paid at the generally applicable rates whilst assessing the risk of a case. Once the threshold is reached and it is decided to take the case to a conclusion they are paid at the lower, published contract rate, subject to the variations set out below. Solicitors and counsel should generally be able to form a clear opinion on the merits by the time the thresholds have been reached. Work done up to the threshold is known as the "risk assessment" stage. Cases where 'party & party' costs are likely to be recoverable are referred to as "'party & party' costs" cases.

13. How are stages priced?

The price of a stage will be made up of the proposed solicitors' profit costs, counsel's fees, experts' costs and other disbursements.

After the initial "risk assessment stage" in 'party & party' costs cases, contract rates will be those published by us from time to time. Where the published contract rates apply, profit costs will be the hours expended at an hourly rate for the work. You will need to assess the hours you require to carry out each of the activities in your

Costed Case Plan. There will be no separate payments for letters, telephone calls etc. The payment will be for the direct hours spent on the case by fee earners. This is intended to be simpler for both parties. It will reduce the need for a detailed assessment.

In 'party & party' costs cases solicitors and counsel will be paid at published contract rates exceeding the threshold set out in the preceding section.

If counsel are planned to do any work in a Key Stage, the solicitor must include them in preparing the stage plan, and draw their attention to the terms covering payment and our Payment Rates and obtain their signature to our Barrister Acceptance Form. Once the Key Stage is negotiated you must supply the barrister with a copy of the Fully Cost Stage or the information in it.

Experts' reports and other disbursements will be paid under the Civil Legal Aid (Remuneration) Regulations and relevant contract rates and arrangements for exceptional circumstances. If you have not agreed them you will need to put in your best estimates of the costs. If an estimate is provided the final costs will be subject to assessment when claimed. These will be incorporated into the overall agreed price for the stage. (You can apply to amend the contract if these costs are greater than estimated.)

14. What are the contract hourly rates?

After the initial "risk assessment" stage, the contract rates vary depending on whether the case is expected to result in an order for 'party & party' costs.

For cases where 'party & party' costs are expected to be paid, for example clinical negligence or personal injury cases the Agency will pay at the following rates: solicitors £70 per hour, junior counsel £50 per hour and senior counsel £90 per hour. There will be no enhancement. Travel time when approved will be paid at one quarter of the relevant rate.

For cases where 'party & party' costs are not expected to be paid, for example cases before Special Immigration Appeals Commission, the Agency will pay in line with current remuneration rates as set out under the Civil Legal Aid (Remuneration) Regulations and relevant contract rates. (Civil Legal Aid (Remuneration) (Amendment) Regulations in relation to Counsels fees) The Agency will also pay in line with the above rates in a successful case which is being appealed or to defend an appeal against an interim order.

15. How will enhancements be assessed on the elements of work not covered by the contract rates?

You will need to propose and justify the enhancement to be applied in accordance with the general Cost Assessment Guidance in Section 12: Enhancement of Costs (available on our website). This sets out the tests as follows:

12.4 The 'relevant authority' - the costs officer or caseworker assessing the case must be satisfied (Paragraph 6.16 [of the Contract Specification]) that:

- the work was done with exceptional competence, skill or expertise;
- the work was done with exceptional speed; or
- the case involved exceptional circumstances or complexity.

12.5 Shall have regard to (Paragraph 6.18 [of the Contract Specification]) to the second stage has its own set of criteria, namely that the 'relevant authority'

- the degree of responsibility accepted by the fee earner;
- the care, speed and economy with which the case was prepared;
- the novelty, weight and complexity of the case.

16. Effect of a possible variation in hearing length on the price of a full hearing stage

For a stage including the full court hearing the stage price will be increased if the court hearing over-runs. You will have to propose in the Costed Case Plan the costs per day of hearing over-runs for solicitors and counsel. The contract price will be based on the judge's allocation of time for the hearing. When pricing a stage including a full court hearing, but prior to the judge's fixing the hearing length, an estimate should be used.

17. What happens if a case plan and key stage cannot be agreed?

If the Costed Case Plan cannot be agreed with the Case Manager there is a right to have it reviewed by the Independent Funding Adjudicator. Any failure to agree the Costed Case Plan is likely to be on the basis of the proposed work, the proposed Key Stages, the competence of the personnel selected to undertake the work, or the hourly rates to be paid. The Independent Funding Adjudicator (IFA) can consider all these aspects of the Plan within the constraints of the standard contract terms and procedures. Ultimately, the Agency has power to refuse or withdraw funding altogether if the proposals for progressing the litigation do not appear to be satisfactory.

The IFA will not be able to review on the basis of the solicitors' failure to provide the information required by the Agency in its required format.

18. Can the agreed stage price be increased?

The HCC team will amend the certificate to increase the agreed price for a Key Stage only where work which could not reasonably have been foreseen has to be done or in other exceptional circumstances and only if the cost of the extra work will exceed 5% of the price.

The Costed Case Plan (see attached for standard formats) will be specified in terms of prices for steps within a stage rather than detailed activities. It will not be possible for the Agency to identify minor changes in work from the Costed Case Plan below the level of a step. This is because it is not intended that minor increases in work result in an increase in the stage price, for example, writing an additional letter. Hence the 5% tolerance has been applied. You will have to demonstrate and justify the increase over the original step price. Demonstrating that any proposed work is over and above that originally included in the price may be difficult. It is worth setting out examples to explain.

If an additional party is unforeseeably joined in proceedings then the work in reviewing that party's arguments will not be in the Costed Case Plan at all. The decision on authorising additional work should be straightforward, as the work was clearly not included in the stage price.

If a solicitor applies for an increase due to writing a large number of letters to the opponents it is unlikely that they will be able to demonstrate the work was not foreseeable and not included in the original stage price. This will more than likely not result in an increase in price.

To take a more marginal example if, in a judicial review case, the price of the step covering: 'receipt of respondents' evidence' was based on five statements being received from defendants which need to be reviewed, but in practice it turns out to be ten statements, additional work would be authorised if it were made clear this was the basis for the original price.

It is proposed that any such 'significant planning assumptions' which significantly affect the Key Stage price be explicitly stated. This will be useful to both parties in setting out the basis for the stage price and in agreeing any subsequent variation to the price. If these planning assumptions prove inaccurate it would justify the solicitor applying for an increase in the stage price. In this example the additional work relating to the five additional statements would be authorised if the planning assumption was clearly set out from the start.

Finally, it is not intended that minor increases are aggregated across several steps within a stage to achieve the required 5% minimum increase. It is expected that applications will be made separately for increases in different steps within a stage in the case as they arise.

19. Changing the team of solicitors, experts or counsel working on the case

We expect material changes to the team running the case to be reported. For example, if the expert or counsel were replaced with one of significantly less relevant experience, the Agency would expect this to be reported. The Agency could then decide if the case team were capable of managing the contract. Alternatively, if staff of the same experience were brought onto the team, but this would lead to disruption or delay to the case, we would expect this to be reported.

20. Making an urgent change to an agreed case plan

If urgent work not covered by the Case Plan is needed a change can be authorised by the Case Manager by an exchange of emails. For example, if you suddenly needed to obtain a worldwide freezing order.

21. What happens at the end of a stage?

You must submit a report setting out the work completed, the outcome of the stage including any key documents, reports and opinions generated, and your fully costed Key Stage Plan for the next stage. A record of your actual costs incurred, including time spent, must be submitted for finalising the stage payment.

If the stage includes a full hearing which overran, you can provide details of the overrun to justify an increase in payment.

The Case Manager will decide whether funding should continue to the next stage and agree a new stage plan. Again, there are rights of review against termination of funding or failure to agree a fully costed stage plan for the next stage.

If the actual cost is 95% (or above) of the price, the agreed price is payable. If the actual cost is between 50% and 95% of the price, the actual cost plus 5% of the price is payable. If the actual cost is 50% (or below) of the price, only the actual cost is payable. Costs will be assessed by the Agency, with the usual rights of appeal.

There will be no detailed assessments by the court, other than 'party & party' costs.

Payment will be made within the standard service standards which the LAA will publish from time to time.

22. What happens if the case stops part way through a stage?

It is possible that the case may be stopped. The client may become financially ineligible for funding or information may become available that shows the client has not made full disclosure about the case. This could lead to discharge or revocation of the client's certificate, which would lead to automatic termination of the contract.

In such circumstances the solicitor will be paid their costs for the proportion of work undertaken in the stage plan.

23. What are the contract payment terms?

Once a contract is in force, full payment of solicitor's profit costs and counsel's fees will be made at the end of each fully costed stage and, if a stage will last more than six months, payments on account can be claimed after each six month. Disbursements over £100 will be paid as they are incurred.

At the end of the case, if you are awarded full 'party & party' costs no further payments are due from the Agency and all payments made under the certificate are repayable to the Agency.

24. Interim partial payment of costs

If the opponent makes an interim partial payment of costs they may be transferred to your office account as costs with the agreement of the Agency. The Agency will require payment in of interim costs where the payments on account and interim payments are substantial. The distribution of costs will be reconciled at the end of the case.

25. Party and party costs order does not cover all of the costs

If the court decides not to order the costs in full against the opponents, application can be made to the Agency. The Agency will consider such applications, taking into account their value and the reasons given by the court for not ordering them in full. Normally payment would only be made where the court expressly excludes them in full in the costs order. If the court does not order the costs in full because they are considered excessive it would not be reasonable for these costs to be paid by the fund.

It is possible that the case will be won but the Court will award costs in respect of those issues it has accepted and deny costs in respect of those issues it has not accepted. In these circumstances the Agency will pay, at the contract rate, for all or some of the work where costs have not been awarded 'party & party'. The 'party & party' bill must be assessed by the court or agreed. Any agreement must be approved by the Agency because it could affect the Agency's and client's liability. A transcript of the judgment must be obtained for the Agency to consider the court's view on all arguments put forward. The Agency will pay, at the contract price, for work in support of arguments reasonably pursued in accordance with the contract. If necessary, the Agency will seek an opinion from independent counsel and, in any event, the Agency's decision on what costs to allow at the contract rate will be appealable to the Independent Cost Assessor whose decision will be binding on the Agency.

Where costs are not recovered in full the statutory charge is likely to apply. Your client must be informed of the estimated or actual financial cost to them of not receiving costs in full on any proposed settlement or outcome at trial (see Section 8 above). If you seek to settle the case with not all costs being recovered from the opponent and with a claim against the fund, the agreement of the Case Manager to the proposed settlement must be obtained in advance.

26. Review

At the end of the case you and the Case Manager may review how the case has progressed to identify whether there is any scope for improving the management of similar cases, or future liaison between you and the HCC team.

Annexes

Annex 1 – Hourly rates in contracted cases

Solicitors	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 1. Enhancements as Reg 6(3).	£70/hr
Junior Counsel	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 2. Enhancements Reg 7(3) as amended by Reg 2(2).	£50/hr
Senior Junior Counsel	Civil Legal Aid (Remuneration) (Amendment) Regulations. Rates as Schedule 2. Enhancements Reg 7(3) as amended by Reg 2(2).	£90/hr
King's Counsel	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 2.	£90/hr
Counsel Ring-Fence (Section 12)	n/a	£5,000 shared equally if 2 barristers instructed.
Travel rate	As regulations above	¼ of above hourly rate
Experts Fees	Civil Legal Aid (Remuneration) (Amendment) Regulations. Rates as Schedule 2.	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 5.

Annexe 2 – Standard stages for case categories

1. Judicial Review:

Normally a three or four stage approach will be applied –

- Investigative stage if merits are unclear
- Obtaining permission and filing of documents.
- Receiving and considering the respondent's evidence, and obtaining counsel's opinion on continuing.
- Finally, preparing a skeleton argument and attending at the full hearing.

The early stages are normally short but there is a significant backlog in the court that may lead the total proceedings to run over a year. If there were a subsequent need to appeal any decision of the court this would be treated as a separate stage.

2. Clinical Negligence, Personal Injury and Actions against the Police:

It is expected that these cases would proceed in the CPR multi-track.

The standard CPR stages will normally be used as Key Stages beyond investigation and pre-action protocol: Issue of Proceedings and final case management conference, and trial. Please refer to the funding check lists for these areas of law. The Solicitors' and Barristers' Information Packs and the various Funding Checklists can all be found by following this

link:<https://www.gov.uk/government/publications/high-cost-cases-non-family-civil>

In exceptional cases these stages can be subdivided to include all steps up to allocation, exchange of witness statements, or exchange of expert evidence.

It is expected that each of these stages will take 6 months to a year.

3. Housing:

Disrepair cases are expected to be dealt with under the CPR multi-track procedures.

It is not expected there will be many defended possession cases with very high costs. Possession cases will be dealt with in one stage leading straight to a full hearing.

4. Appeal:

It is expected that the Costed Case Plan is provided once permission has been given by the court. The case is then dealt with as a single stage including the appeal hearing.

5. Other cases:

Again the CPR multi-track stages will be adopted as Key Stages.

It is of concern that many non-matrimonial cases have run to seven years. The Case Manager will need to support this judicial control by agreeing Costed Case

Plans to fit the key court stages.

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