



Legal Aid  
Agency

# VHCC - Legal Aid Agency Clinical Negligence Funding Checklist August 2017 v3

<b>Version:</b>	<b>Issue date:</b>	<b>Last review date:</b>	<b>Owned by:</b>
3	01.04.2013	01.08.2017	High Cost Civil Team

## Version History

Version:	Date	Reason
1	01.04.2013	First release – Legal Aid Reform and transition to Legal Aid Agency
2	01.10.2015	Information updated
3	01.08.2017	Reviewed – no updates required

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## 1. Overview

From 1 April 2013 this is the Legal Aid Agency's Clinical Negligence Funding Checklist.

For Experts rates please refer to: [www.justice.gov.uk/legal-aid/newslatest-updates/legal-aid-reform](http://www.justice.gov.uk/legal-aid/newslatest-updates/legal-aid-reform)

Solicitor rates:

Civil Legal Aid (Remuneration) Regulations 2013:  
<http://www.legislation.gov.uk/ukxi/2013/422/made>

LAA website based Rates Calculator found here;  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/424937/legal-aidrates-calculator.xls](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424937/legal-aidrates-calculator.xls)

## 2. Scope

Below are the proposed costs limitations/contract prices to cover all work in a publicly funded clinical negligence case in the High Court. If the likely final costs exceed £25,000 a Very High Cost Case contract will be entered into when the certificate is first amended. The VHCC contract terms are unaffected by the Funding Checklist.

These staged sums represent the maximum likely to be authorised and payable by the Legal Aid Agency if the case is unsuccessful. These sums can be revised downwards if necessary to keep cases within The Civil Legal Aid (Merits Criteria) Regulations 2012 cost/benefit ratios: (1:4 for cases with 50-60% prospects, 1:2 for cases with 60-80% prospects, 1:1 for cases with 80%+ prospects)

The stages are:

1 - The Investigative Stage, 2 - Issue of Proceedings to Mutual Exchange,  
3 - Settlement, 4 – Trial, 5 - Quantum Investigations, 6 - Quantum Trial

Hourly rates (1<sup>st</sup> £25,000)

Solicitor - £108 ph (this includes enhancement), QC (in High Court) - £180 ph,  
Senior Junior acting alone - £135 ph, Led Junior Counsel - £112.50 ph, Medical experts - the rates that will be authorised for the most commonly sought experts are in *The Civil Legal Aid (Remuneration) Regulations 2013*.

(Form CIVAPP8A must be completed if you are seeking a higher rate for an expert)

For travel and waiting please refer to the relevant regulations (no enhancement to be claimed)

Hourly rates (post £25,000)

Solicitor - £70 ph, Senior Counsel £90 ph, Junior Counsel £50 ph

For travel and waiting the rate is a ¼ of the relevant rate.

## Simplified claims for payment

The principle for payment when the Funding Checklist is used is that of payment for the number of experts instructed e.g. if you are granted a costs limit of £22,500 to instruct 5 experts in the Investigative Stage and you only instruct 2 experts then you will generally only be able to claim up to £6,750 when your bill is submitted for payment.

Where you have agreed costs limits with the Legal Aid Agency using the Funding Checklist please submit the following:

- Itemised Claim 1 OR time recording sheets which clearly specify dates, the rates claimed and enhancement.
- This Funding Checklist
- Counsel's fee notes
- Disbursement vouchers
- Routine letters and telephone calls should be claimed as part of overall preparation OR itemised as per normal on a Claim 1 with no enhancement.

**If the Checklist is answered in full and the costs limitations agreed there is no need to provide a separate case plan or detailed costs schedule.**

## **3. Investigative Help (Stage 1)**

Includes attendance on client, medical records, client statement(s), instructing experts, considering reports, supplementary questions to experts, instructing counsel, conference(s) with counsel and experts, protocol letter and response.

- **1 expert - £4,500**
- **2 experts - £6,750**
- **3 experts - £9,000- £13,500**
- **4 experts - £13,500- £18,000**
- **5/6 experts (+ MRI) - £20,250- £22,500**

For authorisation of the above sums please answer the following:

- a) Please provide a brief statement (in addition to any client statement) including date of injury, date of knowledge, nature of injury, prognosis (if known), likely particulars of negligence. Please ensure you have addressed the funding requirement that the NHS complaints procedure is followed unless clearly inappropriate.
- b) Are there any additional risk factors e.g. limitation, multiple defendants, client credibility (client evidence conflicts with medical records)?
- c) List all medical experts likely to be instructed before proceedings are issued and in relation to each:
  - Discipline of expert (and name if known)
  - Medical issue the expert will address
  - Proposed order of instruction
  - Approximate timetable for instruction and receipt of report

- d) Have there been any informal or informal admissions (e.g. through the Complaints procedure)?
- e) An estimate of costs:
  - To date (if any)
  - To conclude investigative stage (Stage 1)
  - To conclude settlement
  - To conclude trial
- f) Is a split trial likely to be appropriate? Please give brief reason. (In a case where numerous quantum experts are required the assumption will be that funding is provided on the basis of a split trial unless liability/causation is conceded or a realistic offer of settlement has been made)
- g) An estimated date for pre-issue conference with counsel and expert
- h) An estimated date for final hearing
- i) An estimate of general and special damages, specifying likely heads of damage. A broad estimate is acceptable if quantum is complex or the prognosis unclear.
- j) The assumption at this stage is that prospects are unclear. Please confirm.

#### 4. Issue of Proceedings – Mutual Exchange (Stage 2)

Includes issue/service, allocation questionnaire, CMC, considering Defence, experts' consideration of defence/revision of reports, exchanging statements and reports, Part 35, conference with counsel and experts.

There is an assumption that Leading Counsel may be involved in a 4/5 expert case.

- **1 expert - £6,750**
- **2 experts - £9,000**
- **3 experts - £10,750 - £13,500**
- **4 experts - £14,25000 - £16,750**
- **5 experts - £16,750 - £19,000**

Please note: The above costs brackets are based on pre-March 2015 court issue fees. An increase to the costs of this stage will be considered on a case by case basis.

If you are issuing proceedings after 9<sup>th</sup> March 2015 please answer the following.

- (i) Have you already issued proceedings?
- (ii) If the legal aid certificate authorised you to issue proceedings before the rate increase came into effect please explain why you did not issue proceedings at the lower rate.
- (iii) How much was the fee prior to the March 2015 increase?
- (iv) How much is the fee now payable for this case?

For authorisation of the above sums (and any additional sum due to the increased issue fee) please answer the following:

- a) Please provide a brief updated report on case including particulars of negligence, causation, injury and prognosis, defendant's response to letter of claim, any formal or informal admissions. Are there any additional risk factors e.g. limitation, multiple Defendants, client credibility?
- b) List all medical reports obtained and in relation to each:
  - Discipline of expert and name
  - Medical issue addressed
  - Specific conclusion of each expert
- c) Is a split trial likely to be appropriate? Please give brief reason. (In a case where numerous quantum experts are required the assumption will be that funding is provided on the basis of a split trial unless liability/causation is conceded or a realistic offer of settlement has been made)
- d) An estimate of costs:
  - To date
  - To conclude mutual exchange (Stage 2)
  - To settlement
  - To trial
- e) An estimate of general and special damages specifying heads of damage. A broad estimate is acceptable if quantum is very complex or the prognosis unclear.
- f) Prospects of success in percentage terms
- g) Likelihood of settlement
- h) Estimated date of final hearing
- i) Please submit copies of all reports, Notes of Conference or Counsel's Advice and Defendant's letter of response.

## 5. Settlement (Stage 3)

Includes considering quantum reports (preliminary quantum reports if the case is proceeding by way of split trial), instructing experts for meetings and revision of reports, making Part 36 offer, considering response, settlement meeting/negotiations.

- **1 expert - £6,750**
- **2 experts - £6,750 - £9,500**
- **3 experts - £12,000 - £14,250**
- **4 experts - £19,000**
- **5 experts - £21,750**

For authorisation of the above sums please answer the following:

- a) Please provide a brief updated report on case including a brief summary of the defence theory, any formal or informal admissions and any other risk factors

- b) Is the case proceeding by way of a split trial?
- c) Prospects of success (if case does not settle) in percentage terms.
- d) An estimate of costs:
  - To date
  - To settlement (stage 3)
  - To trial
- e) An estimate of general and special damages
- f) Please submit copy of Notes of Conference or Counsel's written Advice

## 6. Trial – Full Trial or Liability only (Stage 4)

Includes PTR, finalising statements, conference, trial bundle, trial preparation, and attendance at trial.

There is an assumption that in a 4/5 expert case, Leading Counsel may be involved and that a 5-day trial is likely.

- **1 expert - £6,750 - £9,500**
- **2 experts – £12,000 - £14,250**
- **3 experts - £19,000 - £28,500**
- **4 experts - £35,750**
- **5 experts - £40,000**

For authorisation of the above sums please answer the following:

- a) Please provide a brief updated report on case including a summary of key issues in dispute, any admissions, outcome of any settlement negotiations including details of offers made/rejected and any other risk factors.
- b) List all medical experts to attend trial and in relation to each:
  - Discipline and name
  - Issue they will address
  - Specific conclusion of each expert
  - Summary of defendant's expert's view.
- c) Prospects of success in percentage terms.
- d) An estimate of costs:
  - To date
  - To conclude trial (stage 4)
  - To conclude quantum trial if appropriate
- e) An estimate of general and special damages.
- f) Defendant's valuation of claim
- g) Prospects of beating any Part 36 offer and advice to client
- h) Please submit copies of joint expert reports and Notes of Conference or written Advice.

## 7. Quantum Investigations (Stage 5)

Includes instructing experts, considering reports and defendant's reports, revision of reports, schedule of loss, indexation issues, conference, and settlement negotiations.

- **8-10 quantum expert case - £34,000**

For authorisation of the above sum please answer the following:

- a) Please specify number and disciplines of experts
- b) Please detail any offers to settle and response
- c) An estimate of costs
  - To date
  - To conclude quantum investigations (stage 5)
  - To conclude the quantum trial

## 8. Quantum Trial (Stage 6)

Includes PTR, finalising witness statements, conference, trial bundle, trial preparation, attend trial.

- **8-10 quantum expert case and 5 day trial - £41,000**

For authorisation of the above sum please answer the following:

- a) Please specify number and disciplines of experts attending trial
- b) Please detail any offers to settle and response and likelihood of beating any Part 36 offer
- c) An estimate of costs:
  - To date
  - To conclude quantum trial (stage 6)
- d) Please submit claimant and defendant schedules of loss

Please note that the Legal Aid Agency is likely to authorise a maximum of £178,250 in total for a fully contested cerebral palsy case (split trial) with 5 liability and 10 quantum experts where all 6 stages are completed.

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