



Legal Aid
Agency

VHCC - Barristers Information Civil Pack (Non-Family) September 2017 v3

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1	01/04/13	First release
2	02/12/13	Remuneration Regulations Revised.
3	04/09/17	General Update

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1. Overview

This Information Pack sets out the Agency's procedures for individual very high cost cases. It sets out the actions that you, the barrister, should take when you accept 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. Please see our website.

2. The Background

The Merits Tests, Procedures, Contracts and the Exceptional and Complex Cases Team(ECCT)

- Part 6 of The Civil Legal Aid (Procedures) Regulations “Special Case Work” – sets out the extra conditions and controls for very high cost civil cases. In particular, they are subject to proposals put forward for progressing the litigation being satisfactory. Once referred to the ECCT, there must be a proper Costed Case Plan and proposal for a Key Stage. 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; in the early stages of a case future events will be more difficult to predict and will 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 a Exceptional and Complex Cases Team to manage these cases, based in the London and Brighton Office. The ECCT if appropriate will assign an individual case to one of its Case Managers.
- Multi-Party actions are subject to a separate contract arrangement. This document deals only with individual cases or community actions referred to the ECCT 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 11 of 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.

- Typically, these cases will be clinical negligence, actions against public bodies, and judicial review cases. The Agency handles only a few hundred cases each year will be subject to these provisions.

- All figures in this document exclude VAT.

For Family and Children Act cases there is a separate information pack. Please see our website details.

4. When does the Contract start?

- The contract starts when the ECCT 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. 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), set out in Section 3 above, work has been undertaken under the certificate. Either after approval of the contract or with the application, the solicitor will need to submit a claim for the pre-contract work to the Case Manager for assessment under the Civil Legal Aid (Remuneration) Regulations. 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. Any claims for enhanced hourly rates will need to be justified. 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 fees 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. The rates you will use are those in The Civil Legal Aid (Remuneration) (Amendment) Regulations. After costs have reached £25,000 a different approach will be adopted in 'party & party' costs cases, see below.

6. What is Counsel's part in the contract?

- The contract is between the Agency and firm of solicitors. The solicitors are obliged to draw your attention to the terms covering payment and our Payment Rates and obtain your signature to our Barrister Acceptance Form. Once the Key Stage is negotiated the solicitor must supply you with a copy of the Fully Costed Stage or the information in it.

7. What is Counsel's role in case planning

- Where counsel is to be instructed in a case we would expect them to agree your work and hourly rates set out in the Costed Case Plan. In cases where 'party & party' costs are likely to be ordered counsel's payment will be at 'risk rates'. In cases where party and party costs are unlikely to be ordered and enhancements to hourly rates sought Counsel will need to justify those rates in the case plan. They will therefore need to consider the case papers and decide whether to take on the case given their own assessment of prospects of success and payment.

- The use of leading or senior counsel will need to be justified in the light of the nature of the case, the degree of complexity as to fact and law, the amount of quantum and any other particular requirement for specialist expertise. See *Code of Conduct of the Bar Para 606*. Prior authority will need to be obtained from the ECCT team.

- The use of two counsel will also need to be justified as in the client's interest. For examples, where there is the need to note evidence in court, or consider significant documentation, or carry out extensive research. See *Code of Conduct of the Bar Para. 606*. Prior authority will need to be obtained from the ECCT.
- To support counsel in deciding whether to take on the case the first £5,000 of counsel's fees are "ring-fenced" at the current remuneration rates rather than the reduced 'risk rates'. If there are two counsel instructed the 'ring-fence' will be shared £2,500 to each counsel. If it becomes necessary for a new counsel to be instructed for reasons outside the control of the conducting solicitor the new counsel would obtain a further 'ring-fence' of £2,500.

8. Effect of 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 overruns. Counsel will have to propose the likely hearing length in the Costed Case Plan if the judge has not at that time allocated the time for the hearing.

9. What payment terms apply to counsel for full representation or Investigative Representation?

- Whether the contract risk rates apply will depend 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: junior counsel £50 per hour and senior counsel £90 per hour. A led senior would be paid at junior counsel rates. 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 expected to be paid but the case has only borderline or marginal prospects of success and is only to be funded because of overwhelming importance to the client, wider public interest or because of human rights issues, which a solicitor would not pursue at risk, for example, judicial review of a mental health detention decision, the Agency will pay a 30% uplift to the prescribed rates to reflect the additional financial risk, i.e. £65 and £117 per hour respectively. 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, the Agency will pay in line with current remuneration rates as set out below. The Agency will also pay in line with current rates if an appeal in a successful case is being defended or to defend an appeal against an interim order.
- Brief and refresher fees will be assessed against the hours and hourly rates for the preparation, conferences and hearings planned for the case. The rates are those set out in Civil Legal Aid (Remuneration) (Amendment) Regulation Schedule 2. Where leading and junior counsel are instructed appropriate rates will be applied for the work set out in the Case Plan for each to undertake. Travel time when approved will be paid at one quarter of the relevant rate. Where enhancements are sought Counsel should justify their hourly rate in the case plan in accordance with the provisions of Reg 7.

10. What happens if the case plan or payment rates cannot be agreed?

- If the Costed Case Plan cannot be agreed with the Case Manager there is a right to have the Costed Case Plan 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 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.

11. What happens at the end of a stage?

- The solicitor must submit a report setting out the work completed, the outcome of the stage including any key documents, reports and opinions generated, and the fully costed stage plan for the next stage. A record of your actual costs incurred, including time spent, must be submitted for finalising the stage payment.
- The Case Manager will decide whether funding should continue to the next stage and agree a new stage plan. This will be based on your opinion as counsel. Again, there are rights of review against termination of funding or failure to agree a Key Stage plan for the next stage.
- 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 Key Stage and, if a stage will last more

than six months, payments on account can be claimed after each six month period. Disbursements over £100 will be paid as they are incurred.

12. What happens at the end of the case?

- 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

13. 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 barrister will be paid their costs for the proportion of work undertaken in the stage plan.

14. Party and party costs do not cover all of my fees

- 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. If you propose 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.

Annexes

Annex 1 – Hourly rates in contracted cases

	Case Costs are Unlikely to be ordered between parties if case is successful.	Case Costs are Likely to be ordered if case is successful. (Section 9).	Case Costs are Likely to be ordered if case is successful AND LAA agreed 'borderline' prospects of success. (Section 9).
Solicitors	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 1. Enhancements as Reg 6(3).	£70/hr	£91/hr
Junior Counsel	Civil Legal Aid (Remuneration) (Amendment) Regulations. Rates as Schedule 2. Enhancements Reg 7 (3)	£50/hr	£65/hr
Senior Junior Counsel	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 2. Enhancements Reg 2(2).	£90/hr	£117/hr
Queens Counsel	Civil Legal Aid (Remuneration) Regulations. Rates as Schedule 2.	£90/hr	£117/hr
Counsel Ring-Fence (Section 7)	n/a	£5,000 shared equally if 2 barristers instructed.	£5,000 shared equally if 2 barristers instructed.

Travel rate	As regulations above	¼ of above hourly rate	¼ of above hourly rates
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Annex 2 – Contact details for the team

High Cost Civil Team Brighton – For Clinical Negligence, Actions Against the Police, Prison Law and Child Abuse.

Address:

Legal Aid Agency
3rd Floor Invicta House
Trafalgar Place
Brighton
BN1 4FR

DX: 94310 Brighton

Tel: 0300 200 2020

Email: ContactECC@legalaid.gsi.gov.uk.

High Cost Civil Team London – For Immigration & Public Law cases.

DX: 161440 WESTMINSTER 8.

Tel: 0300 200 2020.

Email: ContactECC@legalaid.gsi.gov.uk

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