Actions Against the Police

September 2017 v2

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<th>Version</th>
<th>Issue date</th>
<th>Last review date</th>
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<td>2</td>
<td>11/10/2017</td>
<td>01/04/2013</td>
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Version History

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<td>11/10/17</td>
<td>Update.</td>
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1. Overview

The Actions against the Police (AAP) is part of the Exceptional and Complex Cases Team (ECCT) and is responsible for the management of individual cases and Multiparty/Group Actions against the Police in complex cases and in cases where cost in excess of £25,000 can be expected. In addition the team will deal with cases where costs are less than £25,000 where they are referred to the team.

The team funds a large proportion of the high profile, complex and leading cases against the Police and is also responsible for Judicial Review cases involving Police Powers where costs are likely to exceed £25,000 or where funding decisions are based on an assessment of Significant Wider Public Interest or Human Rights.

Cases involving applications to the Supreme Court will also be dealt with by the team if they have not been previously dealt with by it, as will all Prisoner Rights Judicial Reviews irrespective of likely costs because of the possibility that these cases can be run as test cases.

The team’s main function is the assessment of legal risk in accordance with the guidance contained in the Lord Chancellors Guidance issued under Section 4 of LASPO and balancing robust financial stewardship with funding cases that involve novel law, significant human rights claims, terrorist issues or significant wider public interest.

2. The Team

The team is based in Brighton and now manages all prison law judicial review cases and a large proportion of publicly funded actions against the Police cases nationally. Much of this work is not necessarily high cost.

Over the past few years we have made regular visits to individual firms to discuss our requirements. We aim to develop good relationships with all franchised firms, to be approachable and to develop ways of working with you that cut bureaucracy and the time you need to spend obtaining funding so you can get on with running your cases in the way you want to with as little interference as possible.
3. Our Approach

Applications submitted through CCMS will be sent directly to the team and will be dealt with in accordance with this guidance. In providing the guidance our aim is simplify the procedure by clearly defining what we require from you at each stage of an application, what those stages will be and where possible agree costs in advance.

Please note that costs should be agreed in advance with the team whether or not a VHCC contract is in place. We aim to move to a system of staged funding based on taking the estimated damages in a case which we will agree from the outset and then agreeing costs in a way that will enable each stage of a case to be funded up to and including the final hearing within the appropriate cost benefit ratios.

We believe that staged financial planning is essential at the start of the case to avoid the risk of withdrawal of funding on cost/benefit grounds part way through the case. We accept that it is difficult to fund many of these cases within the proportionality test and that this frequently means that some very complex AAP Cases cannot be funded to trial. Our starting point in AAP cases will always follow the regulations where the following cost benefit ratios apply:

- Prospects of Success Good - Cost benefit ratio 2:1
- Prospects of Success Moderate - Cost benefit ratio 4:1

Borderline or Marginal cases will require either Significant Wider Public Interest or raise significant Human Rights issues (see definitions in the Lord Chancellors Guidance under Section 4 of LASPO).

Because of the nature of AAP cases a cost benefit ratio of 1:1 can be applied if it is appropriate to do so although the starting point will always be the standard cost benefit test.

We believe that the main factors that will determine the costs of the case are:

1. The number of causes of action.
2. The number of identified defendants
4. Extensive volumes of documentation
5. The number of Witness and/or experts
6. Estimated length of trial
7. Any additional risk factors e.g. limitation/ strike out.
Our approach will offer you the following advantages:

1. We will no longer require fully costed case plans. If the information is provided in full and the cost limitations agreed there is no need to provide a separate case plan or detailed costs schedule.

2. A clear and defined budget from the outset of the claim.

3. The flexibility to manage that budget.

4. Avoids extensive correspondence with the Agency for small increases to the cost limit.

5. Cost and risk assessment becomes easier for both the LAA and solicitors. (Please note: aggravated and exemplary damages are not included in the above assessment, save in exceptional circumstances as they are a discretionary remedy of the court. Our cost/risk assessments will be based upon a realistic value of the claim and not the maximum potential value if the claim is successful in every single aspect of the allegations. If you wish us to consider aggravated and exemplary damages you will need to explain why they are likely to be awarded.)

6. You are aware of the information the team requires from you and there will be consistency between suppliers in what detail is required and supplied

7. Claiming costs will be quicker and easier.

8. All firms will be offered the same price for similar cases.

If you are relying on the principals of overwhelming importance to the client, significant wider public interest and/or significant human rights issues, please provide a full explanation ensuring consideration of the appropriate definitions within the Lord Chancellors Guidance under Section 4 of LASPO.

Leading counsel in addition to junior counsel will be authorised if you can show that the law is genuinely novel/complex. It is important that you clearly demonstrate that the use of 2 counsel is cost effective and not involve duplication of work.

Please note that if you are requesting higher amounts please provide full details outlining the complexities and or/exceptional nature of the challenge.
4. Stages and Costs

Devolved Powers:
The team will usually aim to deal with an Emergency applications within 48 hours.

Stage 1: Investigation (this includes attendance on client, client statement, medical records, instructing counsel, conference with counsel, before action letter and response)

In accordance with the proportionality test and the reasonableness of your costs we would be prepared to pay ¼ of the value of the case for this stage if a 1:1 ratio is considered appropriate.

For authorisation of this stage and costs please comment on the following:

1. The clients aim in bringing the litigation. This may be as simple as obtaining damages, but may include an apology, a declaration or a better understanding of what has happened.

2. If the complaints procedure has not been used an explanation for not having used it.

3. The likely individual causes of action, prospects of success and likely damages against each. We accept that this will be an estimate at this stage that we will not necessarily hold you to if evidence comes to light that changes the value of the case.

4. The number of potential defendants and the likely prospects of success in each.

5. An outline of the complexity of the case and why the law is new and novel. If a QC is likely to be required, please give reasons.

6. Extensive documentation. Most of these cases have voluminous documentation so reasons must be given as to why the amount of documentation is above the norm.

7. Please outline the number of likely witnesses and whether they will be required at trial. Give details of any expert evidence.

8. Using your experience, please estimate the likely length of the trial at this stage.
9. Please give details of any other risk factors that may affect the prospects of success such as any limitation issues and/or likelihood of a strike out application.

10. Please provide a breakdown of the hours allowed within this stage for Profit Costs, Counsel (if used), and Experts fees. (This will enable your bills for each stage to be processed quickly)

In addition, please provide:

1. A copy of your letter before action
2. Your clients and any other witness statements in your clients favour.
3. Any information which might affect your clients credibility
4. Copies of any complaint/IPCC responses
5. An estimate of costs to date

Stage 2: Mutual Exchange/Settlement (this will include issue/service of proceedings, allocation questionnaire, CMC, Considering defence, expert evidence, exchange of evidence, conference with counsel, any settlement meetings)

Subject to the proportionality test and the reasonableness of your costs the Agency will pay up to 2/3 of likely damages for this stage, unless a very lengthy trial is expected, including the costs of investigation. Further sums may be available in a case where there is good evidence that the case will settle.

For authorisation of this stage and costs please comment on the following:

1. The results of the investigative stage and how that stage has improved the prospects of success.
2. The individual causes of action still being pursued, the prospects of success and any changes in likely damages in each.
3. Changes in the defendants and the likely prospects of success in each.
4. An update on complexity and on the issue of “new and novel”. If a QC is required at this stage, please give detailed reasons.
5. Extensive documentation. Where cases have voluminous
documentation reasons must be given as to why the number of documents is above the norm.

6. Please outline the number of witnesses you now have and whether they will be required at trial. Give details of any expert evidence.

7. Using your experience, please estimate the likely length of the trial.

8. Please give details of any other risk factors that may affect the prospects of success such as any ongoing limitation issues and/or likelihood of a strike out application.

9. Please provide a breakdown of the hours allowed within this stage for Profit Costs, Counsel and experts fees.

In addition please provide copies of:

1. Counsel advice if obtained to include a brief summary of the defence, any formal or informal admissions or any other risk factors.

2. An assessment of prospects of success in percentage terms (assuming the case does not settle).

3. Any expert evidence.

4. Pre-action protocol correspondence.

5. Any complaint/IPCC responses to previously.

Stage 3: Trial (this includes PTR, finalising statements, conference, trial bundle, trial preparation and attendance at trial).

Subject to the proportionality test the Agency would normally withhold up to 1/3 of the value of the case to conclude this stage, but this would increase if there are funds left from the amounts allowed pre trial.

For authorisation of this stage and costs please comment on the following:

1. The individual causes of action still being pursued, the prospects of success and likely damages in each together with a summary of key issues in dispute, any
admissions, outcome of any settlement negotiations including details of any offers made/rejected and any other identified risk factors.

2. The number of defendants and the likely prospects of success in each.

3. An outline of the complexity of the case and why the law is new and novel. If a QC is required at this stage, please give detailed reasons.

4. Extensive documentation. Most of these cases have voluminous documentation so reasons must be given as to why the amount of documentation is above the norm.

5. Please outline the number of witnesses you now have and whether they will be required at trial. Give details of any expert evidence.

6. The likely length of the trial.

7. Please provide a breakdown of the amounts allowed within this stage for Profit Costs Counsels fees and experts fees.

In addition please provide copies of:

1. Counsel’s advice 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.

2. An assessment of the prospects of success in percentage terms

3. Copies of the defendants witness statements and (if available) expert evidence

4. A current estimate of general and special damages

5. A current estimate of costs to trial.

6. Prospects of beating any Part 36 offer and advice to client.
**Hourly Rates**

Costs under £25,000 will be calculated in accordance with The Civil Legal Aid (Remuneration) Regulations 2013 as amended,

1st £25,000 –

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<th>Description</th>
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<tr>
<td>Solicitor Preparation</td>
<td>£108 p/h (prescribed preparation rate including enhancement of approximately 50%)</td>
</tr>
<tr>
<td>Leading Counsel</td>
<td>£180 p/h</td>
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<tr>
<td>Senior Junior acting alone</td>
<td>£135 p/h Pre 02/12/13</td>
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<tr>
<td>Junior with Leader</td>
<td>£112.50 p/h Pre 02/12/13</td>
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<tr>
<td>Counsel post 02/12/13</td>
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<tr>
<td>County Court, High Court or Upper Tribunal</td>
<td>£71.55p/h (London Rate)</td>
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<tr>
<td>Court of Appeal and Supreme Court:</td>
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<tr>
<td>Led Junior</td>
<td>£112.50 p/h</td>
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<tr>
<td>Leading Senior Counsel in Court of Appeal</td>
<td>£157.50p/h (Preparation and attendance)</td>
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<tr>
<td>Leading Counsel</td>
<td>£180 p/h</td>
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**Costs over £25,000 – VHCC contract “risk rates”:**

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<tr>
<td>Solicitor</td>
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<tr>
<td>Senior Counsel (inc. senior junior acting alone)</td>
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<tr>
<td>Junior counsel</td>
<td>£50</td>
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Medical Experts -

See MOJ Codified rates (The Civil Legal Aid (Remuneration) Regulations pre 02/12/13 as amended post 02/12/13,
• If funding is agreed using the Funding Checklist there is no need to justify across the board enhancement at 60% or below unless a higher rate is sought.

**Claims for payment**

(Claim 1s, POA 1s and finance queries) pre CCMS should be sent to the following address:

Legal Aid Agency Business Delivery South  
Tyneside DX 742350  
Jarrow 2  
Tel: 0300 200 2020

Please note that cases funded by Regional Offices will continue to be assessed in the usual way.

**Simplified Claims for Payment.**

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

- Claim 1  
  - This Funding Checklist  
  - Time recording sheets for each stage  
  - Counsel’s fee notes  
  - Disbursement vouchers

**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.**

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