



Legal Aid
Agency

Review Panel Arrangements

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Version history:	Date	Reason
1.0	1 April 2013	Initial document
1.1	10 October 2014	Hourly rate of remuneration – para.11
2.0	1 May 2015	Merging of IFA & ICA role, clarity in Schedule 1 that those retired from practice may still be eligible
3.0	15 July 2016	Integration of dispute resolution role and revised qualification criteria
4.0	1 February 2019	Increase maximum term of office from three to five years. Extend membership to CILEx Fellows, subject to meeting contract requirements. Updated contract references and minor terminology amendments.
5.0	1 October 2020	Changes to membership criteria including Costs Lawyers able to apply to be Independent Costs Assessors. Solicitors or CILEx Fellows may join or remain on the panel after they have left an organisation which has a contract with the LAA, subject to conditions. Removal process made clearer. Minor terminology amendments.
6.0	1 November 2021	Changes to reflect appointments made by the Lord Chancellor in accordance with the Governance Code. Minor amendments to improve clarity.

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Legal Aid Agency Review Panel Arrangements

1. Background & Scope

- 1.1 These Arrangements which came into effect on 1 April 2013 are made under section 2(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the Act”). These Arrangements succeed the Review Panel Arrangements 2000 (as amended). They provide for the operation of a Review Panel comprising Independent Funding Adjudicators (IFAs) and Independent Costs Assessors (ICAs). From this Review Panel, committees, the Special Controls Review Sub Panel (SCRP) and the Very High Cost Cases Crime Sub Panel (VHCC) are formed.

- 1.2 The Arrangements also provide for the practical arrangements for the appeals process against the following decisions:
 - a) Those on behalf of the Director relating to the making and withdrawal of determinations and conditions and limitations to which determinations (including whether a withdrawal should be by way of revocation) in relation to services sought under section 9 of the Act (in-scope funding) following a decision on internal review with which an individual is dissatisfied;
 - b) Assessments of costs in civil certificated cases carried out by the Lord Chancellor acting through the Agency;
 - c) Assessments of costs of Crime Contract work;
 - d) Prior authority refusals in Crime Contract work;
 - e) Refusals or reductions of extensions to the Upper Limit and decisions by providers not to make a determination that the Client qualifies for, or to withdraw Advocacy Assistance under Crime Contract work;
 - f) A determination that an individual does not qualify for Controlled Legal Representation;
 - g) A withdrawal of a determination that an individual qualifies for Controlled Legal Representation.

- 1.3 These Arrangements do not cover the process for determining applications from individuals to the Director for Exceptional Case Funding under section 10 of the Act as there is no right of appeal to IFAs or SCRPs in such cases.

2. Definitions

“*The Act*” refers to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

“*Agency*” means the Legal Aid Agency.

“*Committee*” means a panel of Adjudicators as provided for by Regulation 45(3) of the Civil Legal Aid (Procedure) Regulations 2012, or Assessors as provided for by paragraph 6.78 of the 2018 Standard Civil Contract Specification or paragraph 8.26 of the 2017 Standard Crime Contract Specification (as amended).

“*Committee Chair*” means the panel member selected to chair a particular committee.

“*Contracts*” means the current criminal and civil contracts between legal aid providers and the Lord Chancellor, acting through the Legal Aid Agency.

“*Director*” means the Director of Legal Aid Casework appointed under section 4 of the Act.

“*Governance Code*” means Governance Code of the Commissioner for Public Appointments.

“*Panel Chair*” means the Chair of the Review Panel.

“*Vice Panel Chair*” means a nominated individual who can act as Panel Chair should the Chair be unavailable.

“*Panel Member*” means a single member - either an Independent Funding Adjudicator (IFA) or an Independent Costs Assessor (ICA) or both.

“*ICA*” means a Panel Member appointed by the Lord Chancellor under section 2 of the Act to assess Providers’ Claims under the Contracts.

“*IFA*” means a Panel Member appointed by the Lord Chancellor under section 2 of the Act who considers appeal decisions under the Civil Legal Aid (Procedure) Regulations 2012 and Criminal Legal Aid (General) Regulations 2013.

“*Regulations*” means the Civil Legal Aid (Procedure) Regulations 2012, the Civil Legal Aid (Remuneration) Regulations 2013, the Civil Legal Aid (Merits Criteria) Regulations 2013 and the Criminal Legal Aid (General) Regulations 2013 (all as amended).

“*SCRP*” means the Special Controls Review Panel, as provided for in Regulation 58(3) of the Civil Legal Aid (Procedure) Regulations 2012.

“*SCRP Chair*” means the Chair of the SCR. The SCR Chair may be appointed on a shared rotational basis of up to three individual SCR members.

“*Review Panel Manager*”- a member of LAA staff appointed by the CEO to oversee the overall management and administration of the Review Panel.

3. Review Panel

- 3.1. There shall be a Review Panel from which:
 - (a) IFAs and ICAs shall be appointed; and
 - (b) IFAs and ICAs can form Committees and Special Controls Review Panels.
- 3.2. The Lord Chancellor shall appoint members of the Review Panel.
- 3.3. The Agency's Review Panel Manager may nominate a candidate to be considered as a temporary member of the Panel for appointment by the Lord Chancellor, subject to the Governance Code.
- 3.4. Only members who meet the criteria for membership set out in Schedule 1 to these Arrangements may be appointed (including temporary appointments) to the Review Panel.

4. Applications for membership of the Review Panel and maintaining the Review Panel

- 4.1. The Agency shall secure applications for membership of the Review Panel by:
 - a) announcing the recruitment exercise online as required for public appointments.
 - b) notification to members of the Bar, solicitors, Fellows of the Chartered Institute of Legal Executives and Costs Lawyers; and
 - c) such other measures, as the CEO considers practicable and reasonable, having regard to the qualifying criteria set out in Schedule 1 to these Arrangements.
- 4.2. The Review Panel Manager shall maintain:
 - (a) a schedule of members who are best qualified among those members to be Chairs of Committees; and
 - (b) separate schedules of all Review Panel members, incorporating their specialist experience or knowledge in the particular areas of law and types of proceedings set out in Schedule 2 to these Arrangements.
- 4.3. The Review Panel Manager will provide updated information to the Panel Chair each year as to the numbers of members comprising each of the groups referred to in para. 4.2(a) and (b). The Review Panel Manager will provide updated information to the SCRIP Chair each year as to the numbers of members comprising SCRIP. Where any question arises as to the inclusion or removal from one of the schedules, that question shall be resolved by the Review Panel Manager.

5. Convening Committees

5.1. SCRP shall be convened to hear cases appealed under Regulation 58(3) of The Civil Legal Aid (Procedure) Regulations 2012 (“the Procedure Regulations”). The SCRP Chair will always be asked to chair any SCRP meeting, with the other members being selected on a rotational basis, subject to experience in the area of law relevant to the case(s) in question. If the SCRP Chair is unavailable to chair, another suitably qualified and experienced SCRP member will be asked to act as Chair.

5.2. When convening any Committee other than SCRP, the Chair and other suitably qualified and experienced Panel Members will be selected in rotation for that committee from the Review Panel, having regard to the schedules to these Arrangements, any potential conflict of interest and relevant specialism.

5.3. Where an IFA or ICA having agreed to consider appeals either as part of a committee or acting as sole Panel Member, is no longer able to give his or her time to the appeal(s) he or she must inform the Agency immediately so that the work can be allocated to another Panel Member. The Agency will expect Panel Members to complete appeals without requesting substitutions save in exceptional circumstances.

6. The decision-making process

6.1. The Agency will provide the papers provided by the appellant in support of the appeal to the Panel Member accompanied by a case note summarising the reason or reasons for refusal or provisional assessment. The IFA or ICA will be required to make his/her decision on the appeal and return the papers within 14 calendar days of receipt.

6.2. Where a committee has been convened, the Agency will agree a date for the appeal to be heard by the committee and provide the committee with the papers referred to in para. 6.1. The committee will be required to decide the appeal and return the papers within 14 calendar days of receipt of the papers.

6.3. Where oral representations are to be made under Schedule 3 the appellant will be informed of the hearing date.

6.4. The Agency may require a member of its staff who is trained and competent to process appeals in the capacity of internal reviewer to assist the Committee in the capacity of clerk to record the decisions made by the committee and the reasons for them. The Agency is likely to require a member of staff to act as a clerk where the case is considered to be exceptionally complex or high profile.

6.5. The clerk must be independent from any previous decision making in the case being heard and may inform the committee of what the clerk considers to be the

relevant regulations, and contract provisions, but will not take part in the decision making process which is for the committee alone.

6.6. Any decision, if not unanimous, will be that of the majority. Where there is no majority decision, the decision will be that of the Chair. A member with a dissenting view may require that it is noted in the record of the meeting made under para.6.7.

6.7. The Panel Member or Chair of any committee must ensure that proper and adequate reasons are given for decisions.

6.8. The Chair of any committee is responsible for making, signing and dating a record of the meeting held under these Arrangements.

6.9. The record of the meeting shall be retained by the Agency in accordance with the provisions of its Document Retention Policy.

7. Conflict of Interest

7.1. It is the responsibility of each Adjudicator or Assessor or committee member to be alert to the possibility in any matter of a conflict of interest and, if he or she identifies a conflict of interest or possible conflict of interest to declare it immediately.

7.2. Any issues arising concerning a potential conflict of interest should be referred to the Review Panel Manager who may consult with the Principal Legal Adviser.

7.3. If any panel member has a conflict of interest in any appeal, he or she shall inform the Agency immediately for re-allocation to a different Panel Member, returning any papers where appropriate and deleting any electronic notifications.

7.4. If any member of a committee has a conflict of interest in any matter, he or she shall withdraw entirely from the meeting while the matter is considered and shall not return until the Chair permits them to do so. It is open to the Chair to require that Panel Member to take no further part. The remaining panel members should then discuss whether they can continue with the appeal, or whether the committee should be adjourned for the LAA to appoint a new Panel Member to the committee. In such circumstances the committee should also consider whether the views of the parties should be sought before continuing with the appeal or adjourning.

7.5. The record of each meeting shall record the names of any member who has a conflict of interest or has declared a conflict of interest or potential conflict of interest. The minutes shall record the matter in respect of which the conflict or potential conflict of interest arose and what steps were taken in respect of that conflict or potential conflict of interest.

8. Indemnity for Adjudicators

8.1. The Agency will indemnify Panel Members in carrying out their functions under these Arrangements provided that they have acted honestly, in good faith and in

accordance with the statutes, regulations and procedures applicable to the decisions they have made.

8.2. Panel Members who have acted in accordance with para.8.1 will not have to meet any personal liability that is incurred in the execution of their function out of their personal resources.

8.3. The CEO will determine the applicability of the indemnity according to the facts of any particular case.

9. Term of appointment

9.1. The term of appointment of Review Panel members, including those holding the positions of Chair and Vice-Chair, and SCRP Chair shall be no more than five years' consecutive service.

9.2. Every member retiring at the expiry of the agreed period under para. 9.1 shall be eligible for re-appointment subject to the Governance Code. In considering whether to recommend a candidate for reappointment, the Review Panel Manager should have regard to the skill sets existing within the Review Panel and the requirements of the Governance Code in relation to reappointments.

9.3. All reappointments are subject to provisions of the Governance Code.

9.4. A member of the Review Panel, including the Panel Chair, Vice Panel Chairs and SCRP Chair, may resign by giving one month's notice in writing to the Review Panel Manager. Where any of the Chairs or Vice Chairs resign, the process under paragraph 10.4 will be followed.

10. Removal from Office

10.1. If it appears to the Agency that a Review Panel member:

- a) no longer meets the membership criteria in Schedule 1
- b) has behaved in a manner incompatible with their duties as a Panel Member

the allocation of work to that member will immediately cease and the Review Panel Manager may, subject to paragraph 10.5, terminate his or her membership with immediate effect.

10.2. If it appears to the Review Panel Manager that any panel member

- a) has failed to complete and return the Annual Declaration of Eligibility or
- b) has not responded to the Agency's requests to allocate appeals or has declined to take any appeals without good reason for six months or more

membership will be terminated with immediate effect and the decision confirmed in writing.

10.3. In the event that the Panel Chair is removed under paragraph 10.2 or 10.3 the Vice Chair shall assume the position of Panel Chair until the end of that term. If no Vice Chair is able to take up the role of Chair on removal or resignation of the Chair, either a temporary Chair will be appointed under paragraph 3.3, or a recruitment process will be carried out as soon as practicable, where existing members of the Panel will be invited to apply for the position of Chair. If the Review Panel Manager considers that no existing panel member is suitable for appointment as Chair, then a temporary appointment to the Panel may be made under paragraph 3.3, subject to the requirements in the Governance Code. At the conclusion of the term, an open recruitment process will be carried out to appoint a new permanent Chair.

10.4. Where removal of a panel member is under consideration under paragraph 10.1,

- (a) The Agency will put the member on notice and provide its reasons in writing.
- (b) The panel member will be given an opportunity to make written representations within 21 days of receiving the notice.
- (c) The Review Panel Manager will consider the representations and make a decision which will be provided within 42 days of receipt of the written representations.
- (d) The Panel Member has a right of appeal against the Review Panel Manager's decision to the Agency's CEO and Panel Chair (or to the Principal Legal Adviser in the case of the Panel Chair being removed).

10.5. If a member of the Review Panel:

- a) makes a composition with his or her creditors
- b) is the subject of a receiving order in bankruptcy or
- c) becomes of unsound mind

The Review Panel Manager may terminate his or her membership by disqualification. Such disqualification shall take effect at the expiry of 14 days from the date of service of a notice specifying the grounds for the disqualification.

10.6. There is no right of appeal against a removal from the panel under 10.2 or 10.5.

10.7 It shall be the duty of any Panel Member to inform the Legal Aid Agency immediately if they find themselves in any circumstances covered by paragraph 10.1 or 10.5(a) or 10.5(b)

11. Remuneration, attendance fees and expenses

11.1. Review Panel Members attending meetings or dealing with appeals and carrying out their functions under these arrangements will be paid such fees and travelling and other reasonable expenses and subsistence allowances as the Agency may from time to time authorise.

11.2. Review Panel Members shall be remunerated at the rate of £52.00 per hour for all appeals save where a Committee is convened. Claims for payment may be referred to the Review Panel Manager and Panel Chair where there is disagreement between the Review Panel Member and the Agency about the reasonableness of any claim for payment.

11.3. Where a Committee is convened the Panel Member selected to chair the meeting shall be remunerated at the rate of £180.85 (excluding VAT) per half day and the other Panel Members forming the Committee shall be remunerated at the rate of £143.55 (excluding VAT) per half day, provided that that a higher fee may be agreed between the Review Panel Manager and those forming the Committee where the case or cases are exceptionally complex.

12. Review Panel meetings

12.1. The CEO or Review Panel Manager may in consultation with the Panel Chair convene such meetings as they consider necessary to provide:

- (a) information on the composition and performance of the Review Panel.
- (b) information on the performance of the Agency that is considered relevant to the role of the Review Panel.
- (c) training for Panel Members.

12.2. The CEO or Review Panel Manager and the Panel Chair shall agree the format and agenda of any meeting convened under para.12.1 and may require Panel Members' attendance.

13. Annual declaration of eligibility and appraisal

13.1. All Panel Members will be required to submit a standard form declaration to the Review Panel Manager every 12 months, declaring that they continue to meet all the criteria for membership of the Review Panel listed in Schedule 1 and confirming any specialisms listed in Schedule 2. The LAA will also require Panel Members to update their declarations concerning potential conflicts of interest.

13.2. The Review Panel Manager will remove any Panel Member where:

- no satisfactory response is received

- the above criteria are no longer met.

13.3. The schedule of Panel Members including specialisms will be revised on the basis of these annual declarations.

13.4. The Review Panel Manager may require Panel Members to:

- a) attend formal training events; and
- b) take part in an appraisal process.

13.5. The appraisal process may take place annually and may include an appointment to discuss performance and/or a written exercise to demonstrate sufficient continued competence.

Annex A

Criteria and Guidance on Appointments of Members and Chairs to the Review Panel.

1. General

1.1. All applicants will be asked to indicate whether they are applying to be a:

- a) Independent Funding Adjudicator
- b) Independent Costs Assessor
- c) SCRP member

1.2. Applicants must make at least one selection and may make more than one.

1.3. There are no criteria for membership for these roles beyond those listed in Schedule 1.

1.4. In addition, applicants may apply for the following roles:

- a) The Review Panel Chair
- b) The SCRP Chair

2. The Review Panel Chair and SCRP Chair

Criteria

- Ability to act in a position of authority and responsibility.
- Ability to represent the views of others, in particular where those views are of fellow professionals
- Ability to engage with senior public officials at Board level.

3. Committee Chair

3.1. Where a Committee is convened the Agency will select a Chair.

Criterion: Evidence of acting in a position of authority and responsibility, in particular with regard to decision making.

4. Specialisms

4.1. The Agency will allocate appeals to Panel Members according to the specialisms they have declared.

4.2. The Agency may make checks to ensure the accuracy of the areas of expertise declared by Panel Members.

4.3. Specialisms are listed in Schedule 2.

SCHEDULE 1

1. Primary Criteria

- 1.1. The criteria which prospective members of the Review Panel must meet before they may be appointed are set out below.
- 1.2. An applicant who is a solicitor or a CILEx Fellow must (a) work for an organisation that has a Contract with the Legal Aid Agency or (b) have worked for such an organisation within two years of applying to join the Panel.
- 1.3. If once appointed to the Panel, a solicitor or CILEx Fellow leaves the employ of a contract holder they may serve the rest of their term on the Panel.
- 1.4. All applicants must have a regular workload of legally aided cases.
- 1.5. An applicant who is a solicitor or CILEx Fellow must hold a current practising certificate.
- 1.6. An applicant who is a solicitor must not have any decisions currently recorded against them at the Solicitors Regulatory Authority or Consumer Complaints Service or the Legal Ombudsman.
- 1.7. An applicant who is a barrister must hold a current practising certificate issued by the Bar Standards Board.
- 1.8. An applicant who is a barrister must not have any complaints currently recorded against them by the Bar Standards Board.
- 1.9. An applicant who is a Costs Lawyer must hold a current practising certificate issued by the Costs Lawyer Standards Board.
- 1.10. An applicant who is a Costs Lawyer must not have any complaints currently recorded against them by the Costs Lawyer Standards Board.
- 1.11. All applicants must be able to demonstrate current familiarity with legal aid regulations, contracts and guidance.
- 1.12. All applicants must inform the LAA if they are under investigation by their regulatory body.
- 1.13. The Agency may make periodic checks to ensure Panel Members have kept up to date with the law and guidance relating to decision making in legal aid cases.

2. Standards and competencies

- 2.1. All applicants must have a sound knowledge and understanding of the current Legal Aid contracts, regulations and guidance as reflected in their own involvement in applications for funding and/or claims for costs.

- 2.2. All applicants must be able to demonstrate experience of objective decision-making against a set of criteria that requires both adherence to rules and the reasonable and impartial exercise of discretion.
- 2.3. All applicants must be committed to valuing diversity, and must demonstrate effective interpersonal and communications skills, including succinct and effective report-writing.

3. Guidance

When making recommendations to the Lord Chancellor for the appointment and re-appointment of members to the Review Panel, the Agency will take into account:

- 3.1. The Principles of Public Appointments
- 3.2. The Governance Code.
- 3.3. The importance of ability over experience whilst recognising the contribution to be played by existing members who have been deemed to perform well in post.
- 3.4. The need to bring together a panel which reflects the diversity of the population.
- 3.5. The need for the Panel as a whole to have expertise in all the relevant categories of law and in the assessment of costs.

SCHEDULE 2

1. Review Panel members - schedule of expertise

- 1.1 The Review Panel Manager shall maintain a schedule of all Review Panel members, showing those that possess the following areas of expertise:

Core roles

- a) Independent Funding Adjudicators
- b) Independent Costs Assessors
- c) Special Controls Review Sub Panel members (civil appeals).
- d) Very High Cost Cases Sub Panel members (crime appeals).

Specialisms

- a) Immigration and Asylum
- b) Mental Health
- c) Family (including children & domestic violence)
- d) Public Law Child Care
- e) Housing
- f) Debt
- g) Clinical negligence
- h) Education
- i) Employment
- j) Probate
- k) Claims Against Public Authorities
- l) Prison Law
- m) Crime
- n) Extradition
- o) Judicial Review
- p) Human Rights
- q) Multi party actions
- r) Public administrative law
- s) High cost cases
- t) Civil Mediation
- u) Legal Aid costs regulations and procedures relating to the above areas of law
- v) Increases to the Upper Limit in criminal cases

SCHEDULE 3

1. Convening Oral Hearings and Committees – Guidance

- 1.1 An appeal to an IFA will be considered without an oral hearing unless the IFA considers one is in the interests of justice under Regulation 45(2) of the Procedure Regulations For costs appeals either party may request the ICA to consider an oral hearing if there are exceptional circumstances, under paragraph 8.23 of the 2017 Standard Crime Contract Specification (as amended) or paragraph 6.75 of the 2018 Standard Civil Contract Specification.

Oral representations can be heard by a single panel member and need not be before a Committee.

- 1.2 Where the IFA or Director consider the appeal is of exceptional complexity or importance the appeal may be referred to a committee of two or more IFAs under Regulation 45(3) of the Procedure Regulations. If a costs appeal is felt to be of such complexity and/or value an ICA may refer the appeal to a panel of three ICAs under paragraph 8.26 of the 2017 Standard Crime Contract Specification (as amended) or paragraph 6.78 of the 2018 Standard Civil Contract Specification.
- 1.3 A panel of two or more Panel Members is known as a Committee and is convened in accordance with section 5 of these Arrangements.
- 1.4 The Agency will allocate Panel members to any Committee convened under paragraph 2 of this Schedule in accordance with the provisions of paragraph 5.2 of these Arrangements.
- 1.5 The Agency may have regard to the locality where the Panel Members practise when allocating them to committees if a face-to-face meeting is to be convened. However, where possible Committee hearings will be conducted by Microsoft Teams or by telephone conference.