

## Clarification on Payment for Civil Legal Services under Regulation 5A of the Civil Legal Aid (Remuneration) Regulations 2013

### Background

Regulation 5A of the *Civil Legal Aid (Remuneration) Regulations 2013* sets out the circumstances where the Lord Chancellor can pay for civil legal services for the making of an application for judicial review that is issued. The purpose of this document is to clarify the way that the Legal Aid Agency (acting on behalf of the Lord Chancellor) will interpret that regulation in certain circumstances. This clarification has been issued following *Duncan Lewis -v- The Lord Chancellor* (CO/1551/2018).

### Regulation 5A

For ease of reference, Regulation 5A(1) is transcribed below with the phrases that are the subject of this clarification underlined<sup>1</sup>:

“5A.—(1) Where an application for judicial review is issued, the Lord Chancellor must not pay remuneration for civil legal services consisting of making that application unless—

- (a) the court gives permission to bring judicial review proceedings;
- (b) the court neither refuses nor gives permission to bring judicial review proceedings and the Lord Chancellor considers that it is reasonable to pay remuneration in the circumstances of the case, taking into account, in particular—
  - i. the reason why the provider did not obtain a costs order or costs agreement in favour of the legally aided person;
  - ii. the extent to which, and the reason why, the legally aided person obtained the outcome sought in the proceedings, and
  - iii. the strength of the application for permission at the time it was filed, based on the law and on the facts which the provider knew or ought to have known at that time;
- (c) the defendant withdraws the decision to which the application for judicial review relates and the withdrawal results in the court—
  - i. refusing permission to bring judicial review proceedings, or
  - ii. neither refusing nor giving permission;
- (d) the court orders an oral hearing to consider—
  - i. whether to give permission to bring judicial review proceedings;
  - ii. whether to give permission to bring a relevant appeal, or
  - iii. a relevant appeal, or
- (e) the court orders a rolled-up hearing.

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<sup>1</sup> This limb of regulation 5A should be read in conjunction with the rest of the regulation, which, for example, provides definitions of terms such as “relevant appeal”.

## Clarification

The following clarification has been agreed by the Ministry of Justice and the LAA and endorsed by the Administrative Court in *Duncan Lewis -v- The Lord Chancellor* (CO/1551/2018).

*In regulation 5A:*

- a) *The phrase “neither refuses nor gives permission” in Regulation 5A(1)(b) should be understood as meaning “neither refuses nor gives permission on paper or, following refusal on paper, at an oral hearing to reconsider that refusal”*
- b) *The phrase “refusing permission to bring judicial review proceedings” in Regulation 5A(1)(c)(i) should be read as meaning “refusing permission to bring judicial review proceedings on paper or at an oral hearing to reconsider that refusal”*
- c) *The phrase “neither refusing nor giving permission” in Regulation 5A(1)(c)(ii) should be understood as meaning “neither refusing nor giving permission on paper or, following refusal on paper, at an oral hearing to reconsider that refusal”.*

## Guidance

### *Regulation 5A(1)(b)*

The first limb of the clarification means that the LAA will in principle be able to exercise the discretion to pay for civil legal services under Regulation 5A(1)(b) in *either* of the following situations:

1. The application for judicial review concludes prior to the court making a determination on permission on the papers; or,
2. The application for judicial review moves beyond a refusal of permission on the papers but concludes before the court makes a further decision on permission at a hearing.

In either of the above circumstances, the LAA will still need to consider whether it is reasonable to pay remuneration in the circumstances of the case, taking into account the factors listed in subparagraph (i) to (iii) of Regulation 5A(1)(b).

### *Regulation 5A(1)(c)*

The second and third limbs of the clarification confirm that Regulation 5A(1)(c) can in principle apply in either of the following situations:

1. The defendant withdraws the decision to which the application for judicial review relates prior to the court making a determination on permission on the papers; or
2. The defendant withdraws the decision to which the application for judicial review relates after the application for judicial review has moved beyond a refusal of permission on the papers



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### **Extent**

The LAA will apply this interpretation to all future decisions under regulation 5A, including any request for a review or reassessment of a matter where it is argued that a different interpretation had previously been applied.