



Ministry
of Justice



HM Prison &
Probation Service

Policy name: Litigation Claims Policy Framework

Reference: N/A

Issue Date: 01 February 2023

Implementation Date: 01 February 2023

Replaces the following documents (e.g. PSIs, PSOs, Custodial Service Specs) which are hereby cancelled: AI 20/2015, PI 22/2015, PSI 31/2015 Managing Litigation Claims

Introduces amendments to the following documents: N/A

Action required by:

<input checked="" type="checkbox"/>	HMPPS HQ	<input checked="" type="checkbox"/>	Governors
<input checked="" type="checkbox"/>	Public Sector Prisons	<input checked="" type="checkbox"/>	Heads of Group
<input type="checkbox"/>	Contracted Prisons	<input type="checkbox"/>	Contract Managers in Probation Trusts
<input checked="" type="checkbox"/>	Probation Service	<input checked="" type="checkbox"/>	Under 18 Young Offender Institutions
<input checked="" type="checkbox"/>	HMPPS Rehabilitation Contract Services Team	<input type="checkbox"/>	HMPPS-run Immigration Removal Centres (IRCs)
<input type="checkbox"/>	Other providers of Probation and Community Services		

Mandatory Actions: All groups referenced above must adhere to the Requirements section of this Policy Framework, which contains all mandatory actions.

For Information: By the implementation date Governors¹ of Public Sector Prisons, Regional Probation Directors (RPD) and senior leaders responsible for probation community accommodation must ensure that their local procedures achieve the required outcomes and comply with the requirements as set out in this Policy Framework.

Governors & RPD's must ensure that any new local policies that they develop because of this Policy Framework are compliant with relevant legislation, including the Public-Sector Equality Duty (Equality Act, 2010).

Section 5 of the Policy Framework contains guidance to implement the mandatory requirements set out in section 4 of this Policy Framework. Whilst it will not be mandatory to follow what is set out in this guidance, clear reasons to depart from the guidance should be documented locally. Any questions concerning departure from the guidance can be sent to the contact details below.

How will this Policy Framework be audited or monitored: Outcomes contained within this framework will be monitored within each business unit.

Resource Impact: Resources needed to implement the requirements of this framework will continue to be met locally This framework introduces no new work and will require no additional local or central resource.

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Approved by OPS for publication: Sarah Coccia and Ian Barrow, Joint Chairs, Operational Policy Sub-board, November 2022

CONTENTS

Section	Title	Page
1	Purpose	4
2	Outcomes	4
3	Different types of claim	4
4	Requirements	5
5	Guidance	6
	5.1. Case Management	6
	5.2. Litigation Casework Teams	7
	5.3. Judicial Reviews	8
	5.4. Obtaining Legal Advice	8
Annex A	Correspondence	10

1. Purpose

- 1.1 It is a key principle of our legal system that everyone, should have access to the courts to seek redress. This framework aims to manage litigation in a way that protects HMPPS' reputation and saves public money through effective case handling, learning lessons and preventing incidents that could lead to claims.
- 1.2 Claims brought against HMPPS by offenders, staff or third parties are defended where the available evidence supports this. Claims should usually only be settled where the legal advice is clear that a claimant's case is strong and defending would be a misuse of taxpayers' money, and where settling will not cause any reputational damage to HMPPS or MoJ.
- 1.3 If offenders are successful in claiming compensation, we will seek to redirect the damages they receive to their victims and the courts if they have any unpaid victim compensation orders, victim surcharges, costs and fines still outstanding from when they were sentenced. Similarly, we will seek to offset any damages awarded to offenders against any legal costs they still owe to HMPPS / MoJ from any previous claims.

2. Outcomes

- 2.1 Governors, Regional Probation Directors (RPD) and senior leaders responsible for probation community accommodation working effectively with HMPPS litigation casework teams to manage cases in a way that protects the reputation of the Agency and the public purse, including acting on learning points from claims in order to prevent repeat incidents.

3. Different types of claim

- 3.1 This framework covers all public sector private and public law litigation claims / judicial reviews for the over 18s prison and probation estates / cases across England and Wales and the Youth Custody Service (YCS) under 18 estate managed within HMPPS. Litigation in the contracted estate is not in scope for this framework (see section 4.13 & 4.14 below).
- 3.2 Private law claims are a type of civil claim. These typically include claims for personal injury, lost or damaged property, discrimination, medical negligence, unlawful detention and breaches of human rights.
- 3.3 Public law / judicial review claims can also be brought. These are when claimants challenge the lawfulness of a decision that is made by a public body. This can be in the form of a challenge to a local decision at an establishment or probation region / AP or in relation to national policy.
- 3.4 There are other types of cases that are separate to litigation and not covered by this framework. These include employment tribunals, inquests, 'Habeas Corpus' cases petitioning courts for release, and compensation sought from the Criminal Injuries Compensation Authority (CICA). Please see Annex A for details about where to forward any correspondence received about these matters.

Where the terms 'Government Legal Department (GLD)' or 'GLD' are used in this framework, the relevant requirements and guidance also relate to any private law firms that GLD have outsourced HMPPS claims to.

4. Requirements

- 4.1 All staff are responsible for taking action to prevent incidents that could lead to litigation. Governors/RPDs are required to work closely with HMPPS litigation casework teams to identify risk and act on learning points arising from claims to prevent similar incidents occurring again in the future.
- 4.2 HMPPS litigation casework teams manage claims on behalf of Governors/RPDs. It is the Governors/RPDs, that have responsibility for making decisions about claims arising from their establishment or probation region / AP, such as accepting or denying liability and whether cases should be defended or settled. They need to ensure that systems are in place in their establishment or probation region / AP to quickly communicate these decisions to HMPPS litigation caseworkers to enable court deadlines to be met and minimise the Agency's spending on legal costs. Policy leads in HMPPS / MoJ HQ adopt the same role as Governors for public law / judicial review claims that relate to challenges against national policy.
- 4.3 Governors/RPDs need to work effectively with HMPPS litigation casework teams to allow litigation caseworkers to communicate decisions to the Government Legal Department (GLD) and HMPPS' claims handlers. When a decision has been taken to settle a claim and a proposed damages offer falls within their respective delegated authority limits, Governors/RPDs and Prison Group Directors are required to provide the necessary authority to HMPPS litigation caseworkers to instruct GLD or HMPPS' claims handlers to make the offer.
- 4.4 Governors/RPDs are responsible for approving or signing key documents such as the Letter of Response, Defence and Counter Schedule of Loss for private law claims. Governors/RPDs or HMPPS / MoJ policy leads will sign key documents required for public law claims including the summary and detailed grounds of defence.
- 4.5 HMPPS litigation casework and policy teams will provide guidance throughout the decision making and legal processes. If the Governor/RPD is unavailable to provide a signature or approval, they must appoint a delegate with appropriate seniority to sign on their behalf. This is often the Head of Business Assurance (HoBA), who acts as the litigation single point of contact (SPoC) / sponsor or, in the case of probation claims, the Head of the Probation Delivery Unit (PDU) or the Head of Probation Litigation and Inquests Team.
- 4.6 Litigation SPoCs / sponsors are required in each establishment or probation region / AP to assist Governors/RPDs in implementing learning outcomes from claims and ensure that trends and statistics are discussed at senior management meetings. This is with a view to ensuring that the required action takes place to prevent the reoccurrence of repeat incidents and claims. HMPPS litigation casework teams will share relevant learning points from claims with HMPPS / MoJ policy leads.
- 4.7 Governors/RPDs or SPoCs / sponsors must ensure that effective processes are in place for providing the necessary evidence / document, or confirmation that it is not available, to HMPPS litigation casework teams in accordance with any deadlines set. This includes relevant documents relating to any third-party providers, such as service level agreements (SLA), where these relate to areas of responsibility and could result in contractors being brought into claims. Failure to meet these deadlines can result in additional legal costs being incurred by the Agency or default judgements being made against HMPPS / MoJ.
- 4.8 Governors/RPDs are also responsible for approving the approach taken to redaction made on documents prior to disclosure, as they are the data owner for that information.

- 4.9 Staff have a duty to attend a trial if they are called as a witness. When court hearings take place for prison claims, Governors should take the necessary forward planning to ensure that staff witnesses are available for attendance at court and any case management conferences prior to the trial. PDU Heads and approved premises managers have responsibility for this for probation claims.
- 4.10 Support will be provided to witnesses by Counsel, GLD and HMPPS casework teams prior to them giving evidence and during the trial. After the trial, support should be provided to witnesses at a local establishment level where this is required. They also have an opportunity to provide their feedback to HMPPS litigation caseworkers about the process.
- 4.11 Arrangements should be made for prisoners to provide evidence via video link or in person as required by the court. Governors should consider what support needs to be provided to prisoners on an individual basis before and after giving evidence. Where entire hearings are taking place digitally, Governors/ PDU Heads / AP managers should liaise with HMPPS litigation casework teams to ensure that witnesses have sufficient access to the necessary IT equipment.
- 4.12 Where possible, prisoners' complaints about alleged property loss or damage should be resolved fairly at an early stage through the complaints process. In these instances, offers of compensation should be made via ex-gratia payments only if appropriate and in line with the HMPPS Finance Manual Policy Framework and guidance in the *Prisoners' Property Policy Framework*. Responding to issues effectively during the complaints process reduces the chance of litigation and unnecessary legal costs being incurred further down the line. Further guidance is provided in the *Prisoner Complaints* operational policy framework.
- 4.13 Litigation claims arising from incidents at contracted prisons or approved premises managed by third party contractors should be brought against the private companies responsible for the operation of the establishment. These cases are managed separately from HMPPS unless any parts of the claim are brought against the Agency, including challenges to HMPPS national policy. If controllers or other HMPPS staff are named as co-defendants or witnesses, they must liaise with the relevant senior contract manager and HMPPS litigation casework team managing the HMPPS part of the claim. Senior contract managers are required to liaise with the establishment and HMPPS staff during such claims.
- 4.14 Litigation arising from incidents at Secure Children's Homes should be brought against the relevant Local Council responsible for those establishments. Similarly, claims arising from incidents at Secure Training Centres and YCS contracted out sites should be brought against the relevant Contractor. Claims arising from the YCS under 18 estate managed within HMPPS and all claims relating to incidents involving young people aged 18-21 at YOIs are case managed by HMPPS litigation casework teams in the same way as claims relating to adult prisoners (please see section 5.2 below).

5. Guidance

5.1 Case Management

- 5.1.1 HMPPS litigation caseworkers inform Governors/RPDs about their new cases and contact the relevant SPoC / teams in the establishment or probation region / AP at the outset of each claim. These caseworkers are then their main point of contact through to completion of the case. They support Governors/RPDs by engaging closely with GLD and HMPPS' claims

handlers. They ensure that Governors/RPDs are provided with the available advice and evidence to enable them to reach timely and effective decisions to secure the best possible outcome on each case.

Type of claims

Pre-action

- 5.1.2 There are two different stages of claims; pre-action and issued. The criteria for which claims are managed by HMPPS' claims handlers and GLD is determined by the profile of the claimant, the complexity and value of the claim and whether it is at the pre-action stage or has been issued.
- 5.1.3 Pre-action claims are usually set out via claim notification forms (CNF). These are usually submitted directly on the online claims portal by a claimant's solicitor, although sometimes they are sent in the post either on a CNF or set out in a letter.
- 5.1.4 The portal process has deadlines associated with it for case related actions. Meeting these deadlines limits the legal costs paid out on claims. If the deadlines are missed, claims will fall outside the portal process and legal costs increase as a result. HMPPS caseworkers work with Governors/RPDs and HMPPS' claims handlers to manage claims within portal deadlines wherever possible.
- 5.1.5 All CNFs and other forms of pre-action claim correspondence are picked up by HMPPS' claims handlers and GLD either directly or when forwarded by staff in HMPPS / MoJ. They then liaise with relevant HMPPS litigation casework teams, who obtain Governors'/RPDs' instructions and evidence from establishments or probation regions / APs and other sources.

Issued

- 5.1.6 When cases are not concluded at the pre-action stage they become issued. Upon receipt of notification that a claim has been issued, HMPPS litigation caseworkers will engage with Governors/RPDs ahead of providing instructions to GLD for the defending or settlement of the claim.
- 5.1.7 Should notification of an issued claim, or any other correspondence relating to a live or imminent claim, be sent directly to an establishment or probation region / AP, this must be forwarded to the relevant litigation casework team immediately. All correspondence that does not relate to a live or imminent claim (pre-action or issued) should be picked up locally by establishments or probation regions / AP as treat official correspondence.
- 5.1.8 As referred in paragraph 4.7 it is essential that information that is relevant to any type of claim, both pre-action and issued, is provided to HMPPS litigation caseworkers by establishments or probation regions / AP in the quickest time possible in order to meet court deadlines and avoid additional legal costs or default judgements.

5.2 Litigation Casework Teams

- 5.2.1 **Prisons** - Of the HMPPS Litigation Casework Teams referred within this framework, Public Sector Prisons (PSP) and Long-Term and High Security Prison Group (LTHSPG) caseworkers manage the majority of pre-action and issued claims brought against prisons. In addition to this, caseworkers and managers from these teams work closely with Governors and SPoCs / sponsors to flag emerging issues and trends in their establishment.

- 5.2.2 **Probation** - For probation claims, caseworkers from the Probation Litigation and Inquests Team manage the majority of pre-action and issued claims brought against probation regions and approved premises. They work closely with Regional Heads of Corporate Services (HoCS) and the AP team to flag emerging issues and trends and follow up on learning from previous claims.
- 5.2.3 **Prisons and Probation** - All high-profile, high value (damages valued at over £30k) and historic abuse private law claims are managed by the National Litigation Team (NLT) in HMPPS HQ. Claims are referred to NLT by PSP, LTHSPG and probation litigation teams and, if they are accepted, NLT caseworkers will notify the appropriate Governor / RPD.
- 5.2.4 NLT are responsible for engaging with Ministers and HMPPS senior leaders to provide updates on cases and, where appropriate, seek approvals ahead of providing Governor/RPD instructions to GLD. NLT caseworkers draft submissions to HMPPS Directors and HM Treasury to seek approvals for high value damages and costs payments.
- 5.2.5 In addition to this, NLT lead on the management of the claims handler contract and other national cost reduction activity. To drive litigation system improvements, they work closely with litigation casework teams across prisons and probation, engaging with policy leads when revisions to national guidance are required as a result of issues arising from claims.
- 5.2.6 In addition to the cases above, there are two types of other claims that are managed centrally within HMPPS outside of NLT. Claims made by the estate of former prisoners following their death in custody are case managed by the Safer Custody Casework team. Claims made by prisoners in relation to parole decisions, recalls to custody or sentence calculation are case managed by the Public Protection Casework Section.
- 5.3 Judicial Reviews
- 5.3.1 **Prisons** - judicial reviews are case managed by the relevant PSP or LTHSPG litigation casework team. Pre-action prison judicial reviews are managed on an individual basis, with some being managed locally by prisons and advice being sought from MoJ Legal by the establishment as required.
- 5.3.2 **Probation** - Judicial Reviews are case managed by the Probation Litigation and Inquests Team. Caseworkers from those teams engage with GLD, Governors, SPoCs / sponsors and other staff at establishments or probation regions / AP in the same way as private law claims.
- 5.3.3 **Policy** - Where a judicial review relates to national policy, the relevant team in HMPPS or MoJ HQ that owns the policy will lead on this with GLD.
- 5.4 Obtaining legal advice
- 5.4.1 If staff are seeking legal advice ahead of local operational decisions, they should contact the relevant policy team in HMPPS or MoJ HQ in the first instance to discuss the issue and determine whether this information already exists. The relevant policy team should then support the establishment or probation region / AP in engaging with MoJ Legal Advisors about any local decisions that are not covered by existing policy which could potentially lead to a future judicial review.

- 5.4.2 General GLD legal advice and guidance is available via: <https://gld.digital> Bespoke advice can be obtained from the Offender Management Team in MoJ Legal: Legal services | Ministry of Justice HQ
- 5.4.3 Staff should not provide legal advice to prisoners / offenders. The prisoner / offender should obtain this directly from their own legal providers. They may ask staff for information about how to do this though if they are unsure of the process. Information about how prison staff should support prisoners with this is included in PSI 07/2015: *Early Days in Custody* and PSI 75/2011: *Residential Services*.
- 5.4.4 Guidance in relation to prisoners' access to legal visits and confidential telephone calls is provided in PSI 16/2011 *Providing Visits and Services to Visitors*. Guidance about the handling of prisoner's legal correspondence is provided in PSI 49/2011 *Prisoner Communication Services*.

Annex A

This annex explains where correspondence should be forwarded in relation to the following cases that are all separate to litigation and not covered by this framework.

1. Employment Tribunals

Any correspondence relating to employment tribunals should be scanned and emailed to admin.mojhr casework@cshrcasework.justice.gov.uk or sent via Royal Mail next day delivery to:

ET1, CSHR Casework Room A012
The Annexe
Government Buildings
Cardiff Road
Newport, NP10 8XG

It is imperative that this information is forwarded as a matter of urgency as HMPPS only has a short period to respond before a default judgement is issued by the Employment Tribunal.

2. Habeas Corpus

Any correspondence relating to this should be referred to the establishment's Regional Litigation Team at the earliest opportunity for forwarding on to Government Legal Department (GLD) immediately.

3. Inquests

The Safer Custody Casework Team in the Safety Group in HQ case manage prison inquests alongside establishments and GLD following a death in custody. Their contact information is available on the Safety Group intranet page: [Safety - HMPPS Intranet \(gsi.gov.uk\)](#)

The Probation Litigation & Inquests Casework Team case manage inquests following the death of a person on probation in the community, including deaths at approved premises. They can be contacted via ProbationLitigationandInquests@justice.gov.uk

4. Criminal Injuries Compensation Authority (CICA)

Anyone seeking this type of compensation should contact CICA direct via telephone 0151 668 0830 or complete and online form at [Cica | Criminal Injuries Compensation - Cica \(cica-criminal-injury-uk.com\)](#)

It is a claimant's legal responsibility to flag any CICA compensation obtained prior to the conclusion of a litigation claim. If damages are awarded in relation to a litigation claim for the same incident, the CICA compensation may be deducted. GLD will take the necessary action should this situation arise during the life of a claim.

5. Motor Vehicle Damage / Insurance Claims (damage to vehicle only)

Any insurance type claims that arise from damage to a motor vehicle are managed by the HMPPS low-cost claims handler. They do this in conjunction with the fleet management team at Branston and the business hub in the establishment responsible for the vehicle. Enquiries about such claims in relation to HMPPS or long-term lease vehicles should be directed to MOJtransportunitbranston@justice.gov.uk. Similar enquiries about Commercial hire vehicles should be directed to MOJvehiclehiredamageclaims@justice.gov.uk