



Legal Aid
Agency

High Profile Cases

Standard Operating Procedure

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1	2 August 2021	Original Version. Complete redraft of previous version
2	29 Dec 2021	Para 3.4.8 added, 4.1 amended
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1. The purpose of this SOP

1.1 The Director of Legal Aid Casework (DLAC) is appointed by the Lord Chancellor under section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO Act”) to make determinations on the provision of legal aid in individual cases. The DLAC acts independently of the Lord Chancellor. In practice, functions exercised by the DLAC are delegated to the Legal Aid Agency (LAA) including decisions on High Profile applications. This SOP seeks to ensure that decisions on High Profile cases are made by experienced caseworkers and that the DLAC, senior LAA staff and external communication staff are briefed when a High Profile application is determined

1.2 This is important because they need to be able to respond to questions posed by Ministry of Justice Ministers, Members of Parliament or the media, quickly, accurately and confidently (whilst maintaining the strict confidentiality rules which apply to data held by the LAA). Being able to do so will serve to protect the reputation of the LAA.

1.3 There are two elements - decision making and handling:

1.3.1 decision making

The decision to grant or refuse High Profile applications, defined at 2 below, is made or authorised at a senior level by experienced caseworkers within Exceptional and Complex Cases Team (ECCT). As well as requiring the input of the most experienced caseworkers in the decision making process and a detailed record of the reasoning, they may also require legal advice.

1.3.2 handling

Senior members of LAA staff are informed, by email (in a standard format, see below at 4), that an application satisfying the definition has been received and the decision made.

2. What is a High Profile case?

2.1 Identifying cases as High Profile is not an exact science and requires the application of judgement and experience by staff at every stage of dealing with an application. If in doubt, advice must always be sought from senior colleagues.

2.2 To achieve the aims in 1.1 above, the types of applications to be treated as High Profile may include controversial, finely balanced, high cost or novel cases. The following may be High Profile, although this list is not exhaustive.

- The case is already subject to media attention locally, nationally, or internationally; or it is likely to receive such attention.
- The case is likely to change the interpretation of existing law or government policy, or impact on public expenditure in a significant way. For example, a challenge to the way Universal Credit is operated nationally is likely to be High Profile. If it were simply that Universal Credit had not been calculated properly in an individual case, it is unlikely to be.
- The costs of the case may be unusually high, for example, a test case or multi-party action (MPA) application where a large group of individuals may benefit from a positive outcome. If in doubt as to what constitutes 'unusually high' in each case type, caseworkers should consult their line manager.
- The case is described as novel in that it may involve arguments that either have not been seen before or where a case is seeking to extend existing authority. For example, this could apply to challenges emanating from the COVID19 pandemic.

3. When a High Profile application is received

3.1 I am a Contract Manager:

3.1.1 If a Provider indicates that they have a High Profile case or describes a case that may meet the LAA definition you should:

- ask the Provider to mark the application as High Profile and for the attention of ECCT
- notify ECCT by email with the applicant's name and date of birth.

3.2 I am a Means Caseworker:

3.2.1 If you are carrying out a means assessment on an application that may be a High Profile case and there is no note indicating that the case is already being treated as High Profile:

- set up a pop-up note on the Costs and Case Management System (CCMS) to indicate that it is a potentially High Profile case. This means that if the applicant qualifies financially, the legal caseworker considering the application will be alerted and can follow the procedures below.

3.3 I am a Caseworker in wider Case Management or a member of Customer Services Team:

3.3.1 If an application you are considering/looking at may be a High Profile case:

- set up a pop-up note on CCMS to indicate that it is a potentially High Profile case
- notify ECCT by email with the applicant's name and CCMS reference number.

3.3.2 ECCT will make a final decision on whether to treat the application as High Profile and respond to you.

3.4 I am a Caseworker in ECCT (including Exceptional Case Funding (ECF)):

3.4.1 If an application you are considering may be a High Profile case:

- notify a Subject Matter Expert (SME) for the work type within which the application falls or, if unavailable, any other SME. Normally this will be by email giving the applicant's name, CCMS reference number and a brief explanation of why it may be High Profile.
- set up a pop-up note on CCMS to indicate that it is a potentially High Profile case.

Where it is an emergency application or unusually urgent this can be done by telephone or an MS Teams call. The SME will make a decision as to whether to treat the application as High Profile and, if so, they will confirm the position to the caseworker and discuss what is required next. Usually this will be in the form of an email setting out the analysis of the application as a brief summary of what the case is about; what the case seeks to achieve; and the decision deemed most appropriate.

3.4.2 The email should also set out an assessment of merits and other LASPO requirements using these headings:

- the criteria or regulations that apply
- what the key facts are
- the law and the key legal issues in play
- the key evidential issues in play
- the reasons supporting or against the suggested decision.

If agreed with the SME, the email may refer to documents contained in the application on CCMS (such as a judgment or order, or counsel's opinion). However, the section of such documents must be clearly identified and the analysis of the issues set out above must be the caseworker's own.

3.4.3 Upon receipt of the email, the SME will consider whether additional information is required including whether advice from CLT on the proper application of the regulations is required. In this instance ECCT caseworkers are in essence CLT's clients, seeking their advice. If so, the SME will forward the caseworker's email with a clear and concise description of what advice is sought from CLT and details of any deadlines. CLT will provide the legal advice requested. The SME will copy the advice to the caseworker when received.

3.4.4 The SME will consider the email, any documents referred to, and any advice obtained from CLT, and respond to the caseworker usually by email. In some cases, the SME may decide to clarify the legal advice from CLT, with the advising lawyer, and the ECCT caseworker.

3.4.5 The email from the SME will either authorise the implementation of the caseworker's suggested decision or explain to the caseworker what decision they would take and why. It is expected that this will usually result in agreement. In the event of a disagreement, after discussion the decision can be escalated to the Principal Legal Adviser and Head of ECCT. The Head of ECCT's decision will be final (but will include reasons). Where a case has been escalated to this level the decision and reasoning will also be communicated to DLAC.

3.4.6 Once agreed the caseworker will then implement the decision on CCMS.

3.4.7 The SME will send an email in the format set out in 4 below to the 'High Profile Group' (whose membership is also set out below) and deal with any questions in response promptly. This 'High Profile Group' will always include an email box, managed by ECCT, used only for such emails. ECCT's Business Support Unit (BSU) will monitor the box at least weekly, keeping a copy of each email and recording brief details in a spreadsheet for this purpose.

3.4.8 Where it is URGENT that seniors are informed, for example, where the fact that an application has been made will be of interest to Ministers or the media, the email in accordance with 3.4.7 above will be sent even if no determination has yet been made AND a short IM will be sent on Teams to DLAC's Private Secretary highlighting the case and that the email has been sent.

3.4.9 If the application is refused, a caseworker must not grant the application either on review under regulation 44 of the Civil Legal Aid (Procedure) Regulations 2012 or following an appeal to an IFA under regulation 45, without the SME's authority and informing the Head of ECCT.

3.4.10 *This process does **not** apply to applications for funding to JR any ECCT decision, and all such applications will be dealt with by wider Case Management so as to maintain confidentiality.*

3.5 I am a SME in ECCT (including ECF):

3.5.1 You should follow the SME's role in the process described from 3.4.1 above ***unless allocated a High Profile case personally***, in which case the process from 3.4.1 will be interpreted so that another SME is contacted as the decision maker and you undertake the role of caseworker in the process.

3.6. I am a member of the 'High Profile Group' and receive High Profile Notification Emails:

3.6.1 You should read each email as soon as possible and, if clarification is required, contact the SME who sent the email with any comments or questions.

3.6.2 You should arrange to keep an archive of these emails.

3.6.3 Ensure that the email is not sent outside the LAA and that any briefing to MOJ colleagues, media or to Ministers is fully compliant with the duty of confidentiality and relevant law governing our work.

3.7 I am a member of BSU in ECCT:

3.7.1 You should (at least weekly):

- check the High Profile email box
- keep a searchable archive of emails received
- update the database of High Profile cases.

4. Notification email

4.1 Any email sent to the “High Profile Group” referred to in 3.4.7 should be sent to the following recipients:

- High Profile Group (this already includes High Profile Group email inbox, Principal Legal Adviser, Head of ECCT, external communications colleagues and DLAC’s Private Secretary as part of the group).
- caseworker handling the application

4.1.1 The subject line must include:

- the words “High Profile”
- the name of applicant
- the CCMS reference number
- the nature of case e.g. “JR of SSJ re refusal to follow Parole Board recommendation to move to closed conditions ”. This needs to be specific to facilitate searches against this criteria.
- the words “Official Sensitive” (OFF SEN)

4.1.2 The body of the email must be in the format set out in Annex A below and include:

- what the case is about and what outcome is being sought
- why it is High Profile
- what the decision is
- a link to any previous publicity (if useful to do so)
- confirmation that the High Profile process has been followed
- confirmation of contact details for questions

ANNEX A

Case name and Reference:	Status:	Application history:
Summary of case:		
Decision		
Possible next steps if any:		
UPDATE 1		
UPDATE 2		

