



# Ministry of Justice

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**Our Reference:** 102990

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## Freedom of Information Request

Dear Mr Kenyon,

Thank you for your email of 1 February, in which you asked for the following information from the Ministry of Justice (MoJ):

- 1. Are staff at the Legal Aid Agency's Central Legal Team employed by the Government Legal Department and/or seconded from the Government Legal Department and/or tied to the Government Legal Department;**
- 2. Any Legal Aid Agency policy document concerning the decision making process for making decisions on applications for legal aid certificates which cover appeals to the Court of Appeal or other court;**
- 3. Any policy documents concerning the Legal Aid Agency's Central Legal Team.**

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

I can confirm that the MoJ holds information you have requested in your second and third questions and this is outlined below. Your first question is not a request for recorded information, however this will be addressed outside the scope of the FOIA towards the end of this letter.

**“Any Legal Aid Agency policy document concerning the decision making process for making decisions on applications for legal aid certificates which cover appeals to the Court of Appeal or other court.”**

Please find attached at Annex A the *Standard Operating Procedure for Reporting and Referral of High Profile Cases in Civil Case Management*.

**“Any policy documents concerning the Legal Aid Agency's Central Legal Team.”**

Please find attached at Annex B the document *MoJ and LAA Ways of Working on Legal Aid Litigation April 2014*.

You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

In respect of your first question, this is not a request for recorded information. However, outside the scope of the FOIA, I can confirm that lawyers forming part of the MoJ's Legal Department transferred to the Government Legal Department as part of civil service reform in July 2013. This included eight lawyers working in the Central Legal Team who remain co-located with the Legal Aid Agency.

#### Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website: <https://www.gov.uk/government/organisations/ministry-of-justice/series/freedom-of-information-disclosure-log>

Yours sincerely

**Information Governance Team**  
**Legal Aid Agency**

## How to Appeal

### Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email **within two months of the date of this letter** to the Data Access and Compliance Unit at the following address:

Data Access and Compliance Unit (10.34),  
Information & Communications Directorate,  
Ministry of Justice,  
102 Petty France,  
London  
SW1H 9AJ

E-mail: [data.access@justice.gsi.gov.uk](mailto:data.access@justice.gsi.gov.uk)

### Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire  
SK9 5AF

Internet address: [https://www.ico.gov.uk/Global/contact\\_us.aspx](https://www.ico.gov.uk/Global/contact_us.aspx)





Legal Aid  
Agency

# **Standard operating procedure for reporting and referral of High Profile Cases in Civil Case Management**

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## Version History

Version	Date	Reason
1	April 2015	
2	August 2015	Clarification that SWPI is a reason to refer

# 1. Overview

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- 1.1 This standard operating procedure sets out the circumstances in which High Profile cases should be referred to senior colleagues and then on to the Central Legal Team and the Principal Legal Advisor to advise on funding decisions in order to minimise legal and reputational risk associated with High Profile cases.
- 1.2 If there is any doubt whether a case should be considered to be High Profile it can be referred to the Central Legal Team's Funding Team ("Funding Team") to review.
- 1.3 Cases which are already attracting media attention should always be referred to the LAA's Communications department under the separate standard operating procedure.

## **Role of the Funding Team**

- 1.4 Lawyers in case management are the subject specialists in terms of the legal aid category whilst lawyers in the Funding Team are specialists in relation to the legal aid scheme and, in particular, the criteria in the Civil Legal Aid (Merits Criteria) Regulations.
- 1.5 The Funding Team supports the Principal Legal Advisor and the Principal Legal Advisor's role is to provide assurance to the Director of Legal Aid Casework that decisions to provide or refuse to provide funding are lawful. The Funding Team will consider the facts of each High Profile case referred to it and give advice on the application of the criteria set out in the Legal Aid Sentencing and Punishment of Offenders Act and the Civil Legal Aid (Merits Criteria) Regulations to the specific facts of the case.
- 1.6 The Funding Team are not the decision makers in this process, but offer legal advice on the relevant criteria. Appeals against decisions made by the High Cost Cases team following legal advice from the Funding Team will proceed to an Independent Funding Adjudicator ("IFA") or to the Special Controls Review Panel ("SCRIP") and returned to the relevant caseworker in the normal way. If the IFA or SCRIP has made a finding against the original DLAC decision, then the views of the Funding Team should again be sought, unless the only issues under appeal were those on which the IFA/SCRIP can make binding findings.
- 1.7 Due to the need to maintain information barriers in claims against the Director of Legal Aid Casework, applications for legal aid to challenge Director of Legal Aid Casework decisions are excluded from this process.
- 1.8 In order to be able to give assurance to the Director of Legal Aid Casework the expectation is that the advice of the Funding Team and/or Principal Legal Advisor in relation to the criteria will be followed. In the unlikely event of any difference of opinion paragraph 4.2 sets out an escalation process for the Head of High Cost Casework (HHCC).

## 2. Defining High Profile

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- 2.1 Where a case is already attracting media attention it should always be referred to the LAA's Communications Team. However, cases attracting media attention may not always need to be referred to senior colleagues and the Funding Team for advice on funding decisions.
- 2.2 A case will be considered as High Profile for the purposes of this standard operating procedure if it meets one of the following criteria:
  - 2.2.1 The case is likely to change the interpretation of existing law or government policy or impact on public expenditure in a significant way.
  - 2.2.2 The case is likely to cause a significant impact on Legal Aid expenditure (i.e. there is the potential to cause a change to the interpretation of Legal Aid scheme itself affecting future applications and expenditure, rather than the particular case being above a certain value).
  - 2.2.3 The case is proceeding to the Court of Appeal (excluding applications for permission from the UTT in immigration cases) or the Supreme Court.
  - 2.2.4 The applicant asserts either (a) benefits to others to meet the proportionality test ( regulation 8 The Civil Legal Aid (Merits Criteria ) (Amendment) ( No 2 ) Regulations 2015 or asserts (b) the case is of significant wider public interest regulation 6 The Civil Legal Aid (Merits Criteria ) (Amendment) ( No 2 ) Regulations 2015, and either are accepted and are deemed determinative by the decision maker
  - 2.2.5 The decision whether to grant or refuse legal aid to the client could cause serious reputational damage to the LAA.
- 2.3 In relation to the fifth criterion above, this might include funding high profile persons challenging the state, in circumstances that may attract hostile publicity or controversy or, conversely, refusing funding to an individual in a matter that is likely to attract widespread public sympathy. Cases should not ordinarily be referred under this standard operating procedure where they simply involve a famous or high profile individual

Identifying cases as High Profile is not an exact science and requires the application of common sense by staff at any stage when dealing with a case. If in doubt, advice must always be sought from the Head of High Cost Cases and the Communications team.

## 3 High Profile Reporting

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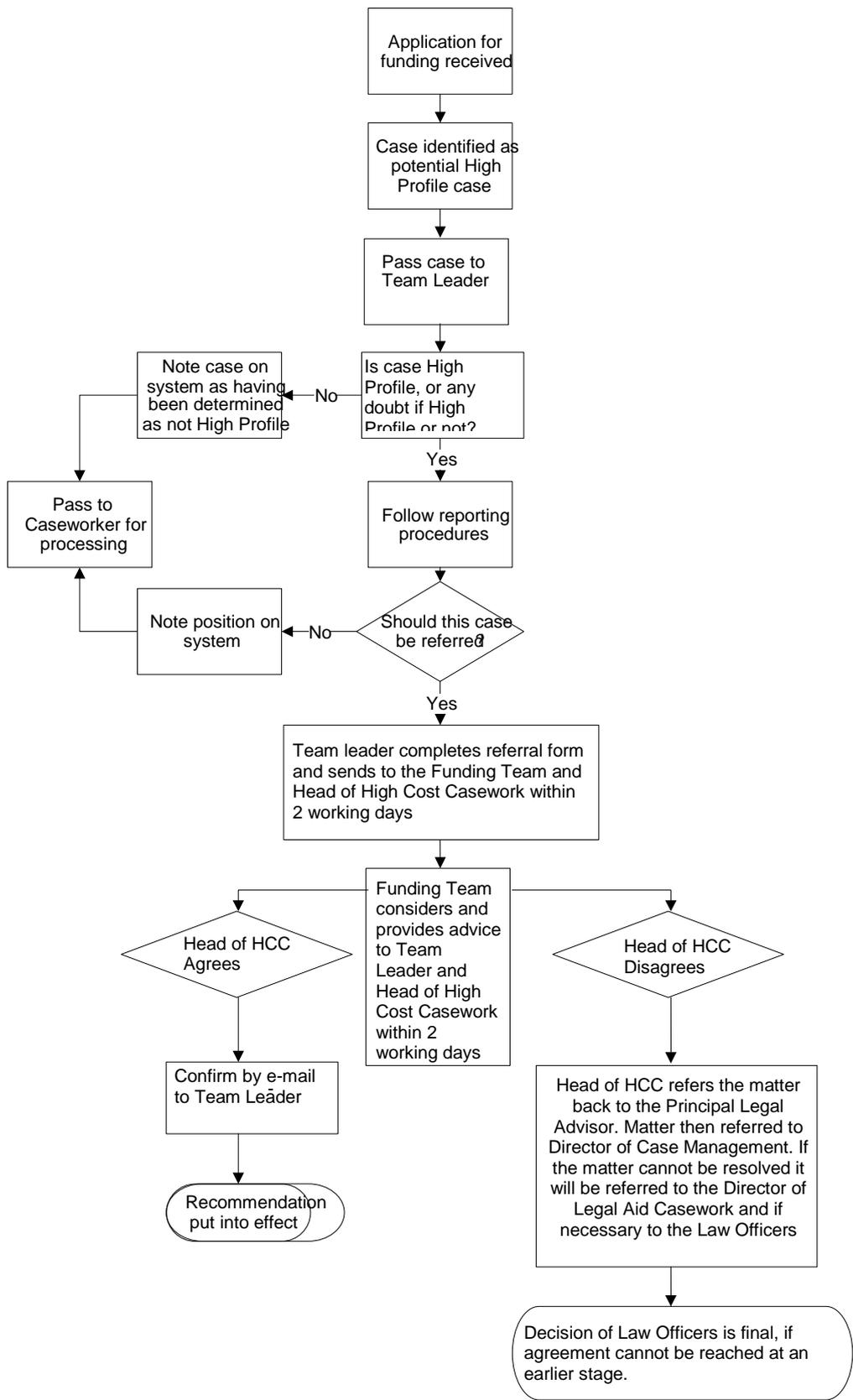
- 3.1 At any stage in the life of an application or certificate if a potential High Profile case is identified it must be immediately referred by caseworkers to their Team Leaders. At this stage no determinations can be made on the application until the application is either deemed not to be High Profile or advice is received from the Funding Team and the determination is agreed with the Head of High Cost Casework.
- 3.2 Within 2 working days of receipt, the Team Leader will consider the matter and likelihood of the case being or becoming High Profile in line with the criteria set out in section 2.
- 3.3 If it is not determined that it meets the criteria of a High Profile case the matter will be returned to the caseworker to be processed in the ordinary way.
- 3.4 If the Team Leader decides the matter is High Profile, they will complete the High Profile Database, generate a report and ensure it is sent to the ZZPI/HPP Reports email group.
- 3.5 The Team Leader must also refer the case to the Head of High Cost Casework and the Funding Team using annex A.
- 3.6 The Team Leader will in any event be responsible for keeping the High Profile Database updated throughout the life of the case.
- 3.7 The Team Leader will deal with the Press Office and other appropriate departments with regard to press releases, questions from the Press Office regarding enquiries from the media, Parliamentary questions and FOI requests in line with the Press Office Referral Standard Operating Procedure.

## 4 High Profile Referral

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- 4.1 The Funding Team will consider the information provided and will provide written advice to the Head of High Cost Casework and the Team Leader within two working days of receipt. If this is not practicable the Head of High Cost Casework will be informed and an alternate date agreed.
- 4.2 In the unlikely event that the Team Leader or Head of High Cost Casework takes issue with the legal advice from the Funding Team, the Head of High Costs Casework and the Principal Legal Advisor will endeavour to ensure that any difference of view is resolved, as follows:
  - 4.2.1 Firstly by discussing the matter further;
  - 4.2.2 If agreement cannot be reached, by escalation to the Director of Case Management.
  - 4.2.3 If the matter cannot be resolved by agreement at this stage the Principal Legal Advisor will escalate the matter to the Director of Legal Aid Casework.
  - 4.2.4 In the extremely unlikely event of any outstanding concerns on the part of the Principal Legal Advisor they may consider it appropriate to escalate the matter to the Law Officers in accordance with the Guidance Note for Government Lawyers.

# 5 Process



## Annex A

### High Profile Referral Form

<b>Name of Applicant</b>	
<b>Name of opponent</b>	
<b>Name of provider</b>	
<b>Date application received</b>	
<b>Reference Number</b>	
<b>Urgency? (for example, is there an imminent Court hearing, deportation, etc.)</b>	
<b>Type of case</b>	
<b>Short summary of case</b>	
<b>Why is this high profile?</b>	
<b>Assessment of merits</b>	
<b>Assessment of means</b>	
<b>Other LASPO requirements</b>	
<b>Date of referral</b>	
<b>Funding Team advice</b>	
<b>Date of advice</b>	
<b>Escalation</b>	
<b>Outcome and date</b>	

**OFFICIAL: SENSITIVE**  
**MOJ and LAA ways of working on legal aid litigation April 2014**

**Conduct of litigation post LASPO**

1. As stated in the Service Level Agreement between the MoJ and LAA, the LAA has retained a legal team dealing with funding queries and litigation arising out of its delivery of legal aid. The transfer of MoJ Legal to the Treasury Solicitor's Department in July 2013 this has resulted in several TSol litigation teams ostensibly handling legal aid litigation, both in Kemble Street and Petty France. This note clarifies arrangements for handling that litigation.
2. Under LASPO the Director of Legal Aid Casework has sole responsibility for individual case decisions and the Lord Chancellor must ensure the Director acts independently when making individual decisions. Responsibility for the overall legal aid scheme including procurement issues and the recovery of costs has passed to the Lord Chancellor. In practice, the LAA act on the Lord Chancellor's behalf in relation to the delivery of legal aid, including procurement issues and the recovery of costs.
3. Legal challenges against the decisions of the Director in relation to individual case decisions should be brought against the Director by name but are in practice often brought against the Legal Aid Agency or the Lord Chancellor. By contrast, challenges to the legislation or policy which should be brought against the Lord Chancellor are in practice often brought against the Director or Legal Aid Agency. The LAA Central Team and MoJ Legal team will work closely with a view to identifying the correct defendant and, where necessary, taking appropriate steps to ensure the case is brought against the appropriate defendant.
4. For the avoidance of doubt, those challenges (whether expressed to be against the Lord Chancellor, Legal Aid Agency or the Director) in relation to individual case decisions and the delivery of legal aid, including procurement issues and the recovery of costs are to be handled by the LAA litigation team, as in reality the decisions in those cases are made by the Director himself or the LAA acting on the Lord Chancellor's behalf. The correct address for service in respect of those cases will therefore be the Principal Legal Advisor, Central Legal Team - Legal Aid Agency, 8<sup>th</sup> Floor, Petty France. As previously, challenges to the policy or legislative framework are a matter for the Lord Chancellor and the TSol litigation teams at Kemble Street will continue to act on his behalf, on instructions from the Legal Aid and Legal Services Team within MoJ.
5. In practice, cases are likely to involve both policy and delivery issues, particularly in the early days of LASPO. The Legal Aid and Legal Services Team and LAA Central Legal Team will therefore work together to ensure there is early warning of issues and co-operation in relation to the handling of

litigation to provide the most cost-effective service for the MoJ. In particular, the teams will look to share counsel where possible and minimise other duplication. The Joint Litigation Strategy Group will provide an oversight function in terms of legal issues and a forum for discussion with policy colleagues.

6. The following are some examples of the scenarios where, although LAA are leading on the litigation, they will generally wish to consult MoJ (MoJ policy or MoJ legal as appropriate).
  - a. Individual cases: when litigation or threatened litigation raises, or is likely to raise, wider issues of legislative interpretation or policy. This might include cases that relate to the interpretation of provisions of LASPO with general application (eg s.10(3)), cases that have a potentially significant financial impact and cases that are likely to attract significant media attention or the interest of OGD.
  - b. Commercial litigation: where LAA need specialist input on the interpretation of contract provisions or where the issue has significant financial or wider policy implications.
  - c. Costs cases: where the case raises a novel or significant point of statutory interpretation or an underlying challenge to the legislation
7. If the LAA is in doubt whether there is such an issue in the case, it is sensible, particularly in the early days of the LASPO regime, to seek views from MOJ lawyers so that an agreed view on whether MOJ needs to be involved can be reached from the outset.
8. Likewise, MoJ agree to keep the LAA informed on legal aid litigation against the Lord Chancellor to ensure the Central Legal Team are aware of the legal approach taken on policy or legislative issues.

#### **Litigation against the Director in relation to individual cases**

9. In working together on litigation in relation to individual cases (both at pre-action and after issue), MOJ and LAA colleagues need to ensure that the independence of the Director of Legal Aid Casework is protected (in fact and as a matter of perception). This is not a concern in relation to other litigation although the principles in paragraph 6 above will apply to all cases.
10. When issues arise in individual case litigation which lead to the LAA consulting MoJ, the LAA should seek views from the MOJ on a lawyer to lawyer basis. MoJ legal will engage their policy colleagues and send a single response back to LAA legal.
11. Any views sought by the LAA should be explicitly on the basis that the LAA is doing so on the legislative or wider policy points raised rather than on the funding decision in the individual case, which is a matter for the Director.

Legal advice or policy views given by the MOJ will be on the same basis. Both the request and response will be provided between lawyers, having involved colleagues. Care should be taken not to share litigation materials (which may involve details of individual cases) more widely than necessary.

### **Pre-action cases**

12. There is a particular need for caution at the pre-action stage, because it may be that receipt of the pre-action letter causes the Director to re-take his funding decision. Requests from the LAA to the MOJ should include the following:

- (i) Issue (brief summary of issue raised for purposes of giving context to advice sought),
- (ii) Specific points of legislative interpretation/intention/wider policy on which views sought.

It is a matter for the LAA to decide whether it is appropriate to share the full pre-action letter at this stage though the LAA will consider any request to share the letter from MOJ in line with the principles set out in this protocol.

### **Issued proceedings**

13. The LAA will involve the MOJ in issued proceedings as appropriate applying the above principles as to the basis upon which views are sought and provided. As the challenge is to a decision which has been taken, the LAA will share the claim form (which is public) and other relevant documents in full with the MOJ. MOJ will be invited to comment in draft on relevant sections of the LAA's grounds. Care should be taken to direct MOJ lawyers to the relevant sections and for input on those sections to be provided without commenting on aspects of the individual case. Care should be taken to ensure input is provided in accordance with the above principles and the need to protect the Director's independence, even after proceedings are issued.

14. It is not generally envisaged that the Lord Chancellor need be an interested party to proceedings in which the LAA is defending an individual funding decision. It may, for example, be appropriate to indicate in the LAA's grounds that the Lord Chancellor agrees with views expressed as to the intention behind, or interpretation of, his legislation, along the following lines:

*"The Lord Chancellor is responsible for LASPO. The MoJ have confirmed that the grounds reflect correctly the Department's view of the relevant legislation."*

**April 2014**