



# How to Apply for Legal Aid Funding for Judicial Review



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- enhancing the quality of public decision-making;
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## Introduction

Legal aid remains available for many judicial review cases, subject to conditions. Certain types of cases are excluded (see Annex 1), and in some cases payment will not be made, even where legal aid is granted (see Annex 2).

This guide is intended for practitioners who do not apply for judicial review funding on a regular basis, or who could do with some clarification on aspects of the criteria. It does not cover the 'legal help' scheme which is only available through legal aid providers with a contract to do public law work.

This guide also does not cover the practicalities of applying. Most legal aid applications have recently moved from paper forms to the new computerised 'CCMS' system. This system may change, and in certain circumstances paper forms may still be required. It therefore relates to the substance of what the application must show, not the way the application must be made.

It is intended as a guide only. It should help you ensure that you have covered all the relevant criteria, considered the relevant issues, and help you find your way to the answer to your question. It is not, and is not intended to be, a definitive statement of what is necessary to obtain legal aid.

## Relevant legislation, guidance and abbreviations

The current legal aid scheme operates under Part 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (**'LASPO'**) and Schedule 1 to that Act, which sets out the scope of legal aid.

The principal regulations and guidance are:

- The Civil Legal Aid (Merits Criteria) Regulations 2013, as amended (**'the Merits Regulations'**).
- The Civil Legal Aid (Procedure) Regulations 2012, as amended (**'the Procedure Regulations'**).
- The Civil Legal Aid (Remuneration) Regulations 2013, as amended (**'the Remuneration Regulations'**).
- The Lord Chancellor's Guidance under section 4 of Legal Aid Sentencing and Punishment of Offenders Act 2012 (issued June 2014) (**'Lord Chancellor's Guidance'**) gives some exposition and interpretation of the provisions of LASPO and the regulations.
- Guidance on financial eligibility for legal aid can be found in the latest version of the Legal Aid Agency's *Guide to Determining Eligibility for Certificated Work*, which is usually revised in April of each year.

## Who can apply?

Only a firm or other provider of legal services can apply for legal aid funding for a judicial review case. Usually, they will need to already have a contract with the Legal Aid Agency (the 'LAA') to provide legal services in the area of public law. However, it is possible to apply even if your LAA contract is in another area of law, or sometimes if you do not have a legal aid contract at all, if you can show that it is in the interests of justice for you to handle the case.<sup>1</sup>

If you are an individual and you believe you have a judicial review case and that you are eligible for legal aid funding, you need to find a solicitor willing to make the application for you, who will then represent you in the case.

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1 Procedure Regulations, 31(5).

## Types of legal aid – investigative and full representation

There are two forms of legal representation available under a legal aid certificate:

- investigative representation; and
- full representation.

Investigative representation is limited to investigating the strength of contemplated proceedings. Generally, you cannot issue proceedings under investigative representation funding.<sup>2</sup> Full representation can cover issuing and all subsequent steps in proceedings.<sup>3</sup>

If you are granted investigative representation or full representation, you will obtain a certificate from the LAA confirming the grant. Both types of representation are subject to the limits imposed by the LAA on a particular legal aid certificate. Typically these limits will include the level of costs the solicitors will be paid by the LAA, and how far they can progress the case before they need to go back to the LAA to get the certificate extended.

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2 Exceptions to this rule are set out in the Merits Regulations, 18(3).

3 Merits Regulations, 18(2)

## Criteria for a successful application

### *Scope*

In applying for either form of legal representation, the case must be ‘in scope’ for legal aid. Most judicial review cases are currently in scope for legal aid, although there are some limited exceptions (see Annex 1).

Note that in order to be in scope, the judicial review case must “have the potential to produce a benefit for the individual, a member of the individual’s family or the environment.”<sup>4</sup> However, if the case subsequently ceases to have potential to benefit the individual, then funding can remain in place (for instance, while the case is settled).<sup>5</sup>

### *Financial Eligibility*

The client must qualify financially for legal aid (the income and capital levels above which applicants become ineligible change, and are not discussed in this guide). The LAA sets requirements about what evidence is required.<sup>6</sup>

### *Procedural requirements*

Applications must be made to the LAA using either the prescribed forms which must be signed and dated, or online using the LAA’s case management system, CCMS. The procedural requirements are principally mandated by the Civil Legal Aid (Procedure) Regulations 2012, as amended.

### *Merits Criteria*

The remaining criteria to be satisfied are identified in the Civil Legal Aid (Merits Criteria) Regulations 2013, as amended. They relate to the appropriateness of using legal aid money to bring litigation (for example, the cases to be funded should be strong enough to justify the cost of funding them, and judicial review cases should not be brought where other cheaper types of legal remedy such as an appeal to a tribunal are suitable). These criteria are listed on the subsequent pages.

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4 LASPO, Schedule 1, Part 1, paragraph 19(3)

5 LASPO, Schedule 1, Part 1, paragraph 19(4)

6 Currently set out in the Guide to determining eligibility for certificated work.

## Checklist of criteria for all applications

Whether you are applying for investigative representation or full representation, there are certain merits criteria that must always be satisfied. These are set out here and explained further in the subsequent pages.

- ✓ The act, omission or other subject of the challenge appears to be susceptible to challenge;<sup>7</sup>
- ✓ There are no alternative proceedings available, or alternative proceedings are not effective<sup>8</sup> and all reasonable alternatives to proceedings have been exhausted;<sup>9</sup>
- ✓ It is not reasonable for the client to use other potential sources of funding,<sup>10</sup> or a Conditional Fee Agreement;<sup>11</sup>
- ✓ No one else can reasonably be expected to bring the claim;<sup>12</sup>
- ✓ There is a need for representation in all the circumstances of the case.<sup>13</sup>

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7 Merits Regulations, 53(a)

8 Merits Regulations, 53(b) as amended by the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2013, 2(2).

9 Merits Regulations, 39(d)

10 Merits Regulations, 39(a)

11 Merits Regulations, 39(b)

12 Merits Regulations 39(c)

13 Merits Regulations, 39(e)

### Decision susceptible to judicial review

Merits Regulations, 53(a)

For all applications (whether for investigative representation or full representation), the decision under challenge must be one that can be challenged by judicial review, e.g. not a matter of private law.

### No alternative proceedings or procedures

Merits Regulations, 39(d) and Merits Regulations, 53(b) (as amended)

For all applications, there must be no available remedy which is an effective alternative to judicial review.<sup>14</sup> For example, if there is an appeal or review process from the decision under challenge, that should be employed. However, if there are good reasons why an alternative process is not effective for your client, and you can convince the LAA of that, then this criterion should not preclude legal aid being granted.

The regulations also have a general requirement that all reasonable alternatives to proceedings have been exhausted.<sup>15</sup> Similar factors apply, and consideration should be given to whether an ombudsman could provide a suitable alternative procedure given the circumstances of the case, e.g. the time available, or the remit of the ombudsman.

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14 Merits Regulations 53(b) as amended by the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2013, 2(2)

15 Merits Regulations, 39(d)

## Alternative sources of funding and conditional fee agreements (CFAs)

Merits Regulations, 39(a) and 39(b)

For all applications, there must be no reasonable alternative sources of funding for the proposed claim. The Lord Chancellor's Guidance provides examples of potential sources such as other interested parties, trade unions or insurers.<sup>16</sup> Whether any of these are reasonable will depend on the circumstances of the case and the interests and financial resources of those other individuals. In particular, consideration should be given to how any private funding arrangement would ensure that the proposed Defendant's costs are met in the event of an adverse costs order against your client, and whether a potential contributor is likely to fund a claim where he or she cannot give instructions (for instance, to minimise the risk or extent of an adverse costs order).

A CFA is unlikely to ever be suitable when applying for investigative representation. This is because for a CFA to be viable there must be sufficient prospects of the claim succeeding, but by definition an investigative representation case is one where the prospects of success are unclear.

In practice, CFAs are rarely used in judicial review proceedings. This is because the prospects of success are often difficult to predict, and because any relief granted is within the discretion of the Court. Given

that a CFA will generally identify 'success conditions' based on obtaining the relief sought, this means that even if a Claimant obtains a favourable judgment, relief may be withheld, and therefore a representative would not be entitled to payment. There are also statutory restrictions on granting relief in judicial review proceedings,<sup>17</sup> which may affect some cases.

For it to be reasonable to undertake work on the basis of a CFA, it will generally be necessary to have sufficiently good prospects of success.<sup>18</sup> The Lord Chancellor's Guidance suggests at least a 60 per cent prospect of success. In some circumstances, the complexity of the case or the level of disbursements required might make a CFA impossible even when the prospects of success are relatively high.

Further, a CFA (unlike legal aid) does not give the client protection against paying the opponent's legal costs in the event that this is ordered by the Court. A CFA will only usually be viable when 'After the Event' (ATE) insurance can be obtained, and when the client is able to pay any premium required. Premiums for ATE insurance in judicial review claims can be prohibitively high, as much as 50 per cent of the sum insured. In addition, ATE insurance may only be suitable where the client is seeking a sum of money as part of the judicial review claim.

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<sup>17</sup> Criminal Justice and Courts Act 2015, s. 84

<sup>18</sup> Lord Chancellor's Guidance, 7.17

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<sup>16</sup> Lord Chancellor's Guidance, 7.14

## No alternative claimants

Merits Regulations, 39(c)

The Lord Chancellor’s Guidance states “this criterion is concerned with the situation where another person is a more appropriate party to proceedings, and will be particularly relevant where the applicant for funding has been selected as a (proposed) party on the basis of their financial eligibility for legal services or status as an individual rather than legal person.”<sup>19</sup>

## The need for representation

Merits Regulations, 39(e)

Relevant factors to this test include:

- Whether the proceedings are so straightforward that a privately paying individual would represent herself;
- Whether there are already other proceedings concerning the same issue;
- Whether other parties with the same position or interests are already represented in the litigation.<sup>20</sup>

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19 Lord Chancellor’s Guidance, 7.21

20 Lord Chancellor’s Guidance, 7.23

## Checklist of criteria for investigative representation

In addition to the criteria which must be satisfied by any application for legal aid for judicial review, there are further criteria to be satisfied by an application for investigative representation. These are:

- ✓ The prospects of success are unclear;<sup>21</sup>
- ✓ Substantial investigative work is required to determine the prospects;<sup>22</sup>
- ✓ There are reasonable grounds to believe the full representation criteria will be satisfied;<sup>23</sup>
- ✓ The opponent has been notified of the claim and given time to respond, or it is impracticable to do so.<sup>24</sup>

Further explanation of the criteria is available on the following pages.

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21 Merits Regulations, 40(1)(a)

22 Merits Regulations, 40(1)(a)

23 Merits Regulations, 40(1)(b)

24 Merits Regulations, 54(b)

## Prospects of success are unclear

Merits Regulations, 40(1)(a)

In any application for investigative representation, you will need to satisfy the LAA that the prospects of the client obtaining – at any final hearing – the outcome that he or she intends to achieve from the judicial review are currently ‘unclear’.

‘Unclear’ means that that the LAA cannot determine whether the prospects of the case are either 50 per cent or more, or less than 50 per cent<sup>25</sup>, and that there are identifiable investigations which could be carried out, after which it should be possible to make a reliable estimate of the prospects of success.<sup>26</sup>

Essentially, you will need to show that if there were to be a final hearing, it is currently not known whether the client would be likely to obtain the outcome he or she is seeking, but that this will be knowable once certain specific steps (for which you are applying for funding) have been taken.

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25 Or that the criteria for funding in ‘borderline’ or ‘marginal’ cases are met: see page 19 for further explanation

26 Merits Regulations, 5(2)

## Substantial investigative work is required

Merits Regulations, 40(1)(a)

For investigative representation applications, you should identify what investigations you wish to undertake. Common examples include:

- Obtaining written advice from counsel on the strength of the case;
- Commissioning an expert report on a doubtful point of fact;
- Corresponding with the opponent (including, if appropriate, a pre-action letter); or
- Considering extensive documentation which needs to be considered at this stage.

To be ‘substantial’ the proposed investigations must reasonably require:

- At least six hours of fee-earner work; or
- Disbursements and/or counsel’s fees of £400 or more.<sup>27</sup>

And the work involved to reach these limits is necessary to investigate the prospects of success of the case.<sup>28</sup>

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27 Lord Chancellor’s Guidance, 6.11

28 Lord Chancellor’s Guidance, 6.13

## Criteria for full representation likely to be met

Merits Regulations, 40(1)(b)

Before granting investigative representation, the LAA must have reasonable grounds for believing that once the investigative work has been carried out, the case will satisfy the criteria for full representation (which are set out below).

The main additional criteria for full representation are that the case will have a 50 per cent or more chance of success<sup>29</sup> and the cost of the case will be proportionate to the likely outcomes, and that the pre-action protocol requirement must be satisfied. In effect, therefore, investigative representation will generally need to cover writing a pre-action letter, unless that has already been done.

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29 Or that the criteria for funding in 'borderline' or 'marginal' cases are met: see page 19 for further explanation.

## Notifying the opponent

Merits Regulations, 54(b)

Before applying for investigative representation, you must notify the opponent of the proposed claim (and allow the opponent a 'reasonable' time to respond) or show that doing so would be impractical.<sup>30</sup>

This is "notification only of the potential for a challenge rather than an exposition of the legal grounds for that challenge"<sup>31</sup> so the notification can be very short.

The Lord Chancellor's Guidance states that it will 'impractical' to notify a potential defendant in cases of urgency or impending limitation periods.<sup>32</sup> There may be other circumstances where it is not appropriate to notify the defendant, for instance where doing so would jeopardise your client's well-being or ability to obtain the outcome he or she is seeking.

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30 The Civil Legal Aid (Merits Criteria) Regulations 2013, 54(b)

31 Lord Chancellor's Guidance, 7.38

32 Lord Chancellor's Guidance, 7.41

## Checklist of criteria for full representation

In addition to the criteria which must be satisfied by any application for legal aid for judicial review, there are further criteria to be satisfied by an application for full representation. They are also relevant to applications for investigative representation, since you must show that these criteria are likely to be satisfied once the proposed investigations have been undertaken.

- ✓ Prospects of success are 50 per cent or better<sup>33</sup> (or 45 to 50 per cent providing other criteria are met);<sup>34</sup>
- ✓ The likely costs of the case are proportionate to the likely benefits;<sup>35</sup> and
- ✓ A pre-action letter has been sent to the opponent, and the defendant has been given time to respond, or it is not practicable to do so.<sup>36</sup>

Further explanation of the criteria is available on the following pages.

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33 Merits Regulations, 56(3)(a)

34 Merits Regulations, 56(3)(b) as amended by the Civil Legal Aid (Merits Criteria) (Amendment) (No.2) Regulations 2015, 2(5)

35 Merits Regulations, 56(2)(b)

36 Merits Regulations, 56(2)(a)

## Prospects of success for full representation

Merits Regulations, 56(3)

You will generally need to satisfy the LAA that the prospects of the client obtaining – at any final hearing – the outcome that he or she intends to achieve from the judicial review are 50 per cent or more. The prospects of success do not need to be more than 50 per cent – they only need to be 50:50.<sup>37</sup>

The prospects of success may also be classed as either ‘borderline’ (meaning that it is not possible, by reason of disputed law, fact or expert evidence, to determine prospects at that stage)<sup>38</sup> or ‘marginal’ (meaning that the prospects are 45 per cent or more, but less than 50 per cent).<sup>39</sup> If the prospects of success are either ‘borderline’ or ‘marginal’ then funding will not be available, unless the case is of ‘significant wider public interest’,<sup>40</sup> is of ‘overwhelming importance to the individual’, or its substance relates to a breach of Convention rights.

The Merits Regulations were amended in 2016 to allow cases with borderline or marginal prospects of success to be funded as above.

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37 Merits Regulations, 5(c)

38 Merits Regulations, 5(d)

39 Merits Regulations, 5(1) (as amended by the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016, 2(2)(b))

40 Merits Regulations, 56(3) (as amended by the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016, 2(5)). The terms ‘significant wider public interest’ and of ‘overwhelming importance to the individual’ are both defined in the Merits Regulations (see regulations 6 and 2 respectively).

## Proportionality

Merits Regulations, 56(2)(b)

For full representation applications, the likely costs of the case must be proportionate to the outcome sought. The test is whether the likely benefits (to the individual applicant and others) justify the likely costs, in all the circumstances including with reference to the prospects of success.<sup>41</sup>

## The pre-action protocol

Merits Regulations, 56(2)(a)

Before applying for full representation, the regulations require that either:

- A pre-action letter has been sent to the opponent, and the opponent has been given a reasonable time to respond in accordance with the pre-action protocol for judicial review; or
- It is impracticable to send a pre-action letter (generally due to the urgency of the case or where the pre-action protocol itself provides that it is not necessary to follow it).<sup>42</sup>

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41 Merits Regulations, 8

42 Lord Chancellor's Guidance, 7.42, and see the Pre-Action Protocol for Judicial Review, 6 and 7

## Emergency funding

The LAA has the power to determine a funding application on the basis of limited information and documents where it is considered to be in the interests of justice.<sup>43</sup> In effect, this means that you can apply for funding on the basis that the LAA will determine the merits of the case initially, and that further information, in particular on the client's financial resources, must be submitted later.

Until the client's financial circumstances have been determined fully, the funding provided will be emergency funding only, and will only cover work that needs to be done on an urgent basis. It is likely to be significantly limited in terms of the amount of work that may be done under the certificate.

If the required further information (usually full application forms and evidence of the client's means) is not provided within the required timescale (five working days from the date of the grant of emergency funding), then the funding decision will be revoked and no money may be claimed under it. Likewise, if the further information is provided but it turns out that the client is not financially eligible for legal aid, or an offer of legal aid contributions is made and the client does not accept it, then the certificate may be withdrawn or revoked and it may be that no money can be claimed under it.

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43 Procedure Regulations, 45(1)(b)

If the further information is provided and the LAA accepts the client is eligible for full funding, the emergency certificate will be 'merged' and will become a 'substantive' certificate.

There is no right of appeal against a refusal of emergency funding. Instead, a full application for funding must be submitted.<sup>44</sup>

There are certain categories of case where funding can be granted by a legal aid provider on an emergency basis, subject to later approval by the LAA.<sup>45</sup>

The detailed procedures for applying for emergency and full funding are subject to change and are not discussed in detail here. You should check current LAA guidance before applying.

## Limitations, extending funding, and reporting

All legal aid certificates are subject to limitations on both the amount of costs that can be incurred and the stages of work that may be undertaken. Annotated examples of legal aid certificates can be found in annex 3.

When applying for funding, especially emergency funding, it is therefore important to make clear what work needs to be undertaken and what this is likely to cost so that the certificate is suitable to your needs.

If and when further work becomes necessary, the certificate can be extended by making a further application to the LAA. Examples of circumstances where this is likely to be necessary are:

- Where there is an oral hearing to determine whether to grant permission;
- Where permission has been granted;
- Where expert evidence or other significant disbursements are necessary; and
- Where there is a directions hearing.

If for any reason it appears to you that the criteria for receiving funding are no longer met in the case, you must inform the LAA.

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44 Procedure Regulations, 53

45 Some legal aid providers continue to have 'delegated powers' to grant funding for judicial review proceedings concerning:  
Part VII of the Housing Act 1996 (as amended)  
Section 21 of the National Assistance Act 1948 (as amended)  
section 47(5) National Health Service and Community Care Act 1990 (as amended),  
section 19(3) Care Act 2014  
Please see the Standard Civil Contract Specification (General Provisions 1-6)  
(Amended 1 July 2015), paragraph 5.3(a).

## Ongoing requirements

When a grant of legal aid funding has been made, relevant parties and the court or tribunal must be notified.

The court or tribunal must be provided with a copy of the legal aid certificate, if proceedings have already been issued, or when proceedings are issued.<sup>46</sup>

The other parties to proceedings must be provided with a notice that funding has been granted whether proceedings have been issued or not (and whether it is for investigative representation or not). However, they are not entitled to a copy of the certificate.<sup>47</sup>

A further notice must be provided to all parties where the certificate is amended so that there is a change in the form of service (i.e. from investigative to full representation) or if the description of proceedings is amended (e.g. from being a claimant in an action for judicial review, to being a respondent in the Court of Appeal).<sup>48</sup>

If there is an amendment to the form of service or to the description of the proceedings, a copy of the amended certificate should be provided to the relevant court or tribunal.<sup>49</sup>

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46 Procedure Regulations, 38(1)(a) and 38(2)(b)(i)

47 Procedure Regulations, 38(1)(b) and 38(2)(a)

48 Procedure Regulations, 38(4)(b)

49 Procedure Regulations, 38(4)(a)

## Appeals and reviews

Where an application for emergency legal aid is refused, there is no right of appeal.<sup>50</sup> A full application can be made.

Where a full application for legal aid is refused, or granted on unsatisfactory terms, or where a grant of legal aid is withdrawn, you can apply for a review of the decision within 14 days.<sup>51</sup>

Where, following a review, the decision remains unsatisfactory, you can appeal to an independent funding adjudicator ('IFA'), unless the reason is either that the client is financially ineligible, or that the case is not in scope for legal aid.<sup>52</sup>

IFAs can only make binding determinations on certain issues.<sup>53</sup> If the IFA differs from the LAA's decision, the matter will be reconsidered by the LAA and a new decision made.<sup>54</sup>

In certain circumstances<sup>55</sup>, the matter may be referred to the Special Controls Review Panel, which has broader terms of reference than IFAs.<sup>56</sup>

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50 Procedure Regulations, 53

51 Procedure Regulations, 44(1)

52 Procedure Regulations, 45(1)

53 Procedure Regulations, 47(1)

54 Procedure Regulations, 46, 47, 48

55 Procedure Regulations, 54(3)

56 Procedure Regulations, 58

## Annex 1 – Immigration judicial reviews not in ‘scope’ for legal aid

Some immigration judicial review claims are not within the ‘scope’ of legal aid. This means you cannot obtain legal aid funding in the normal way in either of the following circumstances:

- If a court or tribunal has considered the same, or substantially the same, issue; and the most recent court or tribunal to consider the issue determined the case against the client; and that determination took place one year or less prior to the date of the application for legal aid; or
- If the client seeks judicial review of removal directions which were made within one year or less of the most recent of the following:
  - a decision to remove the client from the UK;
  - the refusal of leave to appeal against that decision; or
  - the determination or withdrawal of an appeal against that decision.

However, there are some cases which can receive legal aid even if the above criteria are met. In particular, judicial reviews of refusals of asylum claims (where no right of appeal has been provided to the client) or where the claim has been certified preventing an appeal through the immigration tribunal system.<sup>57</sup>

If a judicial review claim is not in scope, it may still be possible to obtain funding under section 10 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (Exceptional Case Funding). Exceptional Case Funding is not dealt with in this guide.<sup>58</sup>

## Annex 2 – Payment for judicial review

Unlike other services provided under legal aid, payment for work on some parts of judicial review cases is dependent on what occurs in the case. These provisions are complex and you should check the relevant legislation, which is the Civil Legal Aid Remuneration Regulations, as amended by the Civil Legal Aid (Remuneration) (Amendment) Regulations 2015.<sup>59</sup>

These provisions only apply to ‘work done on an application for permission for judicial review.’<sup>60</sup> For the purposes of these regulations, that does not include:

- work done on investigating the claim; or
- work done towards an application for interim relief as part of an application for judicial review.<sup>61</sup>

Further, it does not affect payment in a case where no claim is issued.<sup>62</sup>

Payment will always be made where:

- Permission is granted;<sup>63</sup> or

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57 LASPO, Schedule 1, 19(5) – 19(8)

58 The law concerning Exceptional Case Funding was set out by the Court of Appeal in *R (Gudanaviciene) v Director of Legal Aid Casework and Lord Chancellor* [2014] EWCA Civ 1622, but at the time of writing litigation concerning the operation of the scheme remains underway (*R (I.S.) v Director of Legal Aid Casework*, see above) and the Lord Chancellor has stated that new guidance will be released.

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59 These regulations were introduced in response to the case of *R (Ben Hoare Bell and others) v Lord Chancellor* [2015] EWHC 523 (Admin)

60 Remuneration Regulations, 5A(1)

61 Remuneration Regulations, 5A(3)(c)

62 Remuneration Regulations, 5A(1)

63 Remuneration Regulations, 5A(1)(a)

## Annex 3 – Anonymised legal aid certificates

- The Defendant withdraws the decision under challenge, leading to permission being refused or the claim being withdrawn without permission being determined;<sup>64</sup> or
- The court orders an oral hearing to consider granting permission for judicial review, permission to appeal, or to consider the substance of an appeal;<sup>65</sup> or
- The court orders a ‘rolled-up’ hearing to determine permission and the substantive claim at the same time.<sup>66</sup>

If the claim is issued, but permission is refused, and none of the above conditions apply, then no payment will be made for the work done on the application for permission.

If none of the above apply, and permission is neither granted nor refused (i.e. the claim is withdrawn prior to a determination by the court), the Lord Chancellor has discretion as to payment, with particular reference to:

- Why costs were not awarded in favour of the Claimant; and
- The extent to which the outcome sought was achieved; and
- The strength of the application for permission at the time it was filed.

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64 Remuneration Regulations, 5A(1)(c)

65 Remuneration Regulations, 5A(1)(d)

66 Remuneration Regulations, 5A(1)(e)

**CIVIL LEGAL AID CERTIFICATE**  
**Legal Aid, Sentencing and Punishment of Offenders Act 2012**

Reference Number:

Current Provider Details		Client Details	
Firm Name	PUBLIC LAW PROJECT	Client Address	
Address	150 CALEDONIAN ROAD LONDON GB N1 9RD	Opponent Details	Date Included 27/08/2015
Account No			
Phone No			
Fax No			
Ref No			
Conducting Solicitor			
Old Certificate Number			

Each certificate is given an LAA reference number

The details of the organisation, contact details and the opponent are given

This is to certify that the status of the Certificate is as specified in the "Certificate Summary" box below. Its scope is specified in the "Notice" overleaf. It covers the proceedings listed overleaf and is subject to the limitations and conditions listed overleaf.

Certificate Summary	
Emergency Certificate for <i>Investigative Representation</i> will expire eight weeks after the date granted, unless it is discharged, revoked, merged in an ordinary certificate or extended before its expiry. Emergency issued on	27/08/2015
Substantive Certificate for <i>Investigative Representation</i> issued on	05/10/2015
Amendment issued on	26/10/2015
The date and limitations on the substantive certificate are effective from the date of issue of the emergency (if an em)	
<b>Current Certificate Status</b>	<b>LIVE</b>
This certificate imposes both scope and financial limitations on the work to be done under it. Payment will not be made for work undertaken outside the scope specified or in excess of the costs limit. Solicitors should check the limitations imposed carefully and apply for an amendment where appropriate.	

These details give the nature of the certificate. In particular, they identify whether it is emergency or substantive, and when amendments have been made to the certificate

This alerts you to the current status of the certificate at the time it was issued.

This specifies the type of proceedings for which the application has been issued

**Notice**

As claimant to be represented in an action for judicial review against the opponent.  
 Date work can commence on the above proceeding: 05/10/2015

Limitation	Effective	Removed	Cost Limitation
Limited to investigation, sending a detailed letter before claim, consideration of the defendant's response if any, and thereafter solicitor's report or the opinion of external counsel or the opinion of an external solicitor with higher court advocacy rights.			This certificate limits the costs to be incurred under it (including disbursements and any counsel's fees but excluding VAT) to a maximum of £1,500 from 05/10/2015
			This certificate limits the costs to be incurred under it (including disbursements and any counsel's fees but excluding VAT) to a maximum of £2,500 from 26/10/2015

**MULTIPLE COSTS LIMITATIONS**  
 A certificate covering more than one set of proceedings may have more than one costs limitation imposed. It is intended that there should be one effective costs limitation for all the work authorised by the certificate. Accordingly, that costs limit will be the highest of the limitations specified. Solicitors do not need to apportion their costs between the proceedings covered by each limitation and need only apply for an amendment when the total costs for the work to be done under the whole of the certificate are likely to exceed the highest limitation.

**AMENDMENTS**  
 Amendments to the certificate are now issued in the form of a replacement certificate which will show the amended scope including any new costs limitation imposed. The amended costs limitation will set a new maximum for the costs to be incurred. The costs limitation is a final costs figure and the limitation imposed on the final version of the certificate will be the relevant limitation on assessment.

**FAMILY GRADUATED FEES (FGF)**  
 All family proceedings now show the family graduated fee category into which counsel's fees will fall by reference in brackets to FGF (category 1-4) where the wording covers mixed categories this is shown by multiple category numbers. The FGF scheme will only apply to the work done by barristers instructed by solicitors in relation to certificates granted on or after 1 May 2001.

Transitional cases: Where the certificate was granted before 1 May 2001 but is amended thereafter the fees incurred under the amended certificate do not fall within the FGF scheme and the wording shown on the certificates should be disregarded.

High costs cases: Where a high costs case contract has been issued, the contract governs payment of counsel's fees.

Appeals: Only interlocutory appeals are included within the scheme.

These limitations are the work that may be done under the certificate. For instance, it could specify that the only work to be done would be to obtain counsel's opinion, or include provision to attend a hearing

These specify the costs that can be incurred under the certificate, including disbursements and counsel's fees, and the solicitor's work at hourly LAA rates

 Legal Aid Agency	<b>CIVIL LEGAL AID CERTIFICATE</b>  Reference Number:
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Client Name		
Client Address		
Firm Name		
Fee Earner		
Provider Internal Reference		
Office Address		
Opponent Details	Guardian Name	Guardian Address

This is to certify that the status of the Certificate is as specified in the 'Certificate Summary' box below. Its scope is specified in the 'Notice' overleaf. It covers the proceedings listed overleaf and is subject to the limitations and conditions listed overleaf.

The date and limitations on the substantive certificate are effective from the date of issue of the emergency (if an emergency has been issued).

Certificate Summary	
Substantive Certificate	Status: Live
	Effective Date: 28/08/2015
	End Date:
	Reinstatement Date:
	Cost Limitation: £1,350.00
	Cost Limitation effective date:
	Certificate Limitation: N/A

This certificate imposes both scope and financial limitations on the work to be done under it. Solicitors should check the limitations imposed carefully and apply for an amendment where appropriate.

Payment will not be made for work undertaken outside the scope specified or in excess of the costs limit.

NOTICE		
Proceeding(s)		
CATEGORY OF LAW: Public Law		
Action for Judicial Review - Pub Law	Current Status:	LIVE
to be represented in an action for judicial review against the opponent.		
Date work can commence on the above proceeding:	28/08/2015	
Proceeding end date:		
Client involvement type:	Applicant/claimant/petitioner	
Form of Service:	Full Representation	
Date current Form of Service effective:	28/08/2015	
Previous Form of Service:	Full Representation	
Date previous Form of Service effective:		
Limitation	Effective Date	End Date
Limited to an application for permission on the papers (to include if necessary, an application for interim relief on the papers or orally with the consent of the court). If permission is granted limited to filing of the defendant's evidence and thereafter obtaining external counsel's opinion or the opinion of an external solicitor with higher court advocacy rights.	28/08/2015	23/10/2015
Limited to an application for permission on the papers (to include if necessary, an application for interim relief on the papers or orally with the consent of the court). If permission is granted limited to filing of the defendant's evidence and thereafter obtaining external counsel's opinion or the opinion of an external solicitor with higher court advocacy rights.	17/10/2015	

These give the dates that an emergency certificate is valid for. Unless it is merged with the substantive certificate, the certificate will lapse after the set period.

A substantive certificate does not have an end date – it finishes when it is discharged or if it is cancelled or revoked by the LAA



### Guides in this series:

01 An Introduction to Public Law

02 Making an Effective Complaint to a Public Body

03 An Introduction to Judicial Review

04 The ABC of Effective Procedural Applications

05 How to Apply for Legal Aid Funding for Judicial Review

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