

JR Funding and Costs

Jenny Wigley

As billed:

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- Legal Aid in brief;
 - Crowd funding;
 - Cost Capping Orders;
 - Aarhus Regime.
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Legal Aid in brief



- Legal Aid Sentencing and Punishment of Offenders Act 2012 (“LAPSO”);
 - The Civil Legal Aid (Merits Criteria) Regulations 2013;
 - The Civil Legal Aid (Procedure) Regulations 2012;
 - The Civil Legal Aid (Remuneration) Regulations 2013;
 - Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013.
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Legal Aid – still available for JR



- Para 19, Sch 1 LAPSO, if has potential of providing a benefit to the individual, member of family or the environment;
 - Certain types of immigration case excluded (Sch 1 para 19(5)-(6));
 - Subject to financial eligibility criteria – s.21 and Regs;
 - Subject to merits criteria – Merits Regs;
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Legal Aid – Merits Criteria



- Regulations 56, 53 and 39 of the Merits Regulations;
 - 50% or better prospects or marginal/borderline prospects and:
 - wider public interest; or
 - breach of Convention Rights; or
 - of 'overwhelming importance to the individual';
 - Subject to the proportionality test (reg 8);
 - No alternative proceedings or sources of funding.
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Legal Aid – Payment Restriction



- No payment unless permission is granted (reg 5A of the Remuneration Regulations);
 - Subject to some exceptions:
 - various types of settlement;
 - court orders oral hearing to consider permission;
 - court orders rolled- up hearing.
 - So, no payment if permission refused on the papers and then also refused at renewed oral hearing.
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Crowd Funding



- Platforms such as Crowd Justice and Crowd Funder;
- Usually all or nothing initial target;
- No card charged unless initial target met;
- Stretch targets can be added – flexible;
- Unused funds – returned to platform – either towards another case or Access to Justice Foundation charity;
- Donations over £1,000 given option of pro rata refund.

Cost Capping Orders



- SS. 88 - 90 Criminal Justice and Courts Act 2015;
 - CPR Part 46.16 – 46.19, PD46, 10.1 – 10.2;
 - Exclusive regime (s.88(1));
 - Only after permission has been granted (s.88(3))
 - There must be a reciprocal cap (s.89(2))
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Cost Capping Orders (2)



- Requirements to be met (s.88(6))
 - public interest proceedings;
 - C would withdraw in absence of CCO;
 - It would be reasonable for C to do so;
 - 'Public interest' – general public importance, public interest requires issue to be resolved, proceedings are likely to provide an appropriate means of resolving it.
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Cost Capping Orders (3) – s. 89 Factors



- Financial resources of parties including financial supporters;
 - Extent of likely benefit to applicant;
 - Extent of likely benefit to financial supporters;
 - Legal representatives – free of charge?
 - Whether applicant is appropriate person to represent interests of others or public interest.
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Cases on Cost Capping



- *Stephen Hawking and others v. Secretary of State for Health & Social Care and National Health Service Commissioning Board* [2018] EWHC 989 (Admin);
- *Litvinenko v. Secretary of State for the Home Department* [2013] EWHC 3135 (Admin);
- *R (Lumsdon) v. Legal Services Board* [2015] EWCA Civ 421;
- *R (Beety) v. Nursing and Midwifery Council* [2017] EWHC 3579.

Aarhus – Costs Protection



- Planning and environmental cases CPR 45.41- 45.44;
- But – recommended by Lord Justice Jackson as worthy of extension to all judicial review claims;
- Automatic £5,000/£10,000 cap and £35,000 reciprocal cap:
 - if opted for in Claim Form, and
 - if Schedule of Financial Resources provided

Aarhus – Costs Protection (2)



- Whether Aarhus or not can be challenged in Ack of Service;
 - Application to vary or remove caps can also be made in Ack of Service;
 - Key issue is whether ‘prohibitively expensive’
 - To be determined at earliest opportunity;
 - No costs if C loses determination;
 - Provision for any financial hearing to be in private;
 - Recent changes prompted by *RSPB, Friends of the Earth, ClientEarth v. SS Justice* [2017] EWHC 2309 (Admin)
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Advantages of Aarhus over CCOs



- Default position and certainty;
 - No public importance test;
 - No requirement that C would withdraw and would be acting reasonably in doing so in absence of protection;
 - ‘Prohibitively expensive’ test arguably more predictable than consideration of range of factors in ss. 88-89
 - Not dependent on grant of permission.
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Thank you for listening

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