

Legal Aid Reform – Civil Legal Aid Experts’ Fees

The Community Legal Services (Funding) (Amendment No.2) Order 2011 has introduced new codified rates for civil legal aid experts fees.

The proposals are designed to try to ensure a smooth implementation process.

Many of the proposals are being operated on a pilot basis and will be subject to review and possible change as the work progresses.

Key points:

- The new rates for experts will apply to all applications signed on or after 3 October 2011 as well as those signed before 3 October 2011 but not received by the LSC by 10 October 2011.
- The new rates apply whether the contract held by the Provider is Unified or Standard.
- Old rates/expert provisions will still apply to certificates where the application for funding was made prior to the 3 October 2011 (i.e. it will need to have been signed prior to the 3 October 2011) and received by the LSC on or before 10 October 2011.

When to request prior authority:

Where experts are instructed at the codified rates a prior authority is not required and the fees can be justified on assessment. Requests should only be submitted in accordance with the terms of the contract, i.e. where the expenditure is unusual or unusually high. (However, for the first 3 months where requests are received for standard expenditure which is neither unusual nor unusually high these will be granted to give certainty).

When the hourly rates exceed the codified rates it is mandatory to obtain a prior authority. Failure to obtain a prior authority will result in any fees exceeding the codified rates being disallowed.

The Commission may increase the rates if it considers it reasonable to do so due to exceptional circumstances. These are where expert’s evidence is key to the client’s case and either:

- i) the complexity of the material is such that an expert with a high level of seniority is required
- ii) the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence

Where an expert is not listed in the Schedule to the Order, a prior authority is not mandatory and the Commission will assess the costs on an individual basis having regard to the codified rates.

Where an expert is not listed in the Schedule or it is considered there are exceptional circumstances justifying enhanced rates or the expenditure is unusual in nature or unusually large, two or three quotes, for the provision of the relevant service should be submitted with the request for prior authority. In addition, the quotes will need to include details of both the hourly rate, the total number of hours and the maximum amount to be claimed. It would also be of benefit if any court orders could be submitted.

When London or non-London rates apply:

The location of the expert will be the determining factor as to whether London or non-London rates or fees apply. London rates will apply where the expert is based within a London Borough and where applicable the location of the expert's registered office will be used to determine which rate will apply. Where an expert works from or has a number of different office locations, the office closest to the Provider will determine which rates apply.

New form:

A new form has been developed (CLS App 8A) to assist the process in requesting prior authority and justifying the exceptionality criteria.

The use of the form is not mandatory, but using it will ensure that the required information is included.

The CLS App 8A can be submitted by post or, in the case of family and non specialist civil categories, scanned and e-mailed to the addresses shown below.

At present the new form cannot be saved so must be printed; we are still in the process of developing a version which, hopefully, will be able to be saved.

The CLS App 8A can be used to apply for costs extensions associated with the additional expert evidence. However any extensions in respect of scope and general costs extensions should be submitted on the existing App 8 and sent to the Regional offices currently processing the work.

Joint instruction of experts:

Where there is joint instruction of an expert for a number of parties, one provider can apply for a prior authority as a Lead Body. The costs will be apportioned across the number of certificates and a letter of authority issued under each certificate.

An increase to the costs limit can only be requested by the Lead Body submitting the application for prior authority. It is the responsibility of individual Providers to ensure they have sufficient costs cover under their certificates.

If Prior authorities are part granted, the Lead Body will be responsible for communicating the reasons to the other parties who will only receive the part granted authority for the reduced amount.

Part-grants and appeals:

The Commission has agreed to part grant prior authority requests at the codified rates if the exceptionality test has not been met. There will be a right of appeal in family cases, but this does not extend to the remaining civil categories, subject to the exception of housing cases that are carried out under the Unified Contract.

Where prior authorities are part granted a computer generated letter will be issued confirming the grant at the reduced rate. The final page of the form CLS App 8A will also be returned separately with reasons for the decision. The form alone will not however, be accepted as proof of prior authority.

Submitting requests for prior authority:

Requests for prior authority under The Community Legal Services (Funding) (Amendment No.2) Order 2011 for 'Specialist' categories should be submitted to the following offices in the usual way:

- Clinical Negligence – Brighton SCU, 3rd and 4th floors, Invicta House, Trafalgar Place, Brighton, BN1 4FR, DX 94310 Brighton 1
- Special Cases Unit – Case Managers at designated office: London, Brighton, Bristol or Cardiff
- Very High Costs – VHCC, South Tyneside, Berkley Way, Viking Business Park, Jarrow, NE31 1SF, DX 742350 Jarrow 2
- Immigration – London, Exchange Tower, 2, Harbour Exchange Square, London E14 9GE, DX 100170 Docklands 2
- Mental Health – Liverpool, 2nd Floor, Cavern Court, 8 Mathew St, Liverpool, L2 6RE, DX 14208 Liverpool 1

The remainder of applications under the Funding Order 2011 covering family and the other civil categories should be sent to:

- Prior authorities - Cardiff, Marland House, Central Square, Cardiff CF10 1PF DX 33006 Cardiff

A generic email address has also been set up on a pilot basis specifically for family and remaining civil categories:

PriorAuthorityRequests@legalservices.gsi.gov.uk

Please note where requests are submitted by email hard copies should not be sent.

Any requests for prior authorities on applications signed before 3 October 2011 and received at the LSC prior to the 10 October should continue to be sent to Regional Offices who currently process the work.

It is anticipated that there will be a large increase in the number of requests for prior authority and in order to streamline the process and enable the LSC to deliver an effective service it would be helpful if it could be made clear on the application whether the case is pre or post 3 October 2011. It would also be helpful if you could identify when a request is genuinely urgent.

A payment on account of expert's fees will only be authorised when accompanied by a prior authority where the codified rates are exceeded. Where an authority is not included the request will be rejected. Any payments authorised which exceed the codified rate will not be accepted as proof of prior authority and will be reduced on assessment.

Similarly on assessment of costs, the fees will be reduced to the codified rate if no prior authority is submitted.

It should also be noted that Courts cannot direct that higher fees are applicable.

Further information on Legal Aid Reform:

A summary of the Legal Aid Reforms is contained in the following link:

http://www.legalservices.gov.uk/civil/legal_aid_reform.asp.

The new codified rates for experts can be seen at the end of the link, to the Funding Order below:

[http://www.legalservices.gov.uk/docs/cls_main/The_Community_Legal_Service_\(Funding\)_Amendment_No.2_Order_2011.pdf](http://www.legalservices.gov.uk/docs/cls_main/The_Community_Legal_Service_(Funding)_Amendment_No.2_Order_2011.pdf)