



Legal Aid  
Agency

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# Civil Finance Electronic Handbook

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# Contents

<b>Guidance on use of Handbook</b>	<b>8</b>
<b>Guidance Links</b>	<b>9</b>
<b>1: The Certificate</b>	<b>11</b>
1.1: Costs Limitations	11
1.2: Scope	13
1.3: Change of Solicitor	16
1.4: Show Cause	16
1.5: Discharge/Withdrawal of the Certificate	18
1.6: Revocation of the certificate	20
<b>2: Attendance and Preparation</b>	<b>21</b>
2.1: Evidence on File	21
2.2: Administrative Work and Overheads	21
2.3: Perusal of Documentation	22
2.4: Preparation of Documents	22
2.5 Letters and Telephone Calls	23
2.6: Advocacy	24
2.7: Waiting	26
2.8: Travel	26
<b>3: Enhancement</b>	<b>28</b>
3.1: Factors to Consider	28
3.2: Maximum Allowable Enhancement	28
3.3: Determining the level of Enhancement	29
3.4: General Principles	31
3.5: The Guaranteed Enhancement in Family Cases:	31
<b>4: Care Proceedings Graduated Fee Scheme</b>	<b>33</b>
4.1: Calculating the applicable fee	33

4.2: What is included within the fee	38
4.3: Change of Solicitor	38
<b>5: Private Family Law Representation Fee</b>	<b>40</b>
5.1: Excluded Work	40
5.2: Rates Payable for Excluded Work	40
5.3: Change of Solicitor Costs	42
5.4: Calculating the applicable Fee	43
<b>6: Family Advocacy Scheme (FAS)</b>	<b>46</b>
6.1: Excluded Work	46
6.3: What is included in the fee?	48
6.4: Hearings	49
6.5: Calculation of hearing units	54
6.6: Rates	55
6.7: Payment for replacement advocate	56
6.8: Travel	56
6.9: Bolt on Payments	59
6.10: Late Submission	61
6.11: Advocates Attendance Form	61
6.12: Processing Payment	64
6.13: Standard Brief to Counsel	64
<b>7: Family Graduated Fees (FGF)</b>	<b>65</b>
<b>8: Rates</b>	<b>66</b>
8.1 Legal Aid Reform/Transformation	66
8.2 Miscellaneous Rates	67
8.3 Upper Tribunal Work in Asylum Cases	69
8.4 Family Proceedings	70
<b>9: Counsels Fees</b>	<b>76</b>
9.1: Counsel Hourly Rates in Non-Family Proceedings.	76
<b>10: Disbursements</b>	<b>79</b>

10.1: Irrecoverable Disbursements	79
10.2: Requirement for disbursement Vouchers	80
10.3: Advocacy Support Services	82
10.4: Apportionment between parties	82
10.5: Cancellation Fees	82
10.6: Contact Centre Fees	83
10.7: Counsel or Solicitors as Experts	83
10.8 Country Experts	84
10.9: Courier Fees	84
10.10: Costs of Communication Support Professionals	84
10.11: Court Fees	85
10.12: Court Fees for Assessment	85
10.13: DNA Testing	85
10.14: Drug and Alcohol Testing	87
10.15: Expert Administrative Costs	89
10.16 Expert Witness Standards	89
10.17: Independent Social Workers	90
10.18: Interpreters and Translation Costs.	90
10.19: Observations of Contact.	92
10.20: Prior authority	92
10.21: Photocopying	93
10.22: Process Server Fees	94
10.23 Psychologists	95
10.24: Psychotherapists	95
10.25: Police Disclosure	96
10.26: Rates for Experts	96
10.27: Risk Assessments	98
10.28: Solicitor Agents	99
10.29 Subject Access Requests	99
10.30: Surveyor Fees	100
10.31: Transcription Fees	101

10.32: Travel and Subsistence Costs	101
10.33: Local Travel to Court – Travel Expenses	105
10.34: Use of Disbursements in Jurisdictions Outside of England & Wales	107
<b>11: VAT</b>	<b>109</b>
<b>12: Claims Assessed by the Court (Taxed Bills)</b>	<b>113</b>
12.1: Costs and Scope Limitations	113
12.2: Costs of Assessment	115
12.3: Recording Date of Assessment	116
12.4: Documentation Required	116
12.5: Claim Incorrectly Assessed by the Court	117
12.6: Breakdown of advocacy costs	117
<b>13: General Claiming</b>	<b>118</b>
13.1: Submission of the Claim	118
13.2: Rights of Assessment	120
13.3 Change of Solicitor	121
13.4: Bill Preparation	123
13.5: Counsels Fees and the Solicitors Bill	124
13.6: Late Submission	125
<b>14: Processing Claims</b>	<b>127</b>
14.1: Checks made on processing	127
14.2: Under-Claims	130
14.3: Delegated Authority	131
<b>15: Payments On Account</b>	<b>132</b>
15.1: Payment on Account of Disbursements	132
15.2: Profit Costs Payments on Account	132
15.3: Payments on Account to Counsel	133
<b>16: Rejects</b>	<b>135</b>
16.1: Reject, Document Request or Assess	135
16.2: Claim Completion Checklists: Paper Claims	139

16.3: Civil Claim Fix	139
<b>17: Case Outcomes</b>	<b>141</b>
<b>18: Appeals</b>	<b>143</b>
18.1 Time Frames to Appeal	143
18.2: Points of Principle of General Importance	143
<b>19: Inter Partes Costs</b>	<b>144</b>
19.1: Assessment of Costs	144
19.2: Processing	146
19.3: Guidance on Inter Partes Costs in Fixed Fee Cases	146
19.4: Interest on Costs	150
<b>20: Very High Cost Cases</b>	<b>154</b>
<b>21: Case Balancing</b>	<b>157</b>
21.1: Revoked Cases	157
21.2: Contributions	157
<b>22: The Statutory Charge</b>	<b>158</b>
22.1: Basic Elements of the Statutory Charge	158
22.2: Application of the Statutory Charge in Specific Circumstances.	160
22.3: Timing of Recovery and Preservation	163
22.4: Valuing Property Recovered or Preserved	165
22.5: Capital Reassessments	166
22.6: Exemptions to the Charge	167
22.7: Quantifying the Charge	169
22.8: The Statutory Charge in Inquest and Human Rights Act Proceedings	171
22.9: Paying the Statutory Charge	172
22.10: Provider Obligations in Respect of the Statutory Charge	173
22.11: Interest on the Charge	174
22.12: Contract Breaches in respect of the Statutory Charge	175
22.13: Table of Regulations	175
<b>Appendix 1 – Case Law</b>	<b>177</b>

Legal Services Commission v Henthorn	177
<b>Appendix 2 – Hourly Rates (Civil)</b>	<b>178</b>
<b>Appendix 3: Expert Rates</b>	<b>180</b>
<b>Appendix 4: Legislation Details</b>	<b>183</b>
Proceedings under Part IV and V of the Children Act 1989	183
<b>Appendix 5: Counsel Local Bar</b>	<b>185</b>
<b>Appendix 6: Standard Brief to Counsel</b>	<b>188</b>
<b>Appendix 7: Standard Disbursement Template</b>	<b>189</b>
<b>Appendix 8: News Articles</b>	<b>193</b>
<b>Appendix 9: Which Contract/Cost Assessment Guidance</b>	<b>195</b>
<b>Appendix 10: Desk Aids</b>	<b>197</b>
Fee Scheme Exclusions:	197
Scope Desk Aid:	200
<b>Appendix 11: Version History</b>	<b>201</b>



## Guidance on use of Handbook

This handbook has been created from caseworker queries and requests for clarification on specific issues. It is a handbook designed for caseworkers to assist them in their everyday work and is not a comprehensive guidance document. It should be used in conjunction with the contract specification and other guidance such as the costs assessment guidance and where possible reference has been made to these within the handbook. The handbook is intended to be used electronically and, as it will be updated on a regular basis to reflect current processes users should always access it electronically to ensure the correct guidance is being referred to

Please note that the references in red relate to internal processing

Links to the relevant guidance and regulations are listed within the guidance links in the following two pages. Guidance on the applicable contract and cost assessment for different categories of law can be found in Appendix 9: Which Contract/Cost Assessment Guidance

Guidance on legal help/controlled work escape cases can be found in [the Escape Cases Electronic Handbook](#)

## Guidance Links

Guidance links			
<a href="#">Electronic Handbook (civil finance)</a>	<a href="#">Electronic Handbook (Escape Cases)</a>	<a href="#">Cost Assessment Guidance (2018)</a>	<a href="#">Cost Assessment Guidance 2007</a>
<a href="#">Statutory Charge Manual</a>	<a href="#">Expert Witness Guidance</a>	<a href="#">FGF Manual</a>	<a href="#">Reject and Document Request Guidance Page</a>
<a href="#">Unified Contract</a>	<a href="#">2010 Standard Civil Contract</a>	<a href="#">2013 Standard Civil Contract</a>	<a href="#">2014 Standard Civil Contract</a>
<a href="#">2015 Standard Civil Contract</a>	<a href="#">2018 Standard Civil Contract</a>	<a href="#">Points of Principle Manual</a>	<a href="#">Funding Code Guidance</a>
<a href="#">Prior Authority Guidance</a>	<a href="#">Guidance on funding outside England and Wales</a>	<a href="#">Appeals Guidance</a>	<a href="#">Transfer of claims assessed at court Guidance Page</a>

Claim forms and Codes			
<a href="#">Claim codes</a>	<a href="#">Outcome codes</a>	<a href="#">Forms and checklists</a>	<a href="#">Advocates Attendance Form</a>
<a href="#">Assessment Certificated – EX80A</a>	<a href="#">Assessment Certificated – EX80B</a>	<a href="#">Counsels Matrix</a>	

Rates			
<a href="#">Rates Calculator</a>	<a href="#">Expert Rates 2013</a>	<a href="#">Expert Rates Dec 2013</a>	<a href="#">FGF Rates</a>
<a href="#">1994 Rates</a>	<a href="#">Expert Rates 2011</a>		

CCMS Quick Guides: These can be found on the <a href="#">LAA training and support website</a> .			
<b>Appeal Bills</b>	Adjustment Bills	Appeal Bill Enhancement	Billing Document Request
Bill Interim Process	Bulk Claim Upload	Bulk Claim Upload - Solving Issues	Court Assessed Bill
Non-Family Bills	Outcomes, Partial Claim and Other Party Liability (New)	Providing a Costs Undertaking (New)	Recording Outcome and Discharge

<a href="#">Reporting the Statutory Charge</a>	<a href="#">Resubmitting a rejected Bill</a>	<a href="#">Submit an LAA assessed Bill</a>	<a href="#">Submit FAS / FGF Claim</a>
<a href="#">Submit Nil Bill (Updated)</a>	<a href="#">Uploading a Large Bundle onto CCMS</a>		

### Miscellaneous Links

<a href="#">Provider Payment Dates</a>	<a href="#">Court Fees</a>	<a href="#">HMCTS webpage</a>	<a href="#">Court Finder</a>
<a href="#">Where to send your work</a>	<a href="#">London Travel</a>	<a href="#">London Borough Checker</a>	

### Legislation

<a href="#">Local Travel</a>	<a href="#">Children Act</a>	<a href="#">Family Law Reform Act 1969 (DNA test)</a>	<a href="#">LASPO Act 2012</a>
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### Internal Guidance

<a href="#">Delegated Authority Limits</a>	<a href="#">SOPS</a>	<a href="#">Training Materials</a>	<a href="#">Reject Codes</a>
<a href="#">Assessment Codes</a>	<a href="#">Desk Aids</a>		

# 1: The Certificate

## 1.1: Costs Limitations

Additional Guidance:

Section 10 Cost Assessment Manual 2018

Costs limitations are imposed on all certificates and limit the costs to be incurred under the legal aid certificate. Payment cannot be made above the costs limitation – this check should be made before you make payment of the costs. It can be helpful to annotate the claim with the amount you intend to pay as an additional prompt prior to entering on CIS.

Cost limitations are calculated on net costs and include

- Profit Costs
- Disbursements
- Counsels Fee (including those paid under FAS/FGF)

Where there are linked certificates the cost limitations will be added together. [Please see section on linked cases/multiple certificates](#)

Where an assessment is being made as the costs have exceeded the cost limitation an assessment should be made of the profit costs first, followed by disbursements and then counsels' fees.

Example:

*Costs Limitation on a certificate is £2500. Solicitors costs are £3100 (excluding VAT) made up as follows:*

- *Profit Costs: £2100*
- *Disbursements: £700*
- *Counsels Fees: £300*

*As the costs exceed the cost limit we would reduce the profit costs first so that the allowed costs are*

- *Profit Costs: £1500*
- *Disbursements: £700*
- *Counsels Fees: £300*

The exception to this is where the cost limit has been exceeded where the fixed fee escapes. This process is detailed below.

Where the claim has been assessed by the court the costs will be limited to the amount of the cost limitation. For claims assessed by the LAA the costs will be provisionally assessed.

Further guidance on claims assessed by the court can be found in [12.1 Costs and Scope Limitations](#)

### **Costs Limitations where fixed fee escapes**

Where the costs have escaped the fixed fee and the Cost Limit has been exceeded, the standard practice of capping Profit Costs could potentially result in the threshold no longer being exceeded. In these situations, costs can be limited in one of two ways:

- Cap the costs from the disbursements/advocacy as this would not take the Profit Costs to below the escape threshold
- Cap the Profit Costs to keep costs within the Cost Limit.

Either action is acceptable provided that the actual Cost Limit itself is not exceeded and any payments made are within the scope of the Certificate and its limitations. Where the provider has not capped their costs or expressed a preference on how the costs should be capped caseworkers should cap the profit costs as detailed in option 2.

As with non-Fixed Fee matters, counsel fees should only be reduced for Cost Limit reasons where Counsel's fees alone exceed the cost limit.

### **Counsel Cost Allocation**

The overall cost limitation will include any costs allocated to counsel. Counsel cost allocation is determined by the solicitor, and the solicitor will need to manually apportion costs to counsel within the overall limit. Costs should be agreed between the provider and chambers based on an estimate of the costs for the work before any work is undertaken. These can then be adjusted to reflect counsels actual claim once the work is completed.

## 1.2: Scope

Additional Guidance:

[Section 10 Cost Assessment Manual 2018](#)

Please note that the effective date of a certificate (for the purposes of fee schemes) is the date the application was signed by the client (providing this is received within a week).

Where an emergency certificate has been granted the effective date will be the date of the emergency grant.

Where additional proceedings are added to the certificate the provider will only be covered for work in relation to these new proceedings from the date of the amendment.

### Emergency certificates and Limitations

#### *Cover in relation to a specific hearing:*

The certificate may be limited to a specific hearing. In these circumstances the work that can be claimed will be limited to work in relation to that hearing. Where the wording of the certificate is “hearing” or “S8 hearing” this restricts the scope of the certificate to attendance at that hearing – this will be detailed in the case details box and on the certificate. If the provider wished to attend a further hearing a specific amendment would be required to the certificate. Where the wording of the certificate states “hearing/adjournment” they will be covered for the specific hearing and any adjournment without the need to amend the certificate. Where the certificate wording states “interim order” the solicitors will be covered for the initial hearing and the return date, but they would need to amend the certificate for any further hearings.

#### *Emergency certificate date lapse:*

Most emergency certificates have an eight-week limitation placed on them. The rates calculator should be used to check the eight-week period.

Where no substantive certificate has been issued it is only the scope of the emergency certificate which applies, and checks should be made that work is in scope, especially in relation to the dates (and the 8-week limitation). The only work that can be claimed/allowed is that detailed in [10.16 of the Cost Assessment Guidance \(2018\)](#).

Where a substantive certificate is issued within the eight weeks the scope of the substantive certificate applies to the period when the emergency certificate was in place. [\(see POP CLA58\)](#)

Where the substantive certificate has been issued on/after the 13/10/2015 we will allow work undertaken between the expiry of the emergency and the grant of the substantive. This does not apply to certificates issued prior to 13/10/15.

Providers should be aware that any work they undertake outside the scope of the emergency certificate is “at risk” and will only be paid if/when a substantive certificate is issued that covers all work.

Emergency Issue Date and Limitation	Emergency Expiry Limit	Substantive Issue Date and Limitation	Cover
Issued 18/10/2015 Limited to hearing on 25/10/2015	Eight weeks Expires on 13/12/2015 <i>Work between 25/10/15 and 12/12/2015 is undertaken at risk</i>	Issued 12/12/2015 Limited to final hearing	Cover is continuous from 18/10/2015 until the conclusion of the final hearing
Issued 18/10/2015 Limited to hearing on 25/10/2015	Eight weeks Expires on 13/12/2015 <i>Work between 25/10/15 and 12/12/2015 is undertaken at risk</i>	Issued 15/12/2015 Limited to final hearing	Cover is continuous from 18/10/2015 until the conclusion of the final hearing
Delegated functions exercised 01/06/17 Limited to hearing on 25/06/17	Eight weeks Expires on 27/07/17 Date limit added for 08/06/17 – inappropriate use of delegated functions	Issued 26/08/17 Limited to a final hearing	Cover is continuous from 01/06/17 until the conclusion of the final hearing No gap in funding
Delegated functions exercised 01/06/17 Limited to hearing on 25/06/17	Eight weeks Expires on 27/07/17 Date limit added for 08/06/17 – substantive application not submitted in 5 working days	Issued 26/08/17 Limited to a final hearing	Cover is continuous from 01/06/17 until the conclusion of the final hearing No gap in funding
Issued 18/10/2015 Limited to hearing on 25/10/2015	Eight weeks Expires on 13/12/2015	Substantive not issued	Work up to the hearing on 25/10/15 is within scope. Additional closing work can be claimed – see CAG
Delegated functions exercised 01/06/17 Date limited to 08/06/17	Date limited to 08/06/17 Substantive application not submitted in 5 working days	Substantive not issued	Funding is available between 01/06/17 and 08/06/17 only

### **Attendance at Final Hearing**

Solicitors and barristers can only attend a contested final hearing when the certificate specifically covers them for this work. If the hearing was listed as a directions hearing at which the proceedings concluded, then it is not considered a final hearing (for the purposes of scope checks and fee schemes) and can therefore be claimed at the relevant interim hearing rate.

Where work is being claimed at Level 4 but the certificate does not cover this work then the claim should be rejected. The exception being Finding of Fact hearings in private law which will be paid as Final hearings under a certificate within Family Advocacy Scheme even if FHH limit applicable

Where a certificate covers attendance at a final hearing but the hearing is adjourned part-heard, then no amendment is required to cover the adjournment. Similarly, if the final hearing is concluded, but is then listed for review, say in 3 months' time, then the review hearing is covered under the terms of the certificate.

### **Care and Supervision Certificates**

The grant of a SCA Supervision certificate is non- means and merits tested, however where the actual work arises from the Local Authority seeking to extend an existing Supervision Order this would be out of scope. The funding for representation in an extension of a Supervision order is means and merits tested proceedings and not covered by a SCA Supervision certificate.

The grant of SCA Supervision certificate where the work arises from Discharging a Care order and substituting with a Supervision order – these are not SCA proceedings and are means and merits tested. Such an application would not be covered by a SCA Supervision certificate and all work would be out of scope. The correct funding grant would be means and merits tested to Discharge/Vary a Care order.

### **Conveyancing and Implementation**

Q: Certificate for Ancillary Relief with the limitation

“Limited to FHH and to all necessary steps up to and including FDR and any interim financial application dealt with at or before that hearing, as well as to obtain consent order”

Does this cover implementation of the order without amendment but exclude enforcement and conveyancing for which an amendment is needed?

A: The Family Help (Higher) certificate would cover reasonable follow-up work after the FDR without the need for an amendment. However, a specific amendment would be required (if not already covered by the scope limitation) for any conveyancing and



*implementation work (paragraph 20.13.22 of the Funding code guidance) and for enforcement (see also paragraphs 10.14 and 10.15 of the Lord Chancellor's guidance. Reasonable work may include e.g. dealing with any payment of a lump sum agreed etc. and this would be within the scope of Family Help (Higher) but, if conveyancing or any enforcement work was required this would require an amendment.*

### **Proceedings outside England and Wales**

We fund assistance to the client in registering and enforcing orders from overseas. For example, legal advice and assistance would be available if an order had been made in Scotland and was to be registered and enforced here. However, if an order is to be registered and enforced in Scotland then legal aid in Scotland (as appropriate) would need to be sought.

### **Appeals**

For certificates issued under LASPO no amendment is required to undertake work on an interim appeal. Caseworkers and providers should be aware that should there be an adverse judgement consideration should be given as to whether the certificate should continue.

## **1.3: Change of Solicitor**

*The date in the assess/events screen on CIS is the date the change of solicitor was agreed on the certificate. Details on the solicitors in the case can be found in the legal drop down in the top of the case summary screen.*

Further information on change of solicitor costs in fixed fee cases can be found in [the PFLRS section](#)

## **1.4: Show Cause**

The show cause will place an embargo on the certificate which prohibits further work being undertaken. Please note that we should take into account time for the provider to receive the show cause documentation – usually three days.

Where the show cause has been placed on the certificate after the claim had been submitted to the LAA any reject will be a priority reject.

### **Summary of Show Cause Rules Under the funding code and LASPO**

Show Cause Under Funding Code	Embargo placed on certificate and no work can be claimed for date that show cause is in place even if show cause is subsequently removed
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<p>Show Cause under LASPO (intention to withdraw a determination)</p>	<p>If show cause is removed then funding will be continuous (as though show cause was never placed on the certificate)</p> <p>If certificate is withdrawn (discharged/revoked) then no work can be claimed from the date the show cause was placed on the certificate</p> <p>Provider can undertake work “at risk”</p>
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### Claiming for work whilst a show cause is in place (Access to Justice Act)

#### Additional Guidance:

[Funding Code Procedures C55.3](#)

Rule C55.3 of the procedures states that no further work can be carried out following a show cause being placed on a certificate and, there is no provision that it will be covered if the show cause is subsequently lifted.

Work undertaken post show is not claimable subject to the following exceptions:

- Work pending appeal, where permission granted to protect clients’ interests and arising out of the proceedings
- Successful appeal and rescinding Discharge/revocation
- Closing letters

### Show Cause Process under LASPO

For certificates issued after April 2013, [Regulation 42\(3\) of the Civil Legal Aid \(Procedures\) Regulations 2012](#) provides for an equivalent of the show cause procedure under the funding code procedures through notification of an intention to withdraw a determination (see also [section 8.36 of the Lord Chancellor’s Guidance](#)). The scheme is different in that, if the determination is withdrawn as a result of this procedure, the withdrawal takes place with effect from the initial notification of intention (42(3)). That represents a difference from the position under the funding code in that:

- The client will not have cost protection, under the Civil Legal Aid (Costs) Regulations 2013, in the period from when the Director first notified an intention to withdraw the determination;

The provider can carry out work at risk in relation to whether the withdrawal does occur, whereas no work could be carried out within the show cause period under the funding code without express permission irrespective of the ultimate outcome of the show cause. This means that if the show cause/notification of an intention to withdraw a determination is removed we can allow work to be claimed as though there has been no gap in cover. If the determination is subsequently withdrawn (the certificate is discharged) the withdrawal will be effective from the date of the show cause – providers will not be able paid for any work following the date of show cause/intention to withdraw a determination.

These provisions are not retrospective and only apply to certificates issued under LASPO,

### **No Instructions from Client**

If the client has failed to provide instructions to their solicitors a show cause should be placed on the certificate giving the client the opportunity to contact their solicitors, failing which the certificate will be discharged.

If the certificate is still live and there has been no show cause then a referral should be sent to the legal team for them to place a show cause on the certificate. The claim should be returned to the solicitors pending resolution of the show cause.

### **Means Reassessment**

Where there is an outstanding means assessment on a live certificate, this must be resolved prior to payment of the claim. In accordance with the billing checklist caseworkers should reject any claim submitted.

## **1.5: Discharge/Withdrawal of the Certificate**

### **Discharge/Withdrawal for no claim on the fund (Paper Claims)**

*The process for discharging certificates for no claim on the fund is as follows:*

- *Discharge the certificate*
- *Process a nil final [£0] bill to correctly close the matter on CIS.*

*Discharging the certificate for "no claim on the fund" only does not close the certificate on CIS nor does it remove the certificate from CIS case lists*

### **Discharge/Withdrawal on Contribution Cases – Paper Claims**

*Where the client is paying contributions on a case the certificate should be manually discharged to the date of the final work on the case, excluding billing. This ensures that the client receives notification that the certificate has been discharged and they can cease paying contributions. Cases where contributions have been paid in should be referred to a refund caseworker post bill paying for consideration*

### **Work claimable following Discharge/Withdrawal of the certificate**

The relationship between the Provider and the client ceases upon notice of Discharge or Revocation, upon receipt of this notification it might be reasonable to write a closing letter to the client advising them of this fact. The content should be minimal and paid as a routine letter.

Where proceedings have been issued, the Provider should serve the appropriate notice of Discharge or Revocation to the Court. The reasonable costs arising from this would legitimately fall under the certificate where hourly rate or form part of the costs should they escape fixed fee. Any additional costs in respect of coming off the court record cannot be claimed.

Subsequent to these limited steps the expectation will be that Provider prepares their claim for costs, the reasonable costs arising in this respect will be a legitimate claim on the fund.

Where the costs are to be assessed by the LAA only the reasonable costs in preparing the claim and the checking and signing the Claim form will be recoverable. Putting the file in order, instructing a Costs Draftsman to prepare the claim and any correspondence arising in this respect would not be recoverable. Please note the comments on bill preparation and escape case where the [costs are subject to fixed fee in 13.4](#).

Where the costs have been subject to Detailed Assessment by the Court, what can legitimately be claimed as fee earner case specific functions may include:

- Completing N258A (Request for a Detailed Assessment),
- Letter out to Court,
- Diarising,
- Considering provisional assessment,
- Casting up Bill of Costs
- Completing EX80A
- Letter to Court

Where the court has allowed these costs on assessment they will not usually be queried. The exceptions are items 4 and 5 which are dependent on whether there has been a reduction on provisional assessment.

## **1.6: Revocation of the certificate**

When a certificate is revoked the client must be given 21 days to consider the bill and make any representations, as they have a financial interest in the costs. Therefore, if the certificate was revoked either less than 21 days before or any time after the bill has been submitted (to us for assessed bills or to the court for bills where they are the assessing body), the claim will be rejected unless there is documentation confirming the client has seen a copy of the bill and has no objections.

For paper claims assessed by the LAA, the date the Claim1/1A certification is signed should be used to determine whether the provider would have had the opportunity to send the client the bill and allow 21 days to pass. For claims assessed by the court, the financial interest certification at the back of the bill will need to be completed to determine whether the client has been sent a copy of the bill.

This will not apply where the client already had a financial interest by virtue of the statutory charge applying or contributions paid, as the client should already have been provided with the bill.

*Paragraphs 5.15 of the 2013 Standard Civil Contract Specification confirms the client has a financial interest if the certificate is revoked.*

## 2: Attendance and Preparation

### 2.1: Evidence on File

Additional Guidance:

Section 1.18 – 1.27 Cost Assessment Manual 2018

Where there is no evidence of work on file either through an attendance note or supporting documentation this work should be disallowed

### 2.2: Administrative Work and Overheads

Additional Guidance:

Section 2.1 – 2.3 Cost Assessment Manual 2018

Section 2.1 of the [Cost Assessment Guidance](#) confirms that time spent on purely administrative matters will not be allowable. The general definition of administrative work is time that does not involve the direct provision of legal services to the client or time spent that does not benefit or progress proceedings. This may include, but is not limited to: opening files, closing files, maintaining costs records, time spent complying with the contract and setting up or reminding of appointments. On an LAA-assessed matter, administrative time will be reduced on assessment. On a court-assessed matter, the claim will be rejected asking the provider to remove any administrative time from their claim.

Expenses which may be classed as overheads are generally not payable. In house photocopying is generally considered to be an office overhead as are the costs of postage (including recorded delivery), stationary, faxes, scanning, typing and the actual costs of telephone calls

Other overheads include staffing expenses (including training), the cost of maintaining premises and administrative expenses. Please also see [10.9 courier fees](#)

## Video Conference

Q: The solicitors have claimed for a video conference but have claimed the video conference fee and room booking. Can this be claimed?

*A: Whilst the contract indicates that room hire is irrecoverable as it forms part of administrative costs this is not the case with video conferencing. Where the room hire and the hire of the video conference form part of a package it will be reasonable to allow those fees*

## Perusal of expert CV

Providers will have an approved list of experts they use. Where an expert is required that is not on this approved list (possible due to it being an unusual skill set) it will be reasonable to spend time perusing the CV of the expert to determine whether to instruct them.

## 2.3: Perusal of Documentation

Additional Guidance:

Section 2.8 – 2.14 and 2.39 – 2.41 Cost Assessment Manual 2018

As a very rough guide it takes approximately two minutes per page of A4 to read a simple prepared document and to consider its contents and significance. Time taken will depend on the quality and layout of the document. When the solicitor has claimed for perusing documentation consideration should be given as to the documentation considered, the relevance of the documentation in the case and whether there was any duplication – for example different fee earners perusing the same document or repeated perusal of documentation.

## 2.4: Preparation of Documents

### Drafting Attendance Notes

Additional Guidance:

Section 1.28 Cost Assessment Manual 2018

Costs will not be allowed for preparation of file notes solely to record time expended.

There is no requirement that file notes should be typed up. If they are, then a reasonable time ([see 2.16 Costs Assessment Guidance](#)) may be allowed for time spent dictating a file note where it is reasonably lengthy and detailed and relates to an attendance or notes used in preparation of the case. Costs will not be allowed for preparation of file notes solely to record time expended

## Preparing Legal Aid Forms

Additional Guidance:

Section 2.58 – 2.63 Cost Assessment Manual 2018

Guidance on preparing the legal aid forms can be found in the cost assessment manual.

Claims for CCMS downtime or slowness are considered an office overhead and are not claimable as per 2.1 of the [Cost Assessment Guidance](#). Any incidents relating to CCMS downtime should be flagged with Online Support for Investigation

## 2.5 Letters and Telephone Calls

Additional Guidance:

Section 2.28 – 2.30 Cost Assessment Manual 2018

Correspondence	Paper	CCMS	Comments
<b>E-mail</b>	Standard letter	Standard letter	These would have to have content, and not merely administrative. These will not be paid in addition to a letter. Additional time may be claimed if lengthy/complex but will need to be evidenced
<b>Text message chain /WhatsApp message chain, etc.</b>	Standard phone call	Standard phone call	<b>CAG 2.30:</b> Text messages may be claimed as short telephone calls or attendances paid at the hourly rate for the time reasonably incurred, under the same principles applying to telephone calls
			On these same principles a WhatsApp message may be claimed as short telephone calls or attendances paid at the hourly rate for the time reasonably incurred, under the same principles applying to telephone calls



## 2.6: Advocacy

### Advocacy Rates

The higher advocacy hourly rate only applies when representing the client before the judge. Associated attendances with the client led by the solicitor will be paid at the attendance rate.

Time sitting behind counsel or within a counsel led conference is paid at the “attendance at court or conference with counsel” rate as detailed within the Civil Legal Aid Remuneration Regulations.

### Solicitor Advocacy within the Fixed Fee Schemes

Work which would be included within counsel’s brief is considered to be advocacy. This may include:

- Attending upon the opponent at court
- Drafting an order
- Considering documents which were not previously available.

Attending upon the client may also fall within the definition of advocacy when the advocate will need to take instructions from the client as the hearing progresses e.g. during negotiations with the other party or in relation to documents which are produced at the last minute

Associated travel, waiting time and attendance as advocate at advocates meetings in public law children matters. Work which would normally be included within counsel’s brief fee where advocacy was provided by counsel, other than preparation prior to the hearing, may be claimed.

Preparation will not be considered to form part of advocacy costs (other than as detailed above. However, please note that the position changes under FAS as, where solicitors are undertaking advocacy under FAS preparation is included within the FAS fee

Further guidance can also be found in [Obtaining Judgement in a Non Advocate Capacity.](#)

### The Maximum Fee Assessment

*Part D Narrative and Guidance 10.45*

The maximum fee assessment will apply in the following scenario

- The certificate was applied for prior to 09/05/11 and;
- Counsel has been instructed in the family proceedings court without prior authority. Caseworkers do have discretion to consider if the instruction of counsel was reasonable and not undertake a maximum fee assessment. This may be because of a point of law, evidential problem or it is considered to be a complex care case.

The Maximum Fee Principle has been abolished for all certificates issued on or after 09/05/2011. The provider may claim for time instructing and sitting behind counsel under the PFLRS/CPGFS as applicable, regardless of the level of court. On assessment, caseworkers should apply the usual tests of proportionality and reasonableness based on the evidence available.

When undertaking the maximum fee assessment, the following process should be followed

- Assess the costs as usual
- Deduct work undertaken in instructing counsel – this includes any telephone calls or letters
- Deduct any time spent attending the same hearings as counsel

***This is figure A***

- Review the time spent by counsel at the hearings and use this information to consider what work the solicitor would undertake if they had undertaken the work
- Calculate these costs at the appropriate hourly rate

***This is figure B***

- Add Figure A and B together and deduct the net amount paid to counsel – ***this is figure C***
- The maximum fee (amount solicitor will be paid) will be either figure A or B whichever is least.

Disbursements are paid in addition.

*Q: What is the process for undertaking a maximum fee assessment where costs have been assessed by the court?*

*A: The process for undertaking the maximum fee assessment should be the same regardless of whether it is the Court or the LAA who assessed the claim. Therefore, the*

*Court would be expected to undertake the maximum fee assessment if they ultimately assess the claim*

*If the assessment at court fails to apply the maximum fee provisions as this is a discretionary decision we will need to accept the assessment undertaken by the court.*

*Q: What is the process for a maximum fee assessment where the cost limitation has also been exceeded on a case?*

*A: The cost limit will be applied after the maximum fee assessment has been undertaken*

## **2.7: Waiting**

*Q: Where a telephone call includes a substantial amount of waiting should this be claimed as waiting or as attendance?*

*A: Caseworkers should consider the length of time the provider was waiting to determine whether it was reasonable to claim. Where the caseworker considers that it is reasonable they will consider whether a standard call is claimable or it can be claimed at hourly rates. Where it is claimed at hourly rates this will be allowed at the applicable rate for waiting.*

## **2.8: Travel**

Additional Guidance:

7.154 – 7.155 Standard Civil Contract 2018

2.42 – 2.51 Cost Assessment Manual 2018

All costs must be justified as being reasonable. Where costs are claimed in relation to travel – these costs may arise from both travel time and travel expenses. The reasons for travel should be justified on the claim form.

[3.11 of the cost assessment guidance](#) confirms that the following questions should be considered:

- *Was there a reasonable need for the journey?*
- *Was the appropriate form of transport used?*

Where travel time has been incurred caseworkers should consider whether it was reasonable to travel or whether it would be more appropriate to use a local agent or conduct the meeting via telephone attendance or video conference. Providers should

provide justification on the claim form for the travel. This will be particularly appropriate where travel time is over 5 hours (round trip).

Please note that there is a distinction between the time spent travelling which may be paid as detailed above (subject to reasonableness) and travel expenses (i.e. disbursements) which may not be paid when they are considered local travel. Further details on this can be found in the [local travel section in 10.33](#), [10.32 in relation to travel expenses](#) and [6.8 in respect of FAS travel](#).

### **Travel to the funded client**

Additional Guidance:

[2.47 Cost Assessment Manual 2018](#)

It may be appropriate to allow travel to the funded client, where for example the funded client is vulnerable, a child, is housebound, in prison or hospital. However, the provider will need to detail the context necessitating the specific reasons why that travel was necessary on the claim form to allow a judgement on its appropriateness. Any travel expenses will be subject to the rules set out in [section 10.32](#)

## 3: Enhancement

### 3.1: Factors to Consider

Where a claim for enhancement has been made the following should be considered

- The claim should indicate the level of enhancement that is being sought.
- The provider should specify why enhancement is being claimed drawing the assessor's attention to any key issues in their claim.
- It is the job of the assessor to consider the evidence placed before them and either authorise the payment or make the appropriate assessment.

Enhancement applies only to hourly rates, never to Standard or Graduated Fees.

For certificates issued on/after 02/12/13 enhancement can be claimed by counsel where the harmonised rates apply.

### 3.2: Maximum Allowable Enhancement

Pre-Legal Aid Reform Rates (2010 Contract)	Post Legal Aid Reform Rates (2012 Contract onwards)
Magistrates & County Courts: 100%	Magistrates & County Courts: 50%
Higher Courts: 100% (used to be 200% in non- family)	Higher Courts: 100%

#### *Section 12.7 and 12.8 Cost Assessment Guidance 2018*

*“There is clearly some overlap between the factors that will justify enhancement under the “threshold test” and the factors determining the level of enhancement. In neither case can an exhaustive list of features of a case be identified that will demonstrate the presence of these factors, and each claim must be considered on its own merits”*

*“Exceptional” has its normal meaning of “unusual” or “out of the ordinary”, hence more than simply above the average.*

### **3.3: Determining the level of Enhancement**

#### **Stage 1**

Stage 1 is to determine if enhancement is reasonable to claim in principle. This is based on one of three criteria:

#### **a) The work was done with exceptional competence, skill or expertise**

This may cover work where the fee-earner demonstrates unusually detailed knowledge relevant to the case or skilfully pursues an unusual or difficult legal argument.

It may include where the provider has carried out the case (or specific work) in a way that has required less time than would have been expected of a notional reasonable fee-earner or may have conducted the case so well that the client has received a better result than might have been expected.

An example of unusual skill may be taking instructions and providing effective representation for a client who is a child, seriously mentally ill or otherwise very vulnerable.

Providers may wish to emphasise the experience of a fee-earner to identify or support a claim for enhancement, although this will be neither necessary nor sufficient to satisfy this limb.

#### **b) The work was done with exceptional speed**

This may be appropriate where the fee-earner has pursued a case with unusual speed. For example, obtaining or defending an emergency injunction order where the fee-earner carries out substantial work at short notice because of urgent deadlines, such as an injunction hearing on the day of instruction, which has resulted in the fee-earner being unable to deal with other work scheduled in for that day.

#### **c) The case involved exceptional circumstances or complexity.**

May relate to legal issues, questions of conflicting expert evidence or other evidential issues, such as challenging witness evidence.

It may take into account difficulty in taking instructions from the client or other witnesses, as listed above in Stage 1 a).

May also include the nature of the issues as they affect the client, such as if the client's liberty is under threat in an injunction case where the opponent is seeking enforcement by

way of committal or if there are allegations of significant abuse of the child in children-based proceedings.

A case requiring substantial out of hours work may be considered to fall under this limb.

If you are satisfied on the above, move on to Stage 2:

**Stage 2:**

Stage 2 is to determine the amount of enhancement to be allowed and to what work it should apply:

**a) The degree of responsibility accepted by the fee earner**

One consideration should be the extent to which the provider has carried out work without recourse to counsel, whether in relation to analysis and planning of the case, drafting or advocacy.

Another point may be that the fee-earner has identified or addressed evidential issues that might otherwise have incurred the time of an expert.

**b) The care, speed and economy with which the case was prepared**

Care: this may include aspects of the skill with which the fee-earner has carried out work within the case and in particular the care with which the fee-earner has dealt with a vulnerable client. This may include instances where a conflict of interest has arisen between a child and a Guardian Ad Litem when the provider is representing the child in proceedings resulting in the child requiring separate representation from the guardian.

Speed: will involve the same considerations as in Stage 1 b) above.

Economy: enhancement under this provision will reflect a reward for the provider for claiming less time or in disbursements than might otherwise have been expected, whether because of the way in which particular items of work have been carried out or because of the way in which the case has been planned more generally.

**c) The novelty, weight and complexity of the case.**

Novelty: it should be clear from the provider's claim whether the case involves a novel point of law or legal context.

Weight: may refer to the volume of documentation or other material or the number of issues arising or to the importance of the case to the client.

Complexity: will involve the same considerations as Stage 1 c) above.

### 3.4: General Principles

Enhancement is likely to be allowed at higher levels the more of the above factors are present in the case and the more strongly any of the factors are present.

Each case must be considered on its own merits and there is no graduated scale of enhancement for when more of the above factors can be ‘ticked off’ a checklist. A maximum enhancement could be payable on the basis of one factor alone where this is particularly strong.

There is no basis for arguing that proceedings within specific categories of law, or types of proceedings, will inherently satisfy the above criteria, such that an enhancement should be payable in every such case, (i.e.; the sole fact the provider is representing a child in care proceedings does not automatically guarantee an enhancement will be payable, but if it has led to more complicated issues then it could be taken in to account as part of a claim for enhancement). Each claim must be considered on its own facts.

Enhancement rates can be applied to the whole case, to classes of work or to individual items. In general, one of the latter two approaches will be preferable.

It would be less usual to allow enhancement on routine letters or telephone calls or travel and waiting (one exception would be where the enhancement is being awarded owing to speed, for example securing an out of hours injunction, where it may be inappropriate to differentiate between time drafting and attending and making urgent telephone calls or sending urgent letters when applying the enhancement).

### 3.5: The Guaranteed Enhancement in Family Cases:

#### Additional Guidance:

[12.16 Cost Assessment Manual 2018](#)

A guaranteed minimum enhancement of 15% is payable in respect of work carried out by a fee-earner on the Resolution Accredited Specialist Panel, the Law Society Family Law Panel Advanced or the Law Society’s Children Panel (in respect of proceedings relating to children).

Where the fee-earner is a member of the accredited specialist panel of Resolution or the Law Society Panel Advanced, the enhancement is applied to all work done in any family case. In contrast, where the fee-earner is a member of the Law Society’s Children Panel, the enhancement is only available for work done under the certificate that includes proceedings relating to children.



The minimum guaranteed enhancement is not available for supervision or to work done by other fee-earners. When preparing the bill for assessment the narrative must clearly state the fee-earner for whom the enhancement is claimed and the basis for the enhancement.

Panel Membership enhancement is a guaranteed minimum enhancement, and is not payable in addition to any enhancement allowed under the General Specification, though it is not a bar to a higher enhancement being sought

In exceptional circumstances, if the panel member is unable to sign the declaration (for example, because they have left the firm/retired/are on maternity leave), then we can accept a signature in their place from a fellow panel member at the firm or a senior partner. This must be explained in the bill itself or in an attached covering letter.

## 4: Care Proceedings Graduated Fee Scheme

The Care Proceedings Graduated Fee Scheme (CPGFS) covers care and supervision proceedings under S31 Children Act 1989.

It does not cover other public law children cases. These may include

- Emergency Protection Orders
- Adoption proceedings and applications for a placement order
- Proceedings under the inherent jurisdiction of the high court in relation to children
- Appeals against final orders
- Other proceedings under Part IV or V of the Children Act 1989

### 4.1: Calculating the applicable fee

Where there are discrepancies in calculating the applicable fee then the office file should be considered.

#### Party Represented

Additional Guidance:

[6.2 – 6.4 Appendix 1 Cost Assessment Manual 2018](#)

There are separate fees payable for representation of:

- Children
- Parents and those with Parental Responsibility. This includes grandparents who have parental responsibility
- Joined Parties

*Q: What fee is payable for grandparents who lose parental responsibility partway through the case*

*A: As the client's status has changed from non-means/non-merits tested to means and merits tested, then a fresh application for a certificate should be made to the LAA on the relevant forms. However, the parent fee will continue to be applicable even though at the end of the case the client does not qualify as a parent for these purposes in line with the provisions of 7.34 of the 2018 Standard Civil Contract Specification.*

*Q: I represent the aunt in proceedings. They instructed as a joined party and were granted Parental Responsibility at the final hearing by a Special Guardianship Order. What is the correct fee to claim?*

*A: the relevant joined party fee will apply. When an order is made that concludes the proceedings, the client will not be represented as a "parent" during the proceedings and so cannot claim the relevant parent fee.*

### **De-Consolidated or Severed Care Proceedings**

Though not common, it is possible for consolidated care proceedings to be formally separated and run as two separate sets of proceedings. Where this happens, then two fixed fees will be payable. Any work done during the period of consolidation should not be double-claimed and should be apportioned appropriately across the two certificates.

### **Refusal of Joined Party Status**

#### **Additional Guidance:**

#### **7.19 Standard Civil Contract Specification 2018**

Where the client has been unsuccessful in applying to join proceedings because the application is refused, withdrawn or otherwise unsuccessful payment for any work done will be at hourly rates rather than under the CPGFS or the FAS.

*Q: The client was given joined party status in the proceedings. This was however appealed by the other parties and the joined party status was removed. What fee should the provider claim for this work?*

*A: The effect of the appeal decision effectively nullifies the joined party status so it is as though they had never been joined. On that basis the work undertaken should be paid at hourly rates.*

See also guidance on [instructions for less than 24 hours](#).

### Pre-Issue of Proceedings

If a provider exercises their devolved powers/delegated functions prior to the issue of proceedings, this will be considered to be *ultra vires*. A certificate for Care proceedings should only be issued once the Local Authority has commenced proceedings. Local Authorities cannot issue proceedings before a child is born. The Local Authority may issue a notice of intention to issue proceedings, any advice given on such should be claimed as Legal Help or Family Help (Lower) where the client is a parent. Any claim for certificated work will therefore be assessed to nil.

### Which Region

The fee is determined on the location of the solicitors' office and not the court where the case is being heard.

Regional Fee	Regional Office
<b>North</b>	North Western Region (Manchester) North Eastern Region (Newcastle) Yorkshire & Humberside Region (Leeds) Merseyside Region (Liverpool)
<b>Midlands</b>	West Midlands Region (Birmingham) East Midlands Region (Nottingham) Eastern Region (Cambridge)
<b>London</b>	London Region (London)
<b>South</b>	South Eastern Region (Reading) South Western Region (Bristol)
<b>Wales</b>	Wales Region (Cardiff)

### Multiple Client Fee

Additional Guidance:

[7.34 Standard Civil Contract Specification 2018](#)

[7.19 Standard Civil Contract Specification 2018](#)

[5.27 Appendix 1 Costs Assessment Guidance 2013](#)

If providers do not attend on behalf of their multiple clients for at least one hearing then the relevant fee is the 1 party fee. The reference to "represents" is intended to include situations where counsel is instructed. So, the test is not whether the provider has carried out the advocacy but whether they are representing the client during that period.

There is no specific fee for representing two or more joined parties and in these cases a separate fee will be paid for representing each joined party. This differs from representation of two or more children where the 2+ party fee is payable if the proceedings are consolidated

*Q: I have a care and supervision case where the solicitors are claiming two fixed fees for two children as one child was born after the initial proceedings – is this correct?*

*A: You would need to consider whether the proceedings have been consolidated. If the proceedings have been consolidated only one fee is payable but if it is clear that the proceedings have been heard separately then two fees will be payable.*

*For advocacy please see 4.1: Calculating the applicable fee*

Where the solicitors have been instructed for less than 24 hours payment will be made at the applicable hourly rate rather than under a fixed fee

### Escape Threshold

The escape threshold is two times the fixed fee payable. The escape threshold is calculated on the actual profit costs but excludes enhancement, advocacy and disbursements.

### Old and New Scheme Consolidation

Where CPGFS applies it can be broken down into different sections referred to internally by the LAA as phase 1 and phase 2

Certificate Issue Date	Scheme
02/10/2007 to 08/05/2011	Phase 1/FGF for counsel advocacy
09/05/2011 onwards	Phase 2/FAS for advocacy  It should be noted that the rates payable changed on 01/02/2012 and 22/04/2014.

Where a client has been issued a certificate under the old 'Phase 1' fixed fee scheme and is later issued a second certificate under the new 'Phase 2' fixed fee scheme and matters are consolidated, all work should be claimed under the old scheme.

*Q: I have a bill for the mother in care proceedings, she was initially granted funding under Phase 1 and then a second child was born and a new certificate issued under Phase 2. Which fee applies and what is the position regarding FGF payments already made?*

*A: The proceedings determine the fee scheme and where linked certificates straddle both Phase 1 and Phase 2, then the initial provisions will apply, this means the FGF provisions should apply throughout.*

## Related proceedings

### Additional Guidance:

7.46 – 7.47 Standard Civil Contract Specification 2018

Related proceedings are proceedings which are heard together with public law children cases or proceedings in which an order is being sought as an alternative to an order in such proceedings. An example may be Child Arrangement Order (formerly contact and residence) proceedings which are being considered together with the care proceedings. Where there are related proceedings the costs of this work will be claimed within the standard fee.

Where Other Public Matters, such as an Emergency Protection Order, are issued and closed outside of the care proceedings and are never formally consolidated or heard together, these will be paid by way of hourly rates and applicable Other Public Law FAS for advocacy.

*Q: The court has, under its own volition, made a special guardianship order as part of the resolution of the care proceedings. Will this be covered within the care certificate or is an amendment required?*

*A: If the court has chosen to make the order without application to conclude proceedings, this will be in scope. Where a specific application has been made to the court for SGO/Residence etc. then this will require an amendment to the certificate.*

*Q: The client has two certificates for the same care proceedings. The client started as a joined party and had a means/merits tested certificate but then received an interim residence order at an interim hearing. The provider then applied for a new certificate on a non- means non- merits basis which was granted. What fee can be claimed?*

*A: The provider should submit a claim 1a for the parent fee with the costs apportioned across both certificates.*

*Q: How can I claim for any work undertaken under a private law certificate where, part-way through proceedings, the local authority has issued care proceedings based on concerns for the child's welfare?*

*A: Work arising pre-consolidation can be claimed at hourly rates or the fixed fee in the usual way and then work post-consolidation falls under the CPGFS fee where the certificate allows for this work as 'related proceedings' (see above).*

## 4.2: What is included within the fee

### Drafting an order

Additional Guidance:

7.45 Standard Civil Contract Specification 2018

[section 2.2 in relation to administrative work](#)

Drafting a court order at court for the judge to approve is considered advocacy and, where pre FAS would be claimed at hourly rates. However, if it was drafting a consent order in the office then that would be part of the fixed fee

### Obtaining judgement in non-advocate capacity

[Please refer to the guidance in the FAS section.](#)

## 4.3: Change of Solicitor

Additional Guidance:

7.18 and 7.46-7.47 Standard Civil Contract Specification 2018

Where there has been a change of solicitor each provider will be considered separately in terms of their profit costs.

Costs calculated on hourly rates	Applicable Fee
Costs less than standard fee	½ the standard fee
Costs equal to or greater than standard fee	Standard Fee
Costs escape standard fee	Costs as calculated on hourly rates

The following rules apply where a supplier acts for more than one party and a client's certificate is transferred to a new supplier during the case but the first supplier continues to represent one or more clients

Costs calculated on hourly rates	Applicable Fee
First supplier	Standard Fee (unless costs escape)
New supplier (not previously acting for any party in the proceedings) and costs are less than the standard fee	½ the standard fee
New supplier (not previously acting for any party in the proceedings) and costs are equal to or greater than the standard fee	Standard fee
Costs escape standard fee	Costs as calculated on hourly rates

If any of the suppliers have represented the clients at one or more hearings the applicable fee will be that for representing 2+ clients (or half that fee as appropriate)

**Assessment of costs where change of solicitor.**

Please see section [13.3 for further guidance](#).



# 5: Private Family Law Representation Fee

Additional Guidance:

[Cost Assessment Guidance 2018 Appendix 1](#)

## 5.1: Excluded Work

Additional Guidance:

[7.74 Standard Civil Contract Specification 2018 – excluded proceedings](#)

[7.74 Standard Civil Contract Specification 2018 – remuneration for excluded services](#)

The scheme covers all private law cases except for the following

- International Child Abduction
- Proceedings under the Inheritance (Provision for Family and Dependents) Act 1975
- Proceedings under the Trusts of Land and Appointment of Trustees Act 1996
- Applications for forced marriage protection orders under part 4A of the family law act 1996
- Proceedings for defended divorce, judicial separation or dissolution of civil partnership
- Nullity proceedings or annulment of a civil partnership
- Applications for a parental order under the Human Fertilisation and Embryology Act 2008
- Proceedings under the inherent jurisdiction of the high court in relation to children
- Separately representing a child other than in specified proceedings ([Please see s41\(6\) Children Act 1989](#))
- In a final appeal
- Under a high cost case

## 5.2: Rates Payable for Excluded Work

For those family cases which are excluded from PFLRS these should be paid at the appropriate hourly rates.

For counsel please see [section 9:2 Family Cases Outside of FAS/FGF](#).

## Adoption

Under the funding code adoption is defined as “other public law” and therefore does not fall within the private family law fixed fee. Further details can be found in [section 8: Rates](#)

## Separate representation of a child

Separate Representation of a child is excluded from PFLRS unless the providers:

- Represent a child in proceedings which are specified proceedings (as defined in [s41 \(6\) Children Act 1989](#)) OR
- Represent a child in proceedings which are being heard together with specified proceedings.

Where a child is represented separately in relation to an appeal against a final order this will be excluded from PFLRS and FAS (see 7.109 of the 2018 Standard Civil Contract Specification 2018)

Therefore, any proceedings that are not specified are excluded from the PFLRS where the child is being represented (regardless of whether a GAL is appointed) and whether the child is the applicant or the respondent in the proceedings.

Further information on these proceedings can be found in [Appendix 4](#)

Q: I have a case where the child was 17 when proceedings started but was 19 when proceedings concluded, and the matter was billed. Do we still treat this as separate representation of a child?

*A: Yes – the Family Specification talks about “proceedings” in which separate representation of the child is provided (rather than legal services which are provided to the child). On that basis for the purposes of the fee schemes the matter continues to be excluded from the fixed fee regime even if the child turns 18 during the course of proceedings.*

Q: We are representing clients aged 17, in both instances the client is the applicant in Section 8 Children Act proceedings, are we to consider this ‘separate representation of a child in private law proceedings’, and therefore exempt from the current fixed fee schemes?

*A: The work that is excluded is all proceedings where the provider represents a child in proceedings which are neither specified proceedings (under section 41(6) of the Children Act) nor proceedings which are being heard together with specified proceedings.*

*Most of the specified proceedings listed in section 41(6) are public law proceedings so broadly speaking private law children act matters will be outside the scope of the PFLRS or the FAS. A child, as defined in the contract, is someone under the age of 18. For these*

*purposes it does not matter whether the client is the applicant in the proceedings, the respondent or has been joined by the court.*

*In this case the work should therefore be claimed at hourly rates. The only circumstances where that may not be the case is if there is a care order already in force and a residence order is being sought which might act as a discharge of the care order.*

### 5.3: Change of Solicitor Costs

#### Additional Guidance:

7.18 and 7.90 -7.97 Standard Civil Contract Specification 2018 – excluded proceedings

5.25-5.27 Appendix 1 Cost Assessment Guidance 2018

Where there has been a change of solicitor each solicitor will calculate their fees separately on an hourly rate basis

Costs calculated on hourly rates	Applicable Fee
Costs less than standard fee	½ the standard fee
Costs equal to or greater than standard fee	Standard Fee
Costs escape standard fee	Costs as calculated on hourly rates

Where a provider acts for more than one party but the client transfers to a new provider during the case but the first provider continues to represent one or more clients, each provider will be remunerated separately

Where a client transfers to another provider there is no minimum level of work that must be undertaken to claim the applicable fee. However, if the solicitor has acted for the client for less than 24 hours then they will be paid at hourly rates.

#### Example:

*Contact matter.*

*First solicitor undertakes work at level 3 and their costs are £350. As their costs are below the applicable L3 fee of £392 then they will be paid £196 being half of the fixed fee. The second solicitors undertake work at L3 and L4 and their costs are £750. As their costs are above the fixed fee of £671 the solicitors will be paid the standard fee.*

Where one firm of solicitors have provided confirmation that they have undertaken no work within the scope of the Standard Fee, and will therefore not be making a claim, then the

other firm of solicitors will not be subject to the change of solicitor rules and they may claim full payment. *A note should be placed on the memo pad detailing the scenario*

## 5.4: Calculating the applicable Fee

### Instructions for less than 24 hours

#### Additional Guidance:

[7.19 Standard Civil Contract Specification 2018](#)

[5.27 Appendix 1 Costs Assessment Guidance 2018](#)

Where the solicitors have been instructed for less than 24 hours payment will be made at the applicable hourly rate rather than under a fixed fee

### Level 3 and 4

#### Additional Guidance:

[5.5 Appendix 1 Cost Assessment Guidance 2018](#)

In children cases level 3 (family help higher) certificates will usually be limited to the issue of necessary proceedings and representation in proceedings save in relation to or at a final contested hearing. In financial cases certificates will cover the issue of necessary proceedings up to and including the financial dispute resolution hearings and/or obtaining a necessary consent order.

Level 4 (legal representation) would only be necessary where the case is proceeding to a contested final hearing. Where level 4 has been claimed this is for work in relation to the final hearing. It is not however always necessary for the provider to have attended the final contested hearing under FAS to claim work at level 4. The advocacy may have been undertaken by counsel or the case may have been finalised avoiding the need for a contested final hearing to be claimed under FAS. Where however the certificate has been amended but no work has been undertaken at level 4 then no level 4 fee can be claimed. This would need to be justified by the provider when submitting any claim. Please also see [Instructions for less than 24 hours](#)

Where a certificate covers both level 3 and level 4, the solicitors can claim for both the level 3 and the level 4 fee providing they have undertaken work at both levels.

### **Escape Threshold**

The escape threshold is three times the fixed fee payable. The escape threshold is calculated on the actual profit costs but excludes enhancement, advocacy and disbursements.

### **Enforcement Fee**

For private law children and finance this is paid at half the applicable level 4 fee.

For domestic abuse cases an additional full level 4 domestic abuse fixed fee is payable where further court hearings are necessary after the final hearing to deal with the breach of the injunction/order by committal or otherwise

For an enforcement case the escape threshold will be three times the applicable fee.

### **Multiple Fees**

There is no provision for two fixed fees in the same aspect being paid under a certificate.

*Q: I have a claim for a certificate covering Domestic Abuse and Section 8. The Domestic Abuse matters were swiftly resolved and the Section 8 were ongoing for over a year. After the original non-molestation order expired, the client required the matter to go back to court to issue a fresh non-molestation order. The certificate was amended accordingly, so the fresh proceedings are in scope. Can the provider claim two domestic abuse fixed fees?*

*A: This is not allowable per 7.81 of the Standard Civil Contract Specification 2013. A standard fee for a particular aspect may not be claimed more than once per certificate, unless expressly authorised. The only exception to this is enforcement. In this instance, these proceedings are not to enforce the original order, so no additional fee is claimable. However, all work undertaken towards this aspect that is in scope of the certificate will be claimable towards the escape threshold for that aspect.*

### **Multiple Certificates for the same matter**

Additional Guidance:

7.85 Standard Civil Contract Specification 2018

Under the Family Specification where a certificate covering work within the PFLRS is revoked but a further certificate is subsequently issued for the same work to the same client then all the work shall be deemed to have been carried out under the first certificate (and so no further standard fee is payable) unless more than six months has elapsed between the withdrawal or revocation of the first certificate and the issue of the second.

Any advocacy costs and disbursements should be paid under the certificate that they were incurred.

### **Occupation Orders**

Occupation orders fall within the domestic abuse category

### **Early Resolution/Settlement Fee**

A settlement fee can be claimed in a finance aspect where the matter concludes at level 3 and there is a consent order from the court. In order to claim the settlement fee the case must not proceed to any further level of service within the following six months and the claim must not escape the fixed fee.

Please see [Early Resolution/Settlement Fee](#) when claimed under FAS

## 6: Family Advocacy Scheme (FAS)

Additional Guidance:

[Appendix 2 Cost Assessment Guidance 2018](#)

FAS payment scheme allows for payments in respect of advocacy in the majority of Family Cases. Payments are made based on category of law and work undertaken.

The scheme has five categories of law

- Public Law: Care and Supervision
- Other Public Law Children
- Domestic Abuse Proceedings
- Private Law Children
- Ancillary Relief and Other Family Work

Fees are paid on the basis of the work undertaken

- Interim Hearing Unit 1: For interim hearings of 60 minutes or less
- Interim Hearing Unit 2: For interim hearings of between 60 minutes and 2hrs 30. Multiples of hearing unit 2 will be paid where the time exceeds 2hrs30.
- Final Hearing: Where the substantive issues were listed to be and were considered
- Conference – Counsel only
- Opinion – Counsel only

### 6.1: Excluded Work

Additional Guidance:

[7.107 Standard Civil Contract Specification 2018 – excluded proceedings](#)

[7.111- 7.115 Standard Civil Contract Specification 2018 – remuneration for excluded services](#)

[Appendix 2 Costs Assessment Guidance](#)

Exclusions from the scheme include the following advocacy services:

- To any party in international child abduction proceedings
- In proceedings under the Inheritance (Provision for Family and Dependents) Act 1975
- In proceedings under the Trusts of Land and Appointment of Trustees Act 1996
- In proceedings under Part 4A of the Family Law Act 1996 - applications for forced marriage protection orders
- In a defended cause for divorce or judicial separation or for dissolution of a civil partnership or the legal separation of civil partners
- In proceedings for nullity or annulment of a civil partnership
- In applications for a parental order under the Human Fertilisation and Embryology Act 2008
- In proceedings under the inherent jurisdiction of the high court in relation to children
- In proceedings in which the advocate separately represents a child other than proceedings which are specified proceedings within the meaning of [s41 \(6\) Children Act 1989](#) or are heard together with such specified proceedings
- In proceedings in the court of appeal or the supreme court
- In an appeal against a final order
- Under an individual case contract for a very high cost case

### Adoption

Adoption proceedings are defined as “other public law” under the funding code and the Merits Regulations. Where parents or other parties are being represented the work will fall within the FAS. If the child is being represented this will fall outside of FAS, this is because [Separate representation of a child](#) only falls within FAS if the representation is a specified proceeding under [s41 \(6\) Children Act 1989](#)

### Mixed Hearings

Additional Guidance:

[7.116 Standard Civil Contract Specification 2018](#)

Where a hearing covers significant work under both FAS and excluded work the hearing will be treated as excluded and paid at hourly rates. Where providers claim a fee in these circumstances they should evidence that the excluded work was not a significant part of the hearing

### Rates Payable for Excluded Work

For those family cases which are excluded from FAS these should be paid at the appropriate hourly rates for solicitors.



For counsel please see [9.2 Family Cases Outside of FAS](#)

## 6.2: Independent Solicitor Advocates

### Additional Guidance:

7.117-7.119 Standard Civil Contract Specification 2018

Independent solicitor advocates can continue to be paid as a solicitor agent or they can register as an independent solicitor advocate in the same way as counsel – to do this they must be registered with our provider records department as an independent advocate

Work undertaken by a paralegal/assistant on behalf of a self-employed advocate cannot be claimed as work undertaken by the self-employed advocate

## 6.3: What is included in the fee?

### Consideration/Preparation of documents

The advocacy fees cover work that was necessary as a result of the advocate attending court – it does not cover the work required in getting to the point where advocacy is required. Generally, time spent on the consideration or drafting of documents would fall within the representation fee but if time is spent to reconsider the documents for the purpose of the hearing it would fall within the hearing fee.

Piece of work	Description
<b>Attendance Notes</b>	Drafting the attendance note of a specific hearing. This is considered to fall within the advocacy fee
<b>Court Orders</b>	Generally, time spent preparing and agreeing a draft order would be considered part of advocacy and is remunerated under the FAS. However, time spent considering an order received from the court following a hearing, or communicating its content with the client, are correctly remunerable under the PFLRS/CPGFS as applicable. The decision to pay or assess will be made by the caseworker subject to reasonableness and considering the supporting evidence available.
<b>Position Statements</b>	Explains the client's position including a summary of the order or directions that the client is seeking (1) at that hearing and (2) at the final hearing. Is usually part of the preparation for advocacy and should be included in the respective fee

Caseworkers should consider the documentation to hand and decide if the piece of work undertaken is related to a specific hearing (in which case it is likely that payment should

form part of the FAS) or if it is an on-going piece of work (in which case it is likely that payment should be part of the PFLRS/CPGFS as applicable). With the following items of work caseworkers will need to use their discretion to determine which fee scheme the work should fall within.

Piece of work	Description
<b>Affidavit</b>	Essentially, a written statement of evidence confirmed on oath or by affirmation to be true and taken before someone who has authority to administer it.
<b>Case Summary</b>	Is a background to proceedings to date usually confined to those matters which are relevant to the particular hearing.
<b>Chronology</b>	Sets out a timeline of the important events to date.
<b>Pleadings</b>	A statement of the party's case often used more generally to describe the applications and statements filed in the case.
<b>Skeleton Arguments</b>	A written summary of the main arguments being put by the client. It is likely to form part of preparation for advocacy.
<b>Statement of Fact</b>	See Affidavit
<b>Statement of Issues</b>	Summary of the issues to be decided (1) at the hearing and (2) at the final hearing.
<b>Witness statements</b>	See affidavit but not confirmed on oath.

### Reading Days

An advocacy fee will not be paid where the hearing has been listed for certain dates, but the judge has said that certain days will be reading days (for the judge) as the advocate is not required to attend. However, a fee could be claimed, where the judge has directed that the advocates do not attend on a day which is put aside for them draft submissions

## 6.4: Hearings

Additional Guidance:

[7.124-7.134 Standard Civil Contract Specification 2018](#)

### Advocates Meetings

Additional Guidance:

[14.17-14.20 Appendix 2 Cost Assessment Guidance 2018](#)

[7.135 -7.136 Standard Civil Contract Specification 2018](#)

The description of the advocates meeting is set out in the PLO (which is in Practice Direction 12A), including the purpose of these meetings. A review meeting or professionals' meeting does not fall within this definition. They are not limited to the advocates involved, rather all the professionals generally. The legal representatives of the parties could attend these meetings if it is necessary for the provision of legal advice, but it is not advocacy. Time for review or professionals meetings should therefore be claimed as part of the CPGFS representation fee.

There are no limits on the number of advocates meetings that can be claimed although the PLO envisages that there will be two. Claims for advocates meetings should confirm the level of judge. Where two advocates meetings have already been claimed the court order must be provided.

No fees for advocates' meetings will be payable in Private Law cases. Any work undertaken by the solicitor in relation to advocates meetings (or similar) in private law children cases should be claimed under the [Private Family Law Representation Fee](#). Solicitors may instruct counsel to attend in their place but as counsel cannot be a solicitor's agent (as confirmed in 2.50 of the [Cost Assessment Guidance](#)) then this must be paid for directly by the provider out of the PFLRS fee.

## Advocates Meetings and Hearings on the Same Day

### Additional Guidance:

14.20 Appendix 2 Cost Assessment Guidance 2018

*Q: Can an advocates meeting take place on the same day as the hearing?*

*A: Where an advocates meeting takes place on the same day as an interim hearing then it may be claimed only if the meeting takes place outside of any time period that is taken into account in calculating the fee for the interim hearing*

Where an advocates meeting and a hearing are scheduled for the same day, but the advocates can resolve proceedings at the advocates meeting and therefore vacate the hearing, the advocates meeting should be paid as normal and then any time spent in preparation for the vacated hearing should be claimed under the CPGFS. Where counsel is the advocate, the usual rules on the half fee for the vacated hearing would apply.

Where an advocates meeting and a final hearing are scheduled for the same day, the final hearing fee only will apply. As the fee is to cover the entire day at court, an additional fee for an advocates meeting is not claimable. This is also the same when the Final Hearing fee is claimed for an Issues Resolution Hearing that has resolved proceedings

## Finding of Fact Hearing

### Additional Guidance:

7.128 Standard Civil Contract Specification 2018

14.10 Appendix 2 Costs Assessment Guidance 2018

These are payable as a final hearing in private law children cases. They will however be in scope when the scope of funding does not extend to a final hearing

Occasionally a finding of fact hearing in private law cases may be referred to as a “Re L Hearing”

Please see [Court/Advocates bundles](#) for details on court bundle payments in Finding of Fact Hearings.

## Final Hearing

### Additional Guidance:

7.127-7.130 Standard Civil Contract Specification 2018

14.11 Appendix 2 Costs Assessment Guidance 2018

A final hearing fee is claimable for a hearing specifically listed in advance for the purpose of making a final determination. Such a hearing should also be effective as a final hearing and the substantive issues considered. If the hearing was not expected to be a contested hearing it will be payable as an interim. If the case is listed as a final hearing but for some reason is adjourned or postponed before the substantive issues are considered this will be considered an interim hearing.

Please see the [Early Resolution/Settlement Conferences](#) section in relation to the IRH being claimed as a final hearing

The fee includes all preparation or incidental work relating to the hearing including preparation, travel to court, waiting at court as well as the advocacy within the hearing itself.

If the hearing is a contested hearing the certificate must cover representation at a final hearing. If the certificate does not then the hearing cannot be paid as it is out of scope. The provider cannot change the claim to an interim hearing

### Care Proceedings

In care proceedings the main hearing will be the hearing the court has listed for the purpose of making a final determination and, is likely to be the hearing at which the court determines whether or not a section 31 order is made. If a final hearing is listed for a split hearing with certain issues being heard and/or determined in advance of other issues (for example findings of fact and/or threshold criteria) this must be treated as a single final hearing and claimed as a final hearing rather than an interim hearing plus a final hearing.

*Q: I have a public law children care case where the solicitors have claimed for a finding of fact hearing but then claimed a final hearing as well – is this okay?*

*A: Findings of fact and final hearings are considered to be a continuation of each other and can be paid at the final hearing daily rate. As it is considered to be one hearing the court bundle can only be paid once.*

Please see [Court/Advocates Bundles](#) for details on court bundle payments in Finding of Fact Hearings.

### Emergency Protection Orders

The hearing that determines whether an emergency protection order is made is likely to be heard very quickly after the initial application. These hearings may not be specifically listed as a final hearing but if it is clear that the hearing was listed for the purpose of making a final determination then it can be paid as a final hearing.

### Ancillary Relief Proceedings

It is likely to be the hearing at which the court determines the form of relief entitlement

### Domestic Abuse

The final hearing is likely to be the on notice hearing which will determine the form and continuation of the without (ex parte) notice injunction order made.

### Review Hearings

Where the court makes a final determination and then lists a return or review date to see how things are going is not considered to be a final hearing. This should be claimed using the applicable interim hearing rate.

### Domestic Abuse

Where the court has made an ex parte order and then sets a date for a return hearing this will be considered a final hearing providing it is listed for a final determination and it is expected to be contested or effective

### **Obtaining judgment in non-advocate capacity**

If the court is handing down the judgment and someone attends to take a note, this does not constitute advocacy. If it was expected that advocacy would be required, then the advocate who had carried out the hearing should attend.

For solicitors this will form part of the solicitor representation fee. If the matter escapes the fixed fee then it may be paid at hourly rates - the attendance rate, not the advocacy rate.

### **Hearing on same day**

Under [regulations 33 and 34 of the LASPO procedures](#), a provider can only use their delegated functions (devolve powers) for private law children cases under LASPO where they have evidence of domestic violence. Therefore, the non- molestation injunction order must be made before solicitors can issue an application for private law children proceedings.

In these cases, it may be reasonable to allow the providers to attend two separate hearings on the same day.

### **Cancelled Hearings**

Where counsel is instructed and carries out at least 30 minutes preparation time but the hearing is cancelled then counsel may claim a payment of hearing unit one for cancelled interim hearings or half the final hearing fee for final hearings.

This does not apply to solicitors acting under FAS. Their preparatory costs should be included within their fixed fee/hourly rate claim. In addition, any travel time they have incurred (if the hearing cancelled after they have travelled to court) should be included within the fixed fee.

### **Settlement Conferences**

There is a limited pilot in respect of settlement conferences taking place in courts in Liverpool, Cheshire, Leeds, Nottinghamshire, Cleveland, Middlesbrough, Sussex, London, Bristol and the south west. Where appropriate these will take place after the IRH and prior to the final hearing. At present a settlement conference is optional for the parties, the idea behind it is to encourage parties to settle all or part of the case prior to the final hearing.

Where the proceedings are within the FAS scheme these will be treated as an IRH. Where the proceedings do not fall within FAS these should be claimed under the rules for counsel in family proceedings outside of FAS – please [see 9.2 Family Cases Outside of FAS/FGF](#). Providers should confirm on the claim form that this is a settlement conference under the pilot.

## 6.5: Calculation of hearing units

### Additional Guidance:

7.131-7.132 Standard Civil Contract Specification 2018

S14.6 and s15 Appendix 2 Costs Assessment Guidance 2018

The advocate's attendance form confirms the time of the hearing however the advocate will need to detail any lunchtime adjournment and ensure this is deducted from the hearing time claimed.

If two cases are listed at court on the same day the hearing unit will continue to be calculated in the same way even if the two hearings have times that overlap. Each hearing will be calculated separately with the starting time for each hearing being the time at which it was listed and then the time at which it concludes. It is accepted that this may result in an element of duplication however the nature of a fixed fee scheme is that payment is fixed for a piece of work and includes other elements such as preparation.

For emergency hearings (including ex parte hearings) the court may not list a time for the hearing and the papers are issued by the court on the date of the hearing, the advocate may need to wait at court. In these cases the length of the hearing will be measured from the time that the papers were issued until the end of the hearing

An advocates attendance form may not be available in hearings undertaken remotely, for example by video, webcam or telephone conference. Details of hearing times on the court order will be required in the first instance. Where further information is required notes of the hearing on the brief or an attendance note may be required. Where no court order is available, an attendance note, will suffice as evidence of the hearing. Further guidance on evidence for hearing times is contained in the [document "Remote Family Hearings: Updated Ways of Working"](#)

### Lunch Time Adjournments

If a hearing continues over lunch time (between 12 and 2pm) there is an expectation that a lunch will have been taken. Where the hearing starts or finishes during the hours of 12pm and 2pm it is helpful to indicate that no lunchtime adjournment occurred but caseworkers can use their discretion to request confirmation. Where no lunch has been taken annotation of the claim form indicating this will be sufficient.

Solicitors and counsel should indicate the length of the lunchtime adjournment on the claim form and the advocates attendance form. Caseworkers should check the times to ensure that this has been deducted.

For solicitors where there is no indication of a deduction for lunch this should be queried with the solicitor unless the deduction of lunch will have no impact on the hearing units payable. For counsel a lunch of 60 minutes will be deducted.

Where caseworkers have queries in relation to the lunch adjournment, the claim should be rejected.

### **Hearings over a number of days**

For interim hearings the hearing time is calculated from the listing time to the time it concludes. Any the lunchtime or overnight adjournments should be deducted.

The number of hearing units will be calculated based on the total time divided into 2 ½ hr. hearing units.

Providers should supply start and finish times for every day

Q: Should a final hearing that last until 1am the next day be paid as a 1-day final hearing or 2 days?

*A: This can be claimed as two days. Paragraph 7.135 of the family specification confirms that if the hearing runs into a second day two final hearing fees are payable.*

## **6.6: Rates**

### **Mixed Proceedings**

Additional Guidance:

[7.125 Standard Civil Contract Specification 2018](#)

Where a hearing contains significant work on two different aspects of FAS e.g. Children and finance then the advocate could choose which category to claim under.

Only one standard fee may be claimed per hearing and so if different matters concerning the client are dealt with together by the court whether listed together or consecutively they should be treated as one hearing for the purposes of FAS.

### **Ancillary Relief**

For cases concluded prior to 22/04/2014 the rate payable for finance cases in the FPC is the same as the county court rate. Ancillary relief applications under the matrimonial causes act must be started in the county or high court i.e. a divorce registry. There are one or two types of financial applications that can be dealt with in the FPC (e.g. variation of maintenance order).



For cases concluded after 22/04/2014 the rate is determined by the level of judge hearing the case

## 6.7: Payment for replacement advocate

Additional Guidance:

S15.19- 15.20 Appendix 2 Costs Assessment Guidance 2018

Where there is a change of advocate at a final hearing each advocate can submit a claim for the days attended.

## 6.8: Travel

Additional Guidance:

7.154-7.156 Standard Civil Contract Specification 2018

It is generally assumed that a local advocate would be instructed and 15.14 (a) of appendix 2 of the Cost Assessment Guidance 2018 confirms that when considering whether travel is payable we must be satisfied that:

*“It was reasonable to instruct the advocate in question in all the circumstances of the case, taking into account whether there were any suitable potential advocates situated more locally to the court”*

### Travel Justification

Where travel costs have been incurred the following would be considered reasonable justification for counsel to travel:

- There is no local bar
- There is a need for continuity of counsel
- The case requires specific knowledge or skill
- There is no suitable local counsel available

*This is not an exhaustive list*

*Where this information has not been provided or the information provided is insufficient the claim will be provisionally assessed.*

### No Local Bar:

Where there are no local chambers or the number of chambers is small counsel must provide details of the following on their claim:

- That there is no local bar
- If the most local bar has not been used counsel should justify why the attendance of this counsel is more cost effective than the use of another counsel
- If a claim has been made from the main local bar then travel should be accepted if justified. If there is only a small local bar it will be considered reasonable for counsel at the nearest main bar to travel and their reasonable costs can be allowed.
- If counsel have addressed in their claim that there is no local bar caseworkers should verify this using the table and map at the end of the document and this should be sufficient to determine payment of travel costs

Caseworkers can also use the table and map to verify that the counsel instructed was from a local bar close(est) to the court and only where there are questions about this should the claim be returned using a priority return.

Where no or insufficient justification has been provided by counsel travel should be reduced to an amount that would have been payable to a counsel from the main local bar. Similarly, where there is a more local bar travel will be reduced to the costs that would have been incurred by counsel from the main local bar.

### Continuity of Counsel:

The use of counsel already familiar with the case or the client will be considered reasonable justification for counsel to travel provided the nature of the hearing requires it.

The specific counsel (not chambers) must already have been instructed on the case and this must be justified on the case.

Where continuity has been claimed as justification on non-consecutive hearings caseworkers may want to consider the following:

- What is the nature of the hearing?
- Are there frequent changes of counsel and does this remove the justification that there is a need for continuity?
- When did this counsel last represent the client and has the case changed significantly since that point?

Specific Knowledge or Skill:

A particular counsel may be instructed due to their specific knowledge or skill in a specific field of law. This will generally be on the more complex or unusual cases where difficult points of law arises or this is an unusual or novel area of law.

Counsel should justify this on the claim form.

Lack of available counsel:

Where the Instructing solicitor is unable to find counsel who

- Is willing to act under FAS locally OR
- Is available to conduct the case OR
- Has the required knowledge and skill

It may be reasonable to instruct counsel from further afield. This must be justified on the claim form and the closest available counsel instructed.

**Travel Expenses:**

These travel expenses can be paid providing they fulfil the usual assessment criteria including:

- The hearing they relate to is within scope
- They are evidenced by way of invoice (where £20 or over including VAT)
- They are claimed at the correct rate (45p per mile/2<sup>nd</sup> class train fare)
- The mode of travel is reasonable
- It was reasonable for counsel to travel (see travel justification above)
- They are evidenced ([further details on evidence](#))

The travel expenses must be proportional to the journey undertaken and the most cost-effective mode of travel used. Where it is not clear from the claim form what the most cost-effective mode of transport would be these costs will be assessed to nil and the right of appeal allowed to providers. It will generally be accepted that mileage and public transport are reasonable modes of travel, however the use of taxi's and overnight hotel accommodation must be justified.

In addition please see [10.32 in relation to travel costs.](#)

## Exceptional Travel Bolt On

### Additional Guidance:

[15.14 Appendix 2 Costs Assessment Guidance 2018](#)

This can be paid where

- The journey from the advocates office or chambers to the court (or location of advocates meeting or conference) exceeds 25 miles each way. This is calculated based on the actual distance travelled by the most direct route AND
- It was reasonable to travel (see reasons provided above)

## Calculating Mileage

The [court website](#) should be used to calculate the distance travelled. Consideration must also be given to 2-way routes as the return journey may be longer than the journey out.

## 6.9: Bolt on Payments

### Court/Advocates Bundles

*7.148-7.151 Standard Civil Contract Specification 2018*

### Additional Guidance:

[7.148 – 7.151 Standard Civil Contract Specification 2018](#)

Only one court/advocates bundle is payable per hearing. Payment is based on the size of the court bundle for hearings prior to 31/07/14 and on the size of the advocates bundle for hearings on/after 31/07/14.

Verification of the court/advocates bundle size will be through the advocates attendance form (AAF). For hearings on/after 31/07/14 there is provision for the LAA to request and verify the bundle and/or the index list. however, this will usually not be necessary.

In public law children cases court/advocates bundles may be claimed for no more than two interim hearings and each of these must either be a case management conference (or case management hearing), an issues resolution hearing or otherwise a hearing that is listed for the hearing of contested evidence. Given these restrictions a copy of the order may be requested.

	Interim Hearing	Final Hearing
Public Law Children	Two	One
Private Law Children and finance aspects	One per aspect	One
Domestic abuse	No court bundles payable	No court bundles payable

In public law children cases only one court/advocates bundle is payable in relation to either an effective fact finding hearing payable as a final hearing or an effective Final hearing for which a final hearing is claimable under FAS. Where a final hearing continues over a number of days only one court/advocates bundle is payable – payment is not made for every day of the final hearing.

If more than one final hearing payment may be claimed in a case, for example, where there is a finding of fact hearing in private law proceedings as well as a final hearing then a court/advocates bundle may be claimed for each of those final hearings.

The number of court/advocates bundles that can be claimed will take into account all court/advocates bundles that have been claimed by any advocate whether solicitors or counsel. Court/advocates bundles fees paid to counsel count towards the limit of court/advocates bundles claimable.

For example:

*Counsel have claimed one court/advocates bundle for an interim hearing, a solicitor advocate (or further counsel) may only claim one additional court/advocates bundle on an interim hearing, as this totals the two which are claimable in public law children cases.*

Where there is a change of solicitors court/advocates bundles are payable to the person who requested and was paid them first.

### Early Resolution/Settlement Fee

#### Additional Guidance:

7.152 – 7.153 Standard Civil Contract Specification 2018

### Early Resolution in Private Law Finance Cases

The fee is payable in private law finance cases where there has been a resolution at the first appointment or the finance dispute resolution hearing (FDR)

There is no early resolution fee payable in private law children cases. Any reference to this in the previous contract payment annex was a typographical error and in case of any queries reference should be made to the applicable contract specification.

### Cases Concluded at IRH

#### Additional Guidance:

[7.127- 7.130 Standard Civil Contract Specification 2018](#)

If a case concludes at the issues resolution hearing (held under the public law outline) and does not proceed any further, the IRH can be claimed as a final hearing. The advocate's attendance form should be completed to indicate that the case has been settled at the IRH. This can be paid even when the scope of the certificate does not cover representation at the final hearing.

Where a settlement supplement is being claimed a copy of the final order confirming agreement on that date should be attached. This requirement includes issues resolution hearings.

Handwritten orders are acceptable providing they are sealed by the court or certified by the judge.

## **6.10: Late Submission**

Late submission penalties are not applicable under the family advocacy scheme

## **6.11: Advocates Attendance Form**

We can only make payments for any bolt on payments initialled or sealed by the court. Each bolt on claimed must be initialled or sealed individually. The exception to this is where the hearing has been held remotely.

Any amendments must be certified by the court or the judge/legal advisor. Where you are unable to do this you must provide justification to the LAA and we will consider this on a case by case basis.

In line with the guidance circulated to judges, the advocates attendance form must be authorised at the time of the hearing. The court may not retrospectively authorise bolt-ons. In these instances, the bolt-on will not be claimable.

The advocates attendance form needs to be signed by the judge and any bolt ons initialled or sealed. There is no requirement to seal the AAF if it has been signed – it must be one or the other.

There is no requirement for the judge to initial the start and finish times only the form overall.

Where the claim and the advocate's attendance form differ in the time recorded but this does not impact on the fee payable then the caseworker should note that they have identified the discrepancy and only record the correct minutes on CIS

When the hearing (usually the finding of fact or final hearing) is split over a number of days and weeks one completed advocates attendance form will suffice providing it is being claimed at the same time and it is clear what is being claimed.

Where the hearing has been held remotely such as by telephone or video conference we do not require an advocates attendance form. Where possible a court order detailing the times of the hearing and details in relation to bolt on payments will be required. We may request a copy of the attendance notes if further details are needed to verify the hearing or where a court order is not available. Claims for bolt on payments will need to be justified to allow the assessor to make a decision.

Further guidance on remote hearings can be found in the [Remote Family Hearings: Updated Ways of Working](#) guidance document.

### **Interim hearing Under One Hour**

We do not require an advocates attendance form when:

- The claim is for an interim hearing under one hour **and**;
- No bolt on payments are being claimed

This only applies to interim hearings not final hearings and applies equally to counsel and solicitors

### **Final Hearing**

There is no requirement to list the times of the hearing as the provider is paid at a daily rate.

### **Disbursements**

Please see full section on [disbursements](#)

### Evidence Requirements on Submission

Interim Hearing	<ul style="list-style-type: none"> <li>• Advocates Attendance Form (unless HU1 or remote hearing) – this should include listing/prior attendance time.</li> <li>• For remote hearings a copy of the court order detailing start and finish times supplemented by brief/attendance note where required.</li> <li>• For counsel a brief/letter of instruction including date, listing time (if unclear on AAF), type of hearing, details of application before court</li> <li>• For solicitors a copy of the attendance note of the hearing.</li> <li>• Details of any lunch adjournment</li> </ul>
Final Hearing	<ul style="list-style-type: none"> <li>• Advocates Attendance Form unless remote hearing</li> <li>• For remote hearings a copy of the court order supplemented by brief/attendance note where required.</li> <li>• Brief/Letter of instruction including date, type of hearing, details of application before court</li> </ul>
Bolt on Payments	Bolt on payments initialled or sealed individually on AAF For remote hearings the bolt ons should be justified on the claim and highlighted in the court order.
Attendance prior to listed time	Court order
Opinion	Copy opinion
Conference	Conference Notes Start and finish times
Advocates Meeting (where more than two are claimed)	Court order listing advocates meeting
Settlement Payment (and IRH as final hearing)	Copy order detailing settlement/agreement
Cancelled Hearings	Brief/Evidence of instruction Details of any preparation carried out.
Telephone/Video hearings	Times that call was first attempted

We only require a copy of the sealed order where an [Early Resolution/Settlement Fee](#) is being claimed.

### Delegated Authority Limits



The delegated authority limits are per claim overall rather than per line. For further information please see **14.3: Delegated Authority**

## **6.12: Processing Payment**

### **Payment under emergency certificates**

*Payment cannot be made under FAS on emergency certificates on CIS and therefore these payments will show that they have been paid under FGF.*

### **Final Bill Already Paid**

Where a final bill has already been processed evidence should be provided that the claim has already been included in the solicitors' bill. If the claim was omitted from the solicitors' bill then the solicitors will need to submit an amended bill in support of counsels' claim.

## **6.13: Standard Brief to Counsel**

A standard brief cover sheet has been introduced to try and ensure that all the detail required to assess civil bills is included on the solicitor's brief. The brief to Counsel Coversheet can be attached by instructing solicitors to the front of briefs when they are given to counsel.

The coversheet is a voluntary document. A copy of this can be found in [Appendix 6](#).

## 7: Family Graduated Fees (FGF)

The family graduated fee scheme guidance can be found using the following link

<http://www.justice.gov.uk/downloads/legal-aid/fee-schemes/fgsrevisedguidance-august2009.pdf>

The applicable rates can be found in the counsel in family proceedings order.

[http://www.legislation.gov.uk/uksi/2005/184/pdfs/uksi\\_20050184\\_en.pdf](http://www.legislation.gov.uk/uksi/2005/184/pdfs/uksi_20050184_en.pdf)

## 8: Rates

For cases paid under hourly rates the applicable rate will be the rate for the court where the work was undertaken. For cases paid under fixed fees (CPGFS and PFLRS) the applicable rate will be the court the case concluded in.

Checks can be made on the applicable rates using the following:

- [Rates calculator](#)
- Remuneration Regulations (certificates applied for after April 2013)
- Payment Annex of the contract (certificates applied for prior to April 2013)
- Tables in [Appendix 2 – Hourly Rates \(Civil\)](#)

### 8.1 Legal Aid Reform/Transformation

The legal aid reforms introduced a 10% cut to the rates/fees payable. This applies to all hourly rates, fixed fees and expert fees. They applied based on the date of the application (the date it was signed by the client)

Further reductions to some of the rates payable were applied in respect of the legal aid transformation programme.

	Legal Aid Reform Dates	Legal Aid Transformation Dates
<b>Expert Fees</b>	03/10/2011	02/12/2013
<b>Non- Family Applications</b>	03/10/2011	
<b>Family Applications</b>	01/02/2012	22/04/2014 – CPGFS and s31 care/supervision proceedings
<b>Housing applications</b>	03/10/2011	
<b>Housing applications where provider acting under unified family contract</b>	01/02/2012	

These cuts do not apply to firms acting under a CLAC/CLAN contract. A list of firms and their account numbers is provided as a supplementary note to a standard operating

procedure (SOP) on the [intranet](#) (as this contains the account numbers for the CLACS/CLANS it can only be released internally). The CLAC/CLAN contracts are effective for funding applied for between 01/05/2011 and 31/03/2013

## 8.2 Miscellaneous Rates

### London/Non- London Rates

The following website will provide details on London Boroughs – this will help when considering whether the London rates apply. The rate or fixed fee payable is based on the location of the provider.

<http://local.direct.gov.uk/LDGRedirect/Start.do?mode=1>

### Attending Hearing with Counsel

Where the solicitor is attending a hearing where counsel is representing the client the applicable rate will be the lower 'attendance at court or conference with counsel' rate. The ACO code should be used when claiming.

### Deprivation of Liberty and Inherent Jurisdiction Cases

Scenario	Separate Certificate or Amend?	How are they billed?
Care Proceedings are in place or Deprivation of Liberty or other Inherent Jurisdiction (IJ) application made It may have a separate case number but listed to be heard at same time as care proceedings	Amend the existing care proceedings	Falls under the definition of related proceedings so all part of the care case.
Care Proceedings are in place Deprivation of liberty or other IJ application made It is listed to be dealt with separately under different case number and not at same time as care hearing	New certificate required	One care bill as normal Separate bill under the IJ certificate
Care Proceedings are in place Deprivation of liberty or other IJ application made	New certificate required as originally listed separately	A care bill is prepared Then in respect of IJ certificate

<p>It is listed to be dealt with separately under different case number and not at same time as care hearing. However subsequently matters are consolidated</p>		<p>Pre Consolidation: Separate bill for IJ work undertaken pre consolidation</p> <p>Post Consolidation: All work is related proceedings therefore IJ work becomes part of the care bill at this stage and claimed under care certificate.</p>
<p>Care Proceedings are in place Deprivation of liberty or other Inherent Jurisdiction application made Some hearings are listed to be heard together and some are not</p>	<p>A New certificate may be granted if initial hearing is not listed to be heard together with care</p> <p>Where the initial hearing is to be listed together with the care proceedings an amendment to the existing certificate may be appropriate</p>	<p>Where separate certificates are in place, separate bills should be submitted.</p> <p>Where separate certificates are in place and hearings for Care and DoL/IJ are heard together these will be paid on DoL/IJ certificate as hourly rates</p> <p>If the certificate has been amended there will be two bills. One under standard fee (unless the costs escape the fixed fee) for the base costs of the care proceedings and the related proceedings;</p> <p>A second bill for any DoL hearings heard separate from the main care, with advocacy at hourly rates should also be submitted.</p> <p>Hourly rates would be under Table 9(a) of the Remuneration Regulations.</p>

### **Female Genital Mutilation**

As of 31 July 2015, the Serious Crime Bill introduced amendments to the Female Genital Mutilation Act to create an offence of failing to protect a girl from FGM.

Application, variation and discharge of an FGM Protection Order is family work under civil legal aid.

FGM Protection Orders escape the fixed fee schemes [PFLRS & FAS] and are paid at hourly rates, as set out in Table 9(b) of the Remuneration Regs [akin to representation in Forced Marriage Protection Orders.]

Breach of the order will be treated as criminal rather than civil for the purposes of Legal Aid

### **Mixed Rates**

The applicable rate is determined by the type of proceedings for each item of work. Therefore, where the certificate and claim contains work with different proceedings we may see different rates on the claim form. For example, if a certificate covers both Secure Accommodation and Placement proceedings, each aspect should be remunerated at the respective hourly rates. This could be on the same claim, or, preferably, on two claims and any work split between the two aspects apportioned accordingly.

The claims should ideally be considered at the same time, though this is not a requirement. It is possible to submit mixed rates claims on both paper-based claims and CCMS. However, in both instances it would be preferable to keep the bills separate and submit one as an interim and a second as a final. This makes the assessment process clearer.

*Q: I have a case which starts under TOLATA and then includes Finances. What rate should be claimed?*

*A: Separate rates should be claimed for work related to TOLATA (civil rates) and for the work related to finances (PFLRS or family rates).*

### **Anti - Social Behaviour Crime and Policing Act (ASBCPA)**

Work in relation to proceedings under the ASBCPA is paid as hourly rates under table 10a of the remuneration regulations. Where the work relates to a breach this claimed under criminal work and via a representation order.

## **8.3 Upper Tribunal Work in Asylum Cases**

Further guidance on submitting claims for certificated work can be found in the following documents

Further guidance on submitting claims for certificated work can be found in the following documents:

- [CCMS quick guide: Submitting a Claim in an Immigration and Asylum Upper Tribunal Appeal](#)
- [Immigration and Asylum Upper Tribunal Appeals Guidance](#)

## 8.4 Family Proceedings

### Principal Registry of the Family Division

The rate payable for work undertaken in the principle registry of the family division will depend on the level of judge hearing the case.

This should be noted for both counsel payments and solicitors costs

### Appeal of a Final Care Order

Only Care and supervision proceedings themselves are subject to the 10% reduced fees from 22<sup>nd</sup> April 2014 contained in Table 9(aa) of the Remuneration Regulations 2014.

Appeals against final orders are not included in the fee. These should continue to be billed at the rates in Table 9(a) of the relevant Payment Annex

### Counsels Fees

Please see chapter 6 for FAS cases and chapter 9 for counsel fees.

### Single Family Court Changes

The introduction of the single family court on 22/04/14 has brought changes to the terminology we use for rates in family proceedings. For cases paid as a fixed fee the fee payable will be determined by the level of judge before whom proceedings were concluded. For FAS fees hearings held on/after 22/04/14 will be based on the level of judge before whom the proceedings are heard.

Where a non-hearing function is claimed under FAS the level of judge will be based upon the hearing it relates to. For example, an advocates meeting will be paid with reference to the level of judge at the hearing it is linked to and this should be evident upon submission.

Old Terminology	New Terminology
Family Proceedings Court	Assistant to justices clerk Justices Clerk Lay Justice
County Court	Judge of district judge level Judge of circuit judge level

	Recorder Costs Judge
<b>High Court or Court of Protection</b>	Judge of high court judge level or Court of Protection Section 9/Deputy Judge of the High Court

### Care and Supervision

Only the making of the care or supervision order is within s31 Children Act and therefore claimable at “care rates”. This will include related proceedings made within the care proceedings (i.e. Residence, contact, CAO) that are heard together within the care proceedings or in which an order is sought as an alternative.

All other public law cases are within the “other public law” category.

Current rates can be found in the [Civil Legal Aid \(Remuneration\) \(amendment\) \(No2\) Regulations 2014](#).

Fixed Fee	Advocacy	Hourly Rates – Care Rates
<b>Care Proceedings Graduated Fee scheme (CPGFS) Table 2 (c) remuneration regulations</b>	From 09/05/11 paid under FAS Schedule 3 – Table 1 (a) remuneration regulations	Pre- April 2014 table 9(a) remuneration regulations Post April 2014 table 9 (aa) remuneration regulations

### Other Public Law (within part IV and V of Children Act)

Any other public law children cases other than s31 care proceedings. This includes proceedings under the following sections of the Children Act.

- Part IV Children Act 1989
- Part V Children Act 1989
- S25 Children Act 1989

Proceedings	Fixed Fee	Advocacy	Hourly Rates
<ul style="list-style-type: none"> <li>• Child Assessment Order</li> <li>• Contact with a child in Care</li> <li>• Discharge/Vary a Care Order</li> <li>• Discharge/Vary a Supervision Order</li> <li>• Emergency Protection Order</li> <li>• Education Supervision Order</li> </ul>	OPL - No fixed fee	From 09/05/11 paid under FAS	Family Prescribed rates Table 9a Remuneration Regulations



<ul style="list-style-type: none"> <li>• Recovery of a Child</li> <li>• Secure Accommodation Order</li> </ul>			
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### Child Assessment

Child assessment orders require the child to be made available for an assessment and, as they are made under S43 Children Act they are therefore categorised as “other public law proceedings”. There are therefore paid at care proceedings rates when paid as hourly rates and, for certificates issued on/after 09/05/11 any advocacy will be paid under FAS.

### Contact with a Child in Care

Contact with a Child in Care (as opposed to Contact or CAO Contact orders) are relevant where there is any local authority responsibility for the child and another party is seeking contact with that child. They are made under s34 and part IV children act and fall within the category of “Other Public Law”.

### Discharge/Vary a Care or Supervision Order

This is where an application has been made to discharge or vary a care/ supervision order. If they discharge the order it will no longer be in force. This falls within part IV children act and within the category of “other public law”. Solicitors work will be paid at the applicable care hourly rates. Advocacy prior to 09/05/11 will be paid at hourly rate and post 09/05/11 will be paid within FAS

### Emergency Protection Order (EPO)/Extend/Vary EPO

These orders are obtained under part V of the children act and made by the court to ensure the short-term safety of the child.

### Education Supervision Order

These orders are obtained under s36 and part IV of the children act and made by the court to help improve the attendance of the child at school.

### Recovery of a child

Where these cases arise in public law matters they will fall under the other public law category and are payable under table 9a.

Recovery of a child cases can occur in private family law matters and this will be remunerated under PFLRS and FAS fee schemes.

### Secure Accommodation Orders

Secure accommodation orders are defined as “other public law” and are therefore excluded from both the Care Fixed Fee Scheme (CPGFS) as detailed in chapter 4 and Private Family Law Representation Fee (PFLRS) as detailed in chapter 5. They do however fall within the Family Advocacy Scheme (FAS). Work undertaken is paid at the care hourly rates unless it falls within FAS.

They are a specified proceeding under S41 Children Act ([by virtue of 12.27 FPR](#)) and therefore will continue to remain within FAS where a child is being represented separately.

### Special Guardianship

Where a special guardianship order is sought as an alternative to other public law proceedings then this will be paid as per the table above. Special Guardianship Orders that are sought within care proceedings are considered related proceedings and paid within the care fee. Stand-alone proceedings are considered as private law and paid as detailed below.

### **Other Public Law – Other Family Proceedings**

These proceedings are defined as “other public law”, however as they do not fall within part IV, V or s25 of the Children Act the hourly rate is for “other family proceedings” under Table 9b.

Proceedings	Fixed Fee	Advocacy	Hourly Rates
<ul style="list-style-type: none"> <li>Adoption – represent parent</li> <li>Placement Proceedings</li> </ul>	OPL - No fixed fee	From 09/05/11 paid under FAS	Other Family Prescribed rates Table 9b Remuneration Regulations

### Adoption

Under the funding code and LASPO Regulations adoption is defined as “other public law”, this will apply even to cases which are “private” adoptions and also to those following a care order. This means that adoption is not included within either PFLRS or CPGFS fee schemes and the rates are paid at hourly rates for work undertaken by solicitors with the exception of advocacy. Advocacy will be paid under the FAS.

Where there is [Separate representation of a child](#) in adoption proceedings this is not a specified proceeding under [s41\(6\) Children Act 1989](#) and therefore it remains outside of PFLRS, CPGFS and FAS.

Adoption proceedings do not fall under the definition of “care” under the contract and therefore where the certificate was applied for after 1 October 2007 adoption is paid at other family proceedings rates under the Payment Annex and in the appropriate Remuneration Regulations (Table 9(b)).

Prior to then the rates were determined by the court. If they are in the magistrates' court the applicable rate is the magistrates' court rates under the family remuneration regulations 1991. If they are in the county court they are payable at the county court rates under the civil remuneration regulations 1994.

Please see [rates payable for excluded work](#) for further information on adoption.

### Placement Proceedings

Under the funding code placement proceedings are categorised as “other public law”. This means that placement proceedings are not included within either PFLRS or CPGFS but they are included within FAS. This means that with the exception of advocacy post 09/05/11 this work will be paid at hourly rates.

Placement proceedings are paid at prescribed family proceeding rates.

Where the placement order falls within related care and supervision proceedings then these costs should be claimed within the fixed fee

### **Other Public Law – Other Family Proceedings excluded from FAS**

These proceedings are defined as “other public law”, however as they do not fall within part IV, V or s25 of the Children the hourly rate is for “other family proceedings” under Table 9b.

They are also excluded from FAS and therefore advocacy is subject to a reasonableness assessment and may payable by reference to the FGF scheme.

Proceedings	Fixed Fee	Advocacy	Hourly Rates
<ul style="list-style-type: none"> <li>• <b>Adoption - representation of child</b></li> <li>• <b>Wardship</b></li> </ul>	OPL - No fixed fee	Reasonable costs Schedule 3 Table 1(b) Remuneration Regulations	Other Family Prescribed rates Table 9b Remuneration Regulations

### Wardship

Wardship proceedings are part of the inherent jurisdiction of the court and under the funding code and Merits Regulations are categorised as “other public law”. Work under the inherent jurisdiction of the court is excluded from the fixed fee schemes and FAS.

Wardship proceedings do not fall under the definition of care under the contract and are therefore paid at other family rates

### **Private Family Law**

#### Declaration of Parentage

For certificates issued under the AJA they will be paid at the finance fixed fee. For certificates issued under LASPO they are paid under the children fixed fee.

Where they are payable under hourly rates these are paid under the “other family” prescribed rates

### Special Guardianship Orders

If the client seeks advice about an application for a Special Guardianship Order (and there are no related care proceedings) this will fall within the definition of private law.

It should be claimed as a private law children fixed fee (if issued after 09/05/2011) or as other family prescribed rates if claimed outside of the fixed fee (pre 09/05/11 or case has escaped fixed fee)

### Section 37 Reports

A section 37 report falls within private law children proceedings and will consider whether a care or supervision order should be made. This work will fall within the private law proceedings in which the order was made. The case will only fall within public law children once the local authority issue formal s31 Care Proceedings

Fixed Fee	Advocacy	Hourly Rates – Private Family
<b>Private Family Law Representation scheme</b>	From 09/05/11 paid under FAS Schedule 3 – Table 2 (a) remuneration regulations	Table 9(b) remuneration regulations

## 9: Counsels Fees

### 9.1: Counsel Hourly Rates in Non-Family Proceedings.

Funding applied for on/after 03/10/2011 and prior to 01/12/2013

For non -family certificates issued on/after 3/10/2011 counsel will be remunerated at hourly rates. These rates can be found in schedule 2 of the [Civil Legal Aid \(Remuneration\) Regulations 2013](#)

Please note that Senior Counsel is defined as having over 10 years call or more and, whilst there are no codified rates for senior counsel in the county court. It would therefore be considered reasonable to pay a rate somewhere between the junior counsel rate of £112.50 and the senior counsel (high court) rate of £135.

#### Travel

There are no codified rates for travel but it is considered that it would be reasonable to pay these at the same rate as the solicitors.

#### London Rates

Paragraph 13.9 of the Cost Assessment Guidance 2018 confirms that the location of chambers determines whether the London or non- London rate is applicable

On assessment where a barrister in London is instructed for proceedings outside London, it would not be considered reasonable to pay the London hourly rates (or additional travel costs) unless there is justification for not instructing a barrister more local to proceedings.

#### Funding applied for on/after 01/12/2013

For non- family certificates issued on/after 01/12/2013 solicitor and counsel rates have been harmonised, meaning that the solicitor hourly rates are payable to counsel for work undertaken in the county court, high court or upper tribunal other than for queens counsel. The applicable rates can be found in [schedule 2 of the Civil Legal Aid \(Remuneration\)\(Amendment\) Regulations 2013](#).

The rates for court of appeal, Supreme Court and for queens counsel in any court have not changed, nor has the requirement to obtain Prior Authority where queens counsel is sought.

#### CF1/CF1A forms

The CF1/1A form is mandatory from 01/12/2013 for all paper claims. The CF1/1A is to be used in cases where Counsel are required to submit a breakdown of their fees to the instructing solicitor to form part of the bill submission to the LAA at the conclusion of the

proceedings. Where enhancement or travel costs have been claimed on CCMS the CF1/CF1A can be used to justify these costs. Alternatively, justification can be provided on a separate document that is uploaded to CCMS.

### **Enhancement**

Counsel can also claim enhancement on this hourly rate where justified in line with section 12.12 of the cost assessment guidance 2013. For paper claims this must be detailed on the CF1 or CF1a form. For CCMS cases justification for enhancement can be provided either on the CF1/CF1A or on a separate document uploaded to CCMS. Further guidance on enhancement can also be found in Chapter 3.

### **Claiming for Non- Family Counsel on CCMS**

The solicitor and counsel should decide between them if counsel is going to bill separately or have their costs included in the solicitor's claim. If the bills are to come in separately then counsel should be allocated a cost limit within the claim and, once the final bill is submitted, CCMS will notify counsel that their bill must be submitted. If the bills are both to be claimed by the solicitor, then this should be indicated on CCMS and the solicitor must upload confirmation from counsel they are happy for the solicitor to claim on their behalf.

The claims for both solicitor and counsel will be assessed together at the point of assessment. Where the counsels claim is submitted prematurely it will be rejected pending submission of the solicitors claim. Where solicitors claim is submitted without counsel having submitted their bill, the solicitors claim will be rejected.

## **9.2: Family Cases Outside of FAS/FGF**

### **Additional Guidance:**

#### **7.113 Standard Civil Contract Specification 2018**

Where counsel are acting under certificates in respect of TOLATA or Inheritance Act cases payment for these cases will be using the civil rates as detailed below

- The hourly rates detailed in section 9.1 above (for certificates issued between 03/10/2011 and 01/12/2013)
- The hourly rates payable to the solicitors (for certificates issued on/after 02/12/2013)
- For all other family cases which are outside the FGF/FAS scheme any assessment of counsels fees may take into account the rates applicable had the services had

been provided by a solicitor or the rates which would have been paid under FGF. The FGF rates are detailed in the [Counsel in Family Proceedings Order](#)

Where these cases are assessed by the court it will be for the court to determine the rate payable.

Where solicitors are undertaking advocacy they should use the appropriate solicitor hourly rate.

### **CCMS Claiming**

The bill from solicitor and counsel must come in separately and must both be submitted at the conclusion of proceedings (usually this will be when the court makes the final order containing provision for assessment of costs). Any counsel bill for family proceedings that is submitted in advance of the point of assessment and the solicitor's bill being ready will be rejected for being premature. Where solicitor's claim is submitted without counsel having submitted their bill, the solicitor's claim will be rejected.

This does not impact on the usual contractual rules around claiming payments on account (POA).

# 10: Disbursements

## 10.1: Irrecoverable Disbursements

### Additional Guidance

4.21 – 4.27 and 6.62 Standard Civil Contract Specification

This is a non-exhaustive list of irrecoverable disbursements.

Costs of (or expenses relating to) the residential assessment of a Child or treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by us.
Ad Valorem stamp duties.
Capital duty.
Clients travelling and accommodation expenses save in the circumstances prescribed in the Costs Assessment Guidance and unless they relate to treatment, therapy, training or other interventions of an educative or rehabilitative nature or to the residential assessment of a Child.
All fees, charges and costs of Child contact centres, including assessments and reports on supervised contact, and of other professional assessments of contact between Children and adults.
Discharge of debts owed by the Client, for example, rent or mortgage arrears.
Fee payable on voluntary petitions in bankruptcy.
Fee payable to implement a pension sharing order.
Fee payable to the Office of the Public Guardian.
Immigration application fees.
Mortgagees" or lessors" legal costs and disbursements.
Passport fees.
Probate fees.
In the Family Category of Law only, costs of or expenses in relation to the provision of Family Mediation, conciliation or any other dispute resolution including Family Group conferences.
In the Family Category of Law only, costs or expenses of risk assessments within section 16A Children Act 1989 (as amended) and undertaken by Cafcass officers or Welsh family proceedings officers, including assessments of the risk of harm to a Child in connection with domestic abuse to the Child or another person.
In the Family Category of Law only, costs of or expenses relating to any activity to promote contact with a Child directed by the court under Section 11A to 11G Children Act 1989 (as amended). This includes all programmes, consideration of suitability under s11E and other work to or with a view to establishing, maintaining or improving contact with a child or, by addressing violent behaviour, to or with a view to enabling or facilitating contact with a child.
Any administration fee charged by an expert including, but not limited to, (i) a fee in respect of office space or provision of a consultation room, (ii) a fee in respect of administrative support services, such as typing services, (iii) a fee in respect of courier services and (iv) a subsistence fee.
Any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.



Please note that we consider anger management courses to be therapy or training and are therefore considered to be an irrecoverable disbursement.

### **Administrative Costs**

Administrative fees such as postage, credit card and booking fees are generally not payable.

### **Late Payment Fees**

We will not pay for late payment charges. These are considered to be an irrecoverable disbursement and therefore cannot be paid out of the fund.

## **10.2: Requirement for disbursement Vouchers**

### **Submission of Disbursement Vouchers**

From 6th June 2011 all civil certificated claims required the submission of a disbursement voucher for any amount which has a value of £20 or over (inclusive of VAT). This requirement applies to payment on account requests (including those submitted via our e-forms system) as well as claims submitted. We may also require copies of any reports undertaken to allow us to make an assessment of the reasonableness of these costs.

Where no disbursement voucher is available e.g. In respect of Mileage or Court fees your request should be accompanied by a file note, letter confirming payment or ledger entry showing full details of the disbursement claimed. File ledgers will only be accepted in lieu of a disbursement voucher where invoices are unlikely e.g. mileage or court fees.

Invoices for experts should be produced by the expert and should contain the following details:

- The experts name
- The specialism of the expert,
- The address of the expert and, where they are claiming travel where they are travelling to and from
- The client name
- A breakdown of the work undertaken. The breakdown should contain the hourly rate or contain sufficient detail to allow the hourly rate to be easily determined. This requirement applies to all claims submitted (including those issued before the codified rates were introduced).

Where the solicitors have been unable to provide the level of detail in the vouchers due to the age of the case we will accept vouchers without that level of detail but providers will need to justify this in a covering letter. The invoice should represent work undertaken rather than be a quotation.

Where disbursement vouchers are required these should be collated on a clip and attached to the claim.

The table below details the standard evidence requirements however this does not mean that further evidence cannot be requested if necessary to undertake an assessment.

Type of Disbursement	Standard Evidence Requirement	Minimum requirement if unable to provide standard evidence
<b>GP Medical Records</b>	<ul style="list-style-type: none"> <li>Receipt/Invoice or letter from medical centre confirming payment.</li> <li>Justification for charge if incurred after 25/05/18</li> </ul>	<ul style="list-style-type: none"> <li>Ledger entry</li> </ul>
<b>Police Disclosure</b>	<ul style="list-style-type: none"> <li>Receipt/Invoice or letter from police confirming payment</li> <li>Justification for charge if incurred after 25/05/18</li> </ul>	<ul style="list-style-type: none"> <li>Ledger entry</li> </ul>
<b>Train Fare</b>	<ul style="list-style-type: none"> <li>Train Ticket</li> </ul>	<ul style="list-style-type: none"> <li>Ledger entry with screen print verifying rail fare.</li> </ul>
<b>Car Parking</b>	<ul style="list-style-type: none"> <li>Ticket/Receipt from car park detailing amount paid and date</li> </ul>	<ul style="list-style-type: none"> <li>Ledger Entry</li> </ul>
<b>Court Fee for assessment of costs</b>	<ul style="list-style-type: none"> <li>Bill - EX80A/B</li> <li>POA – Receipt/Ledger entry/copy of letter sent to court</li> </ul>	<ul style="list-style-type: none"> <li>Receipt/Ledger Entry</li> <li>Copy of letter sent to court</li> </ul>
<b>DNA Testing</b>	<ul style="list-style-type: none"> <li>Invoice</li> </ul>	<ul style="list-style-type: none"> <li>Court Order</li> <li>Ledger entry</li> <li>Letter confirming payment</li> </ul>
<b>Drug and Alcohol testing</b>	<ul style="list-style-type: none"> <li>POA and Bill - Invoice</li> <li>Bill – court order confirming drugs tested. This isn't required if prior authority has been granted and it matches</li> </ul>	<ul style="list-style-type: none"> <li>Court Order/Attendance Note of hearing</li> <li>Ledger entry</li> <li>Letter requesting testing and letter confirming payment</li> </ul>
<b>Experts</b>	<ul style="list-style-type: none"> <li>Invoice</li> </ul>	<ul style="list-style-type: none"> <li>Ledger</li> <li>Letter confirming payment</li> <li>Copy report</li> </ul>
<b>Risk Assessments</b>	<ul style="list-style-type: none"> <li>POA and Bill – Invoice</li> <li>Bill – court order confirming risk assessment criteria. This isn't required if prior authority has been granted and the amount matches</li> </ul>	<ul style="list-style-type: none"> <li>Court Order/Attendance Note of hearing</li> <li>Ledger entry</li> <li>Copy Report</li> </ul>

**Unable to Provide Vouchers**

Where the solicitors are unable to provide vouchers we will, in exceptional circumstances accept a copy of the ledger entry to verify that the disbursement has been incurred.

Where we need to assess the disbursement we would require some form of supplemental evidence to enable an assessment to be made (i.e. copy of the instructions and a copy of the report drafted)

Examples of exceptional circumstances where alternative evidence will be accepted

Client attends a hearing and these costs are paid from the legal aid fund. The client is drug dependent and provides no further instructions to the provider after the hearing and fails to supply evidence of the travel for the purposes of invoice requirements. Despite efforts of the firm to obtain the invoices they are unable to do so.

This would be an exceptional circumstance and we could authorise payment. File evidence would be required, that the monetary transaction made (file letter) together with evidence from the file/sols letter to clearly outline context of the payment, ordered to attend by the Court etc.

**10.3: Advocacy Support Services**

Advocacy support services or witness intermediaries are services provided to the client to give support during the proceedings or in court and also to aid their understanding of the proceedings. They generally do not form part of legal representation or representation at court. As the legal advice continues to be provided by the solicitor or counsel it is not considered that these costs are recoverable from the fund.

**10.4: Apportionment between parties**

Further guidance on apportionment of experts' fees can be found in [section 1.6 of the Narrative and Guidance Document](#) and [section 4.4 and 4.5 of the guidance on the remuneration of experts witnesses](#).

When considering the amount payable each case will need to be considered individually based on the information detailed in the claim form.

**10.5: Cancellation Fees**

Additional Guidance

Schedule 5(4) Civil Legal Aid Remuneration Regulations 2013

No cancellation fee will be payable if the expert is cancelled more than 72 hours before a hearing.

For a case where a hearing scheduled for a number of days might be cancelled, the 72 hours' notice would extend into the number of days of that cancelled hearing. It might be right to reimburse for the first or second day but the notice would allow the expert rescheduling subsequent days and further cancellation fees would not be appropriate.

Where it is clear that the expert was cancelled more than 72 hours before a hearing these costs will be provisionally assessed. Where it is unclear from the documentation provided when the expert was cancelled we may request this documentation via a reject.

## 10.6: Contact Centre Fees

The costs of or expenses relating to assessments or reports (including on contact at a contact centre) based, in whole or in part, on an observation of contact with a child/children cannot be charged as disbursements recoverable from the Fund.:

Supervised contact involves professional supervision and/or observation of the contact having regard to safety issues and/or contact reintroduction. Supported contact is contact taking place at a specified, neutral venue without any professional supervision although there may be contact centre staff present. Previously, the costs of an assessment of supervised contact or other professional assessment of contact could in certain exceptional circumstances and, subject to the exclusions in paragraph 1.3 of the Funding Code, be met by the Fund on behalf of a funded client. However, this is no longer appropriate in relation to orders or directions made on or after 6 April 2009 requiring an assessment of contact, including contact re-introduction or any report based, in whole or in part, on an observation or observations of contact with a child/children.

The correct approach when finding any such costs would be to disallow the entire report as being out of scope, as a disbursement arising in whole or in part, on an observation of contact and therefore irrecoverable under paragraph 2.5, sub paragraph 3, of the Funding Code decision making guidance and the contract specification. Costs of completing the contact centre referral form and the form itself are a recoverable expense however no more than 12 minutes should be allowed

## 10.7: Counsel or Solicitors as Experts

### Additional Guidance

5.37 – 5.44 of the Guidance on the Remuneration of Expert Witnesses

## 10.8 Country Experts

The average hourly rates for a country expert is generally between £70 - £100. The average time taken is between 8-12 hours, this includes a review of any documentation, meeting with the client, associated travel and the drafting of the report.

Where a claim is made for work undertaken outside these parameters providers should ensure that they justify why the additional time or higher rate was necessary.

## 10.9: Courier Fees

### Additional Guidance

#### 2.2 Cost Assessment Guidance 2018

Courier Fees are generally an irrecoverable disbursement against the fund. However, exceptionally these will be claimable as disbursements, where they are incurred in relation to a particular case or matter and it was reasonable to do so. When making a claim (other than payments on account) solicitors must justify the exceptional circumstance and the reasonableness of courier costs

For payments on account there is no requirement to justify the use of the courier – this will be assessed upon submission of the claim as above.

## 10.10: Costs of Communication Support Professionals

### Additional Guidance

#### 3.7 Cost Assessment Guidance 2018

The Equality Act 2010 places an obligation on service providers to make reasonable adjustments so that they can assist clients with disabilities. The provider as service provider is therefore obliged to make adjustments, where it would be reasonable to do so. The adjustment is not a disbursement as it is to be borne by the provider.

Where it would not be reasonable to make the adjustment, the client can be charged and so the costs may be a disbursement and reimbursed by the Lord Chancellor. In recognition of the level of these costs and to prevent any gap in provision, the costs of sign language interpretation have been deemed unreasonable for providers to bear on an ongoing basis. These costs will be reimbursed by the Lord Chancellor. It is important, however, for the costs of the interpretation, and any additional preparation time incurred by the

interpretation, to be calculated and notified to the Agency separately, so that the cost does not get passed onto the BSL client via the statutory charge. These costs should therefore be reported as part of the costs of assessment.

## 10.11: Court Fees

Court fees in Care cases would not generally fall to the Parent or Child in the proceedings as the respondents. However, where there is a need to instruct an expert there are instances where these may arise and will be allowable on assessment. For example:

- An application for a DNA test;
- An application to court for a hair strand or blood test;
- An application for any other expert report;

Please note that this list is not exclusive and any fee arising should be justified in the claim for costs to avoid a request for further information or assessment. Attention should be given to the individual circumstances to determine if apportionment of the fees is appropriate, for example, an application for a joint expert may need to be apportioned, whereas an application for a special guardianship order as an alternative to a care order would not (where the certificate allows this).

## 10.12: Court Fees for Assessment

For Claims, the EX80A/EX80B will constitute the evidence that the Court Assessment fee has been paid. No other evidence is required but a copy of the ledger indicating the payment may be provided as an alternative.

For POA's evidence of the Court Assessment fee will be required.

## 10.13: DNA Testing

The funding order and Remuneration Regulations set out a rate per test and an additional fee for reporting. The test includes testing of the father and child (plus mother if required). The amount would increase for each additional child tested. If there are a number of alleged fathers each father and child/children tested would constitute a separate test. The report fee is per report not per person.

*For a certificate issued on 01/06/2012 the applicable rate would be £315 for the test plus an additional fee of £90 making a total of £405. A further fee of £133 is allowable for each additional child tested.*

If there is no detailed breakdown on the invoice but the amount claimed is for the total of the test fee and the report fee this is reasonable without the need for a further breakdown although caseworkers should check the rates claimed are within the codified rate: e.g. if the invoice says “DNA testing £324”, this is reasonable as it represents the £252 test fee plus £72 report fee.

Where grandparents are being tested the provider should confirm why it was necessary for the grandparents to be tested. We would also expect alternative quotes to be sought and evidenced with the claim.

### **DNA Sample Collection Fees**

Where a sample fee has been charged a fee of between £50 and £90 per collection address would be considered reasonable. This will include any associated costs.

Where three samples are being collected of the mother, alleged father and child from the same address one collection fee of between £50-£90 would be considered reasonable. Where the DNA sample for the mother and child is collected at one address and the DNA sample of the alleged father is collated at a different address two sample collection fees will be payable. The invoice should detail that the collection took place at different addresses.

Factors that might point to the higher amount being charged could include difficulty in collating the sample from the client or the number of clients attending at the same address. This is not however an exhaustive list and we would expect providers to provide details to justify this.

### **Payment of DNA tests**

*S22 (4) AJA or S30 (1) LASPO*

[S20 \(6\) Family Law Reform Act 1969](#) confirms that the party who made the application for the test should generally pay the costs of DNA tests. Where the court makes an order on its own motion we would generally expect these costs to be split equally between the parties. In addition, please see [10.4: Apportionment between parties](#)

Where solicitors are claiming these costs, and the funded client is the respondent to the application for the DNA testing itself, we should not pay these costs unless justification has been provided.

*After consideration of the facts of the individual case, where the caseworker considers the apportionment is not correct, then where the claim is assessed by the LAA we will disallow these costs. Where the claim is assessed by the court caseworkers should reject these claims.*

## 10.14: Drug and Alcohol Testing

### Additional Guidance

#### 5.14- 5.17 Guidance on the Remuneration of Expert Witnesses

There are no hourly rates for drug/alcohol testing, and these are generally not itemised on a time basis. Where a report is ordered we require a breakdown of the work undertaken including any rate claimed and the time taken. These tests will commonly arise in Residence/Contact and Care cases and would normally arise by Order of the Court.

The court will specify on the order what they require each party to be tested for i.e. which drugs, length of time to be tested and the type of test it should be.

Although there are no hourly rates, the solicitors should only be requesting that the laboratories quote and undertake any testing in accordance what the court has ordered, i.e.: -

- Which drugs are being tested
- Length of time over which the testing should arise, e.g. three months; and
- The type of test that it should be.

Alcohol testing bracelets (for example, Scram X) may be claimed if this has been ordered by the court and it is not part of a therapy or a support programme.

### Assessment

We require the court order and the invoice to be submitted alongside the claim. The work undertaken must match that requested on the court order in relation to the three elements above for payment to be made.

The main inconsistencies that arise when applying for a request for testing from a laboratory are as follows:

The length of time the testing should cover – the standard period of testing is 3 months unless the court orders any other length of testing period (this should be specified on the court order).

The type of analysis/testing required – testing can be carried out as an Overview/Standard testing or on a Month-by-month/Rolling/Segmented testing basis. The overview/standard testing is where one sample is tested for the past three months. With month-by-



month/Rolling/Segmented testing a sample will be collected and tested on a monthly basis. This is a more costly method of testing, and unless the court order specifies this method of testing solicitors should only request testing on an Overview/Standard testing basis.

If the court specify the types of drugs that should be tested then the quote should match these drugs and no others.

When the court order hair strand testing for alcohol this will only be for FAEE and ETG testing, Liver Function testing will not be required. We would only expect to see Liver Function testing on the quotation when the court has specified this type of testing or when the court order states blood testing for alcohol. Where the court order states liver testing and the invoice confirms alcohol package this will be satisfactory.

If the solicitor requests a quote from the laboratories that matches that of the Court Order it will be justified on assessment/taxation, however where the solicitor accepts a quote that differs from the court order they will be risking a reduction on billing. Where the nature of the testing is not clear it should be rejected, where the nature of the testing or on assessment the amount is considered unreasonable the cost should be reduced.

Also note that any fees in respect of administrative support services are not payable by the LAA. This includes Split invoicing fees charged by laboratories.

### **Sample Collection Fees**

There is no codified rate for sample collection for drug testing although it is considered that the DNA sample collection fee is a comparative fee. A fee of between £50 and £110 (hair and blood) would be considered reasonable having regard to the fees payable on DNA testing and potentially more complex collection requirements. Where providers are claiming towards the higher end of the range this would need to be justified on assessment.

### **Payment on Account**

POA requests for drug and alcohol testing, requests are being rejected for hourly rates and the number of hours. This is inappropriate as there are no codified rates for drug and alcohol testing and the manner Companies bill is not by hour.

An invoice will be required, although the court order is not required. These amounts are not generally assessed within the POA process. As a general rule:

- We should not be rejecting POA's for an hourly rate and the number of hours as these are rarely specified.
- They should be paid as requested if the amount of the POA matches the invoice

## 10.15: Expert Administrative Costs

### Additional Guidance

4.24 and 6.61 Standard Civil Contract Specification 2018

Schedule 5(4) Civil Legal Aid (Remuneration) Regulations 2013

Any administration fee charged by an expert is considered to be irrecoverable against the fund - this includes but is not limited to:

- *a fee in respect of office space or provision of a consultation room*
- a fee in respect of administrative support services, such as typing services
- a fee in respect of courier services and
- a subsistence fee

## 10.16 Expert Witness Standards

### Additional Guidance

S6 Guidance on the Remuneration of Expert Witnesses

On 01/10/2014 changes were implemented in [Practice Direction 25B](#) to introduce standards for expert witnesses acting in family matters involving disputes about children. The standards apply to the following proceedings where the expert was instructed on/after 01/10/14:

- Care and Supervision
- Adoption Proceedings
- Private Law Cases relating to child arrangement orders
- Subject to any order made by the court, the LAA will only pay for expert witnesses in these cases where the experts comply with the practice directions.

Providers will need to confirm that the expert meets the standards either by annotating the claim form or in a supplemental note submitted with the claim. Where the expert does not meet the standards we require an order from the court which specifies why instruction of

an expert who does not meet the standards should be used in the case along with a copy of the experts CV.

## 10.17: Independent Social Workers

### Additional Guidance

7.180 – 7.181 Standard Civil Contract Specification 2018

The current rate for independent social workers (ISWs) is based on the rates paid by CAF/CASS. ISWs are not listed in the Remuneration Regulations, and they are instead paid in accordance with s7.181 and 7.182 of the Standard Civil Contract in line with the rates payable by CAF/CASS for the work.

In 2014 CAF/CASS introduced a national rate of £33 per hour. Accordingly, the LAA will allow claims for this rate in relation to ISW instructions that take place on/after 1 April 2014. Those instructions that took place prior to 1 April 2014 will continue to be remunerated at the previous rates, namely £30 p/h outside of London and £33 inside of London depending on where the case takes place.

There are no set rates for independent social work services in non-family cases. In such cases the LAA may use the family rates above as the starting point taking into account all the circumstances of the case and any evidence supplied by the provider to decide on the correct rate for each. This approach is detailed in the [Expert Witness Fees Guidance](#)

The contract confirms that the costs of and expenses relating to independent social work is not an allowable disbursement where such work is provided outside of England and Wales

## 10.18: Interpreters and Translation Costs.

### Additional Guidance

5.23 – 5.27 and 5.35 – 5.36 Guidance on Remuneration of Expert Witnesses

Point of Principle CLA 34

The guidance on remuneration of [Expert Witnesses \(6.20 -6.22\)](#) confirms that a rate of £100 per 1,000 words would be considered reasonable for translation as this is the rate that prior authority would not be required in a certificated matter. Please note this does not supersede the codified rates for interpreters which should be applied where applicable.

Additional guidance on interpreters can be found in [6.29 of the Guidance on the Remuneration of Expert Witnesses](#)

For translation we will require either the rate per word and number of words translated or the hourly rate and time taken. We will generally consider the hourly rate for interpretation to be a comparable rate to that used for translation.

### **Interpreters Charges**

For work undertaken from 01/04/2019, attendance and waiting at a hearing can be claimed at the codified rate for interpreters. It is considered that a rate of 2/3rds of the hourly rate is reasonable in respect of travel time in all instances.

### **Telephone Interpretation**

Where telephone interpretation is undertaken prior to 01/04/17 (as opposed to face to face interpretation) it has been agreed that a rate of between £42 p/h and £53.40 p/h is considered reasonable. This equates to between 70 and 89 pence per minute.

For telephone interpretation undertaken on or after 1<sup>st</sup> April 2017 the codified rate for interpreters will apply. As per the Civil Legal Aid (remuneration) (amendment) Regulations 2013 the current hourly rate is £25 for London and £28 for non-London.

In addition, please see [10.31: Transcription Fees](#)

### **Use of In-House Interpretation Services**

*Point of Principle, CLA 34*

The costs of a firm's in-house interpreter are not allowable as a disbursement or under profit costs. However, should the main fee earner with conduct of proceedings speak the same foreign language as the client, then this can be claimed as an attendance on the client. Provided no third-party interpreter has been used, this may also be taken in to account as a relevant factor for a discretionary enhancement (subject to the usual rules on enhancement of costs).

### **Minimum Charges**

Where an interpreter is claiming a minimum charge we would expect these to be justified on submission of either the claim or the prior authority/CW3 application. In order for us to make an assessment as to whether these costs were reasonable the provider would need to demonstrate that there was a scarcity of resource and therefore it was necessary to instruct an interpreter who claimed for that minimum charge.

This can be done by providing written evidence from at least three local service providers that they charge a 1hr minimum fee. Any justification or evidence provided must be dated within 12 months of the instruction of the interpreter. It is not sufficient for the provider to

state that this is a standard charge that is claimed on all cases. Where no justification has been provided we will assess to the actual time taken.

### **Interpreters Travel**

The actual time taken for an interpreter to travel to attend upon a client can be claimed. This is opposed to simply allowing the reasonable time to travel from the interpreter's registered office to the client. This is on the basis that an interpreter will often travel directly from one client to another throughout the course of the day and will not return back to the office in between attending upon clients. It is therefore considered reasonable to allow the actual time taken for an interpreter to travel from one client to another.

Despite the above in order to make such an allowance the invoice from the interpreter must clearly specify the details of the journey undertaken on a specific date, including the start and destination point. The Legal Aid Agency will not make an assumption in the event of claims for long journeys by an interpreter that a lengthy journey between clients has taken place. If specific details of the journey are not provided the default position will be to allow the reasonable time to reach the client's location from the interpreter's registered office.

## **10.19: Observations of Contact.**

### [Additional Guidance](#)

#### [5.1 Guidance on the Remuneration of Expert Witnesses](#)

Any assessment, for example from a psychologist or psychiatrist required to inform the decision of the court may be based on some observation of contact. However, the purpose of the report must be to express an expert opinion on risk and/or safety of contact in principle rather than any assessment of supervised contact itself and any contact centre costs or fees must be met elsewhere. We might therefore expect to see a psychiatrist observing one session of contact to inform the report more generally but the purpose of the report must not be to assess contact.

Guideline times for observations of contact can be found in [section 6.1 of the Guidance on the Remuneration of Expert Witnesses](#).

## **10.20: Prior authority**

A Prior Authority granted is a guarantee to pay the set rate (including above codified rates) up to the amount specified, but does not limit the total expenditure. If additional expenditure is incurred this can be justified upon assessment e.g. If prior authority is granted to a psychologist above codified rate say £150 per hour for 5 hours, anything over

and above the 5 hours could also be justified upon assessment although at the agreed rate of £150.

Where prior authority to exceed a codified rate is granted and the court directs for an addendum report or other additional work, an amendment to the original prior authority is not required. Any additional hours claimed should be justified on assessment. Where the court directs for a new and separate report, prior authority will need to be applied for afresh.

Where a claim is being assessed we may make an assessment below the prior authority, for example where

- The amount actually incurred is less than the prior authority (for example where less time was taken by the expert than originally expected, but they are still claiming an amount to the value of the prior authority)
- Cost limitation exceeded

## 10.21: Photocopying

The costs of in house photocopying will generally not be allowed as these costs are generally considered to form part of the office overheads. The exception to this is where there are unusual circumstances or the documents are unusually numerous.

Copies of over 500 pages will usually be considered exceptional.

Copying should be done at the lowest commercial rate – approximately 4p per copy (A4 size). Please note however that these are guideline rates and if the firm are not able to obtain copies at these rates this should be justified with reference to alternative quotes obtained

Number of Copies	Cost
1 to 5 Copies	10p each
6 to 49 Copies	8p each
50 to 199 Copies	7p each
200 to 499 Copies	5p each
500+ Copies	4p each

Where the copies are made by another party for copies of documents they provide this payment will usually be allowed on assessment subject to the costs being reasonable.

## 10.22: Process Server Fees

### Additional Guidance

#### 5.45 – 5.48 Guidance on the Remuneration of Expert Witnesses

For Process Servers in Scotland please see [10.34: Use of Disbursements in Jurisdictions Outside of England & Wales](#)

### Telephone Calls

It would usually be considered reasonable to allow a few telephone calls to facilitate the service of documents. Some process servers will claim a flat rate for these telephone calls which is reasonable charge provided the rate claimed is reasonable. The rate payable could be based on one unit of their hourly rate (similar to how solicitors claim)

Checks should be made however to ensure the telephone calls are not administrative and the reasons for the calls should be detailed by the process server to allow for an accurate assessment to be undertaken. These are generally claimable at 1/10 of the hourly rate.

### Swear Fees

Although not a requirement outside of committal and freezing orders, the court prefers any affidavit/statement of service to be officially sworn so the cost of the swear fee is allowable under Legal Aid so they can be certain the respondent has received and understood the order. The cost of doing so is set by whoever is available to administer the oath and is around £5 for one document and then a further £2 for any additional document. Where charges have been made for additional documents full details of what these documents are should be provided.

### Travel

Given the nature of the work undertaken by process servers it is considered that the hourly rate applies to time spent travelling. The process server should detail on their invoice where they are travelling to and from.

Generally, there is an expectation that an enquiry agent within either the locality of the court or respondent would be instructed. This approach is confirmed in 3.10 of the Cost Assessment Guidance 2013 which confirms that “It will seldom be reasonable to instruct an enquiry agent except in the locality where the work is being done”.

### Repeated Attempts at Service

Where the process server has attempted service on more than three occasions this should be justified by the provider/process server. We may also question whether substituted service was considered by the court.

### **Supplementary Costs**

Where additional costs are charged, such as preparing an invoice or uploading documents to a database, consideration should be given to whether the supplementary cost is something a privately paying client would be reasonably expected to incur. Where it is not considered reasonable, it should be assessed to nil and a right of appeal given. Where the court is the assessing authority and has allowed these costs, there is no need to question the costs further.

Time spent by a process server undertaking a risk assessment is considered to form part of their office overheads and is therefore not allowable on assessment. For claims assessed by the LAA these costs will be disallowed on assessment. Where the court is the assessing authority the claim will be returned to the provider for the work to be removed from the claim.

## **10.23 Psychologists**

Whether the child psychologist or the adult psychologist hourly rates is applied depends upon the purpose and nature of the assessment required rather than the type of case (i.e. public or private). For instance, where the parents are being assessed specifically on addictions the adult psychologist rate would usually apply. Where it is the child who is to be assessed then the child psychologist rate would usually apply if a child psychologist is to carry out the work.

If the main purpose is the assessment of the parents and that may include seeing the child with the parents, then the appropriate rate to be applied would be that of the adult psychologist.

The costs of therapy cannot be paid.

## **10.24: Psychotherapists**

### **Additional Guidance**

#### **5.12 – 5.13 Guidance on the Remuneration of Expert Witnesses**

There are no codified rates for psychotherapists and we would therefore need to consider if there was a comparable rate. Many psychotherapists have trained as ISW's and, where it is clear that the work carried out most closely fits that of an Independent Social Worker (ISW) then the ISW rate of £33/£30 may be applied.

A similar position applies to play therapists.



## 10.25: Police Disclosure

### Additional Guidance

#### 5.51 – 5.52 Guidance on the Remuneration of Expert Witnesses

We would usually expect an invoice in support of a claim for reimbursement of any fee payable to the police however many police authorities do not provide an invoice. In these circumstances the provider should confirm that in their covering letter and provide a copy of their ledger detailing the payment to the relevant police force.

For payments on account it will be sufficient for an invoice (or in its absence a ledger) to be provided.

## 10.26: Rates for Experts

### Additional Guidance

#### S2 Guidance on the Remuneration of Expert Witnesses Guideline rates – Annexes 1-5 Guidance on the Remuneration of Expert Witnesses

### Expert Rates prior to 03/10/11

There are no codified rates for experts for certificates applied for prior to 03/10/11. The codified rates can be used as a guide to what rate would be considered reasonable.

### Expert Rates for certificates after 03/10/11

Codified rates were introduced for experts for certificates issued on/after 03/10/11.

These are hourly rates and cannot be exceeded without prior authority. The maximum hourly rate applies to all work undertaken by the expert (except travel) including attendance at court, report writing, interviews with client. Payments on Account for experts should also be within the codified rates unless prior authority has been granted.

Reductions were made to some of the codified expert rates for certificates issued on/after 01/12/13. There were however no changes to housing disrepair surveyor fees or the rates for [cerebral palsy experts](#)

All rates are detailed in the guidance on the remuneration of [expert witnesses](#) and in Appendix 3.

Case Start Date (to and from)	Legislation
03/10/2011 and 31/03/13	<a href="#">Community legal service (funding) amendment No2 Order 2011 Schedule 6</a>
01/04/2013 and 01/02/13	<a href="#">Civil Legal Aid (Remuneration) Regulations 2013</a>
On/after 02/12/13	<a href="#">Civil Legal Aid (Remuneration) (amendment) Regulations 2013</a>

### London/Non-London rates for experts

As the rates differentiate between London and Non-London, this can cause issues identifying the appropriate rate. The guidance states that the address of the registered office determines where the expert is based and hence the rate paid.

However, where the expert has more than one office, the office closest to the client or Provider will be used to determine the rate.

Should the experts have a PO box address outside of the London Boroughs or have given their home address as their registered office and it is apparent that they are based in London, it is reasonable to conclude that the experts have more than one office and if the place of work in London is closer to the client or Provider, the London rate is applicable.

If there is any doubt whether the expert is within a London Borough, or otherwise, enter the postcode or address in the link, to clarify:

<http://local.direct.gov.uk/LDGRedirect/Start.do?mode=1>

### Guideline Rates

Annex 5 of the remuneration of expert witnesses provides guideline rates for some experts that are not covered by the remuneration regulations or where a higher rate may be payable due to a scarcity of these expert types.

### No expert Rate

Where an expert is not listed the LAA or the court will assess the rate payable. In considering the rate at which to fund the expert service, the LAA:

- must have regard to the rates set out in section for other experts, potentially are there experts of a similar nature.
- may require a number of quotes to assess the reasonableness of the rate payable.

We may also consider the work undertaken by the expert, whether the work is comparable to that of another expert and we will also consider the qualifications of the expert.

## 10.27: Risk Assessments

### Additional Guidance

#### 5.6 – 5.11 Guidance on the Remuneration of Expert Witnesses

Risk assessments within section 16A Children Act 1989 and undertaken by Cafcass officers or Welsh family proceedings officers are irrecoverable disbursements. This exclusion of risk assessments does not extend to specialist assessments of risk that require professional expertise which is beyond that held by Cafcass officers/Welsh family proceedings officers.

There is a set rate for specialist risk assessment expert services. For funding applied for between 01/10/2011 and 30/11/13 the applicable rate is £63 and for funding applied for after that date the appropriate rate is £50.40.

Caseworkers will need to examine the nature of the work undertaken in order to determine whether the expert service being provided is in fact that of a specialist risk assessment expert in accordance with guidance or, whether the expert is providing independent social work services.

The following combination of factors could point to a risk assessment being required:

- A court order in the proceedings specifies that a 'risk assessment' is required; and
- Work that is being done is over and above that requiring independent social work expertise. In considering this, caseworkers will need to look at the nature of the services being provided. For example, the following circumstances may require the expert service provided to be treated as a risk assessment:
  - There is a substantiated criminal allegation relevant to the proceedings in the immediate background of the case (e.g. a conviction for a sex offence or pending proceedings for this case; and
  - A finding of sexual abuse relevant to the case has been made by a court; and
  - A report is specifically required to address the risk posed as a result of the above factors.

All the above types of factors would need to be present in order to justify remunerating the expert services provided at the risk assessment rate of £63/£50.40 per hour. Only if prior authority is granted, can a higher hourly rate apply.

We do not routinely require court orders for risk assessments. If prior authority has been granted for a risk assessment then a check has been made by the prior authority team that the risk assessment fulfils the criteria

If prior authority hasn't been granted then a copy of the court order should be provided so that we can establish if the work fulfils the criteria for a risk assessment. For payments on account, where the rate of £63/£50.40 is being claimed an invoice stating that the social worker acted as a risk assessor will suffice.

Further guidance can be found in the [Risk Assessment Expert Fee Guide](#)

## **10.28: Solicitor Agents**

These costs form part of the solicitors profit costs and should be claimed at the applicable hourly rate or within the fixed fee rather than as a disbursement. These can be claimed direct under FAS if the advocate is registered with LAA as such. A Claim 5A should be submitted otherwise payment will be made on the corresponding Claim 1A.

## **10.29 Subject Access Requests**

### **Subject Access Requests – Copies of Records**

With the introduction of the Data Protection Act 2018 on 25<sup>th</sup> May 2018 the position in relation to charging for copies of records under a subject access request has changed. From that date anyone can make a request to a company or organisation asking for access to the personal information it holds on them and, this right can be exercised at any point for free.

Where the organisation considers that a subject access request is “manifestly unreasonable or excessive” there is provision for a charge to be made.

This will particularly impact on charges for a medical record. Where a client is requesting their medical records then this should be done under a subject access request. There will be circumstances where a doctor's surgery will not treat a request as a subject access request and will charge e.g. when solicitors seek them for the purpose of court assessments arising from a court order for expert assessment.

Requests for police disclosure are often for full disclosure including third party information which means the costs of disclosure are generally claimable as they contain information that relates to individuals other than the client. These requests are made pursuant to the

Family and Police protocol or a court order where the police fail to comply with the protocol. Further guidance can be found in [10.25: Police Disclosure](#)

For information disclosure requests that incur a fee, we would expect to see details of the fee in the case file as fees vary and a justification of a charge being made. This may be in the letter from the charging organisation, a copy of information from their website or a short note from the provider on the file.

Where requests for information incur a charge because they fall outside the scope of the Data Protection Act 2018 and any Relevant General Data Protection Regulations, we would expect to see an invoice, covering letter or a copy of the ledger from the organisation disclosing the information which details the payment.

Further details can be found on the [Information Commissioners website](#).

## 10.30: Surveyor Fees

### Correct Rate

The Payment Annex and Remuneration Regulations confirms that the correct rate for surveyors fees are paid at a lower rate for non-disrepair cases.

For certificates issues between 3<sup>rd</sup> October 2011 and the 1<sup>st</sup> December 2013, the rate is set at £50 per hour;

For certificates issued on/after 2<sup>nd</sup> December 2013, the rate is set at £40 per hour.

For housing disrepair cases see below.

### Housing and Disrepair Cases

The type of diagnostic and investigative survey undertaken in housing disrepair cases will generally involve more complexity than a housing valuation. It is therefore accepted that a surveyor acting as an expert witness in a housing disrepair matter would meet the exceptionality criteria required to exceed the codified rate for property valuations.

As a result from 01/04/2013 the following rates were introduced for surveyors in housing disrepair cases

<b>Outside London</b>	<b>Up to £85 per hour</b>
<b>In London</b>	<b>Up to £115 per hour</b>

## 10.31: Transcription Fees

There are no codified rates for transcription fees and therefore any assessment will be based on

- Whether it was reasonable to incur the costs, based on the specific circumstances of each case and;
- If the costs are reasonable and proportionate.

We will generally require a copy of the court order requesting the transcription along with the invoice, which should detail a breakdown of how the costs were reached. In cases where there has been no order for transcription (for example in relation to an appeal), the provider should detail the reasons why an order cannot be provided.

Further guidance on transcription fees can be found in [5.28-5.30 of the Guidance on the Remuneration of Expert Witnesses](#) and also in section [10.18: Interpreters and Translation Costs](#).

## 10.32: Travel and Subsistence Costs

### Local Experts

In respect of disbursements fixed rates have been introduced for experts that must be applied; however, on assessment the expert's context and the reasonableness of their fees must also be considered including whether it is more appropriate to instruct a more local expert. The Cost Assessment Guidance indicates that 'payment for disbursements that are more expensive by reason of the distance of the client from the provider's office will be limited accordingly'.

In respect of this 'localism' issue, if the Provider is experiencing difficulties in instructing experts in the locale this needs to be made apparent in the bill submissions. This will allow an informed judgement as to the reasonableness of any additional costs arising.

On a practical level this is a question on assessment rather than a reason to reject a claim. If it was considered appropriate to raise this as a query this would be a non KIP reject reason as outlined in our reject checklist.

### Travel Rate for Experts

The maximum hourly rate paid to experts for travel time is £40. It would generally not be considered reasonable to pay more than the experts applicable hourly rate and, whilst a discretionary decision, it is considered that 2/3 of the hourly rate would be considered reasonable (capped at £40). The only exception is [Travel in respect of process servers](#)

Example 1:

*A psychologist has an hourly rate of £117. They have claimed their travel costs at £78 which equates to 2/3 of their hourly rate. As this exceeds the maximum hourly rate for travel of £40 this should be reduced to the £40 maximum*

Example 2:

*An independent social worker has an hourly rate of £30 (they were instructed prior to 01/04/14). They have claimed their travel costs at their hourly rate of £30. It is not considered reasonable to pay the full hourly rate for travel costs and a payment of 2/3 of the hourly rate (£20 per hour) is considered reasonable.*

*The £40 maximum expert travel rate is not considered appropriate as this is above the hourly rate charged by independent social workers*

**Overnight Expenses for Experts**

For disbursements arising from third party instruction (e.g., an expert), provided their invoice details the expenses, this will be sufficient evidence to consider payment. However, it should contain sufficient information to allow an understanding of why the travel and overnight expense was considered appropriate and consideration should be given to the guide rates for accommodation detailed below.

There is no provision for payment of subsistence costs to an expert – [Please see 10.15: Expert Administrative Costs](#)

**Vouchers**

Any claim for disbursements of £20 or over (including VAT) should be evidenced. For travel costs this will be the receipt or ticket and, where mileage is being claimed this will be the ledger and file note detailing the number of miles.

Only standard class rail costs are payable. If no ticket is available for the journey taken then alternative proof of the disbursement supported by evidence that the amount claimed represents the appropriate standard class fee will be acceptable (e.g. screenshot from ticketing website)

Claims for mileage must specify the destination and mileage involved to allow verification of the distance claimed. When submitting a claim (as opposed to a payment on account) justification should also be provided as to why it was reasonable to travel by car rather than public transport.

**Provider Travel and Subsistence Claims.**

Where travel and/or accommodation is allowed, the following guide rates apply:

Standard Mileage Rate	£0.45 per mile maximum
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Public Transport Mileage Rate (applicable where public transport is available but the provider chooses to drive)	£0.25 per mile maximum
Expert Travel (hourly rate)	£40 maximum
Overnight Hotel – London, Birmingham, Manchester, Leeds, Liverpool or Newcastle-Upon-Tyne city centres	£85.25
Overnight Hotel – elsewhere	£55.25
Overnight (other than at a hotel)	£25.00
Night Subsistence Allowance ( <i>not payable for experts</i> )	£21.00
Personal Incidental Allowance ( <i>not payable for experts</i> )	£5.00
First class travel will not be allowed unless it is more cost effective than standard travel	

All accommodation, night subsistence and personal incidental expenses will need to be evidenced by a receipt in accordance with current validation processes. Where travel is apportioned across a number of certificates this should be noted on the claim form or on an attendance note. This will help to avoid any queries when the claim is being processed.

If you look at the cost assessment guidance these rates at first sight appear at odds with what the guidance indicates, however the £111.25 and £81.25 rates quoted include the night subsistence allowance of £21.00 and the personal incidental allowance of £5.00. Alternative rates may be accepted by the LAA in exceptional circumstances.

### Taxi Costs

Where taxi costs are claimed but public transport alternatives are available claims may be assessed to the cost of public transport unless evidence is provided that this was unavailable or inappropriate.

### Mileage

The mileage rate of 45p is a maximum rate. The civil contract specification confirms that providers can only claim whatever disbursements have actually been incurred and



therefore where the mileage rate incurred on the ledger is lower, then the lower amount should be allowed.

Please note that the mileage rate for travel takes into account the costs of fuel (petrol/diesel) and therefore no separate claim should be made for fuel costs

Issue Date	Travel Rates
Certificate issued pre-9 <sup>th</sup> May 2011	<ul style="list-style-type: none"> <li>• Solicitor Mileage: capped at 45ppm</li> <li>• Client Mileage: capped at 45ppm</li> <li>• Expert mileage: no maximum, subject to reasonableness</li> <li>• Expert travel rate: no maximum, subject to reasonableness</li> </ul>
Certificate issued post 9 <sup>th</sup> May 2011	<ul style="list-style-type: none"> <li>• Solicitor Mileage: capped at 45ppm</li> <li>• Client Mileage: capped at 45ppm</li> <li>• Expert mileage: capped at 45ppm</li> <li>• Expert travel rate: capped at £40 per hour.</li> </ul>

### Congestion Charge

#### Additional Guidance

3.20 – 3.22 Cost Assessment Guidance 2018

The congestion charge may only be claimed as a disbursement where it is incurred exclusively in relation to the case or matter. Fee earners of providers based inside the charging zones will need to provide evidence that they would not have incurred the charge if it were not for that particular fee earner case work, given that if a fee earner uses a private car to travel to/from his or her office inside the zone the daily charge will be triggered by his or her normal journey to/from work.

Consideration should also be given as to whether travel by car was the most appropriate and cost-effective mode of travel.

No payment can be made without evidence that the congestion charge has been paid for the date claimed.

### **Funded Client Travel Costs**

#### Additional Guidance

3.23 – 3.32 Cost Assessment Guidance 2018

Table 4.24 of the Civil Specification Contract confirms that client's travel may only be claimed in the circumstances as laid out in the Cost Assessment Guidance. Where claimed, these costs should be included as disbursements within the solicitors' bill.

The rules for payment of funded client travel expenses differ depending on the situation.

Attendance at court: The funded clients travel expenses will be paid where it is reasonable for the client to attend court. The guidance states this is as a witness of fact and we would expect to see justification as to why this is considered reasonable. These same principles apply for third parties who are required to attend court as a witness of fact.

Travel to attend experts: These are paid where it was necessary for client to attend the expert and where the client cannot afford to pay for visiting the expert (the client is impecunious). When considering whether the costs should be allowed we would need to consider the cost of the travel, distance to the expert and the method of travel.

Where travel costs are payable we should consider the most reasonable form of travel, this is usually public transport. Any travel by taxi will require justification.

## 10.33: Local Travel to Court – Travel Expenses

*3.15 of the Cost Assessment Guidance confirms:*

*Paragraph 5.22(3) of the Practice Direction to Rule 47.6 CPR (Civil Procedure (Amendment) Rules 2013) states that local travel expenses incurred by legal representatives will not be allowed on assessment. What is "local" will be a matter in the discretion of the court dealing with the case at the relevant time, but as a general rule, will be taken to mean within a radius of 10 miles radius of the court. However, courts will generally take a flexible approach and may allow travel expenses where local public transport is known to be poor. Any claim for travel expenses within this 10-mile radius should be supported by a file note giving the particular reasons for the claim.*

On the basis of the above we will not pay for any travel expenses to court where the journey is within a 10 mile radius of the court unless justified on the claim. If there is no justification any costs that have been incurred should be assessed to nil. This applies to both solicitor and counsel claims assessed by the LAA. If costs are assessed by the court and travel within this radius is allowed, this will be accepted by LAA.

Where mileage has been apportioned (and therefore appears to be below 10 miles) the provider should note this clearly on the claim.

Time spent travelling can be paid regardless of distance subject to reasonableness tests. This will be paid at the applicable hourly rate for travel and waiting. Further details on travel time can be found in [section 2.8](#)

It has been agreed following discussions with provider representative bodies that the local travel guidance will only apply to matters started on/after 01/09/14.

Question:	Answer:
What is "local" travel to court?	Local travel is classed as a journey to court that is 10 miles or less from your office to the court you are travelling to.
Is the local travel rule applicable to a 10-mile (or less) return journey or a one way journey?	Local travel is classed as a 10 mile or less one-way journey. It is not calculated on the distance of a return trip. For example, if your local court is 7 miles away from your office this is the distance that is used for calculating whether travel costs are claimable or not. The return trip of 14 miles is not the distance used and in such an example travel costs would not be claimable given the one-way journey to court is less than 10 miles.
Does the local travel rule apply to journeys to locations other than courts that are less than 10 miles away from my office?	No. The rule only applies to journeys to court. Travel expenses incurred as a result of journeys to other destinations within 10 miles of your office are potentially remunerable, subject to the usual reasonableness rules and necessary documentary evidence (e.g. travel to attend upon a client in prison based less than 10 miles from your office).
What about journeys that are above 10 miles, can I claim travel costs for such journeys?	Yes. The position in respect of non-local travel to court (i.e. one-way journeys to court in excess of 10 miles) remains unchanged and therefore the relevant travel costs are remunerable.
What are travel costs?	Section 3 of the CAG relates to disbursements only. Therefore, disbursements incurred as a result of journeys to court of less than 10 miles are not remunerable. This includes the following (but is not exhaustive): <ul style="list-style-type: none"> <li>Mileage</li> <li>Train tickets</li> <li>Bus tickets</li> <li>Taxi fare</li> <li>Ferry tickets</li> </ul> Parking and tunnel costs are payable
Can I claim my travel time then?	Yes. If you are undertaking a journey to court that is less than 10 miles you can claim the time the journey takes as travel within your profit costs in the usual fashion (please note that for the FAS exceptional travel bolt-on, it remains 25 miles). The time taken should be claimed at the appropriate hourly rate for travel and waiting and is subject to the usual reasonableness provisions and fee scheme rules.
Can I claim my car parking costs?	Yes. If you travel to court in your car and the journey is less than 10 miles you can still claim the cost of car parking as a disbursement. This is due to the fact that car parking is a disbursement that is incurred irrespective of the distance of the journey to the relevant court.
If I drive to court 8 miles away from my office, park in a public car park, represent my client, and	You can claim the following: <ul style="list-style-type: none"> <li>Profit Costs</li> <li>Time taken to travel to court</li> <li>Time spent at court (attendance, waiting, advocacy etc.)</li> </ul>

then drive back to my office what can I claim?	Time taken to travel back to your office Please note, as above, this does not affect the rules for payment when the fixed fees or FAS applies. Disbursements Parking Costs Mileage for the journey to court cannot be claimed in accordance with CAG 3.14 as the journey each way is less than 10 miles.
If I drive to a court that is based 11 miles away from my office can I claim my travel disbursements?	Yes. Local travel is defined as a one-way journey of 10 miles or less. If the journey is 11 miles it falls outside of this definition and travel disbursements can be claimed in the usual fashion.
If the journey to court is above 10 miles from my office can I claim the expenses in respect of the full journey or are the first 10 miles non-claimable.	You can claim your travel disbursements in such instances for the full distance of the journey. When travelling to a court that is over 10 miles away from your office the full travel disbursement can be claimed and it is not necessary to disregard the first 10 miles.
When did this rule become effective?	The rule became effective for certificates issued from 1 <sup>st</sup> September 2014 onwards.
What about certificates issued prior to this date?	The rule does not apply and disbursements incurred as a result of travel to court are remunerable irrespective of the distance travelled, subject to the usual reasonableness and documentary evidence provisions.
Does the local travel to court rule include travelling to Tribunals within 10 miles of my office?	No. Tribunals do not fall under the remit of the CPR and are governed by The Tribunal Procedure Rules. The guidance at CAG 3.14 does not therefore extend to travel to Tribunals and travel costs can be claimed subject to the usual rules irrespective of the distance of the journey to the Tribunal. Please note that this is a change of approach from our initial guidance on this matter issued in September 2014.
My journey to court is less than 10 miles but is a particularly difficult trip to make. I note the wording in CAG 3.14 allows for discretion in respect of difficult trips. Can I claim my travel costs in such instances?	CAG 3.14 does contain scope to allow travel costs in respect of difficult trips. If you feel that the trip to court of 10 miles or less is particularly difficult and should therefore be allowable you should provide justification as to why you feel this is the case with your claim (attendance note, covering letter etc.).
Are there any exemptions?	No. Only the above.

## 10.34: Use of Disbursements in Jurisdictions Outside of England & Wales

The use of an expert outside of the jurisdiction of England & Wales is allowable from the fund subject to the usual rules on reasonableness and proportionality.

As the costs are incurred in a foreign jurisdiction, then the codified rates applicable to experts are not enforceable. However, the codified rates can be used as a comparator to determine the reasonableness of any claim.

This does not affect the LAA's position with Independent Social Workers for work undertaken in jurisdictions outside of England & Wales, which cannot be paid under any circumstances as detailed in 7.182 of the Standard Civil Contract Specification 2013

Please also see [10.7: Counsel or Solicitors as Experts](#) for the use of legal experts in foreign jurisdictions

### **Process Servers in Scotland**

Where a client is required to serve papers on an opponent based in Scotland, the serving of papers is undertaken by Sheriff Officers or messengers-at-arms. They charge flat rates that are set by statute in Scotland so it is unlikely a breakdown of any mileage will be provided. As the costs are incurred outside the jurisdiction of England and Wales, the LAA is able to accept these invoices. Costs should be checked against:

[Act of Sederunt \(Fees of Sheriff Officers\) 2013](#); or

[Act of Sederunt \(Fees of Messengers-at-arms\) 2013](#) as applicable

# 11: VAT

## Additional Guidance

### s4 Cost Assessment Guidance 2018

It is not for the LAA to determine the VAT status of individual cases. Any queries that a provider has on VAT in individual cases should be referred to Her Majesties Revenue and Customs (HMRC)

### VAT Rates and applicable dates

#### *Section 4.37 Costs Assessment Guidance 2018*

On Bills the VAT calculation is based on the date of last progressive work undertaken as detailed in the claim form excluding bill preparation. In some circumstances a firm may elect to use the VAT rate that was applicable when the work was undertaken, particularly with true disbursements. In these circumstances caseworkers may see split rates.

Applicable VAT Period	Rate
1991: forward	17.5%
1/12/08 - 1/1/10	15%
1/1/10 - 4/1/11	17.5%
4/1/11: forward	20%

### VAT on disbursements

#### *S4.7 – S4.20 Costs Assessment Guidance 2018*

It is the responsibility of the Solicitor to determine the basis of a claim for VAT either as a true disbursement or not ([paragraph 4.14 Costs Assessment Guidance](#)). They will then claim the sum on the claim form. Although true disbursements are claimable inclusive of VAT the LAA requires a breakdown of the fee to show VAT separately. This is so the LAA can confirm the correct or reasonable hourly rate has been claimed by the expert under the [CLS \(Funding Order\) \(Amendment No 2 2011\)](#).

The following should be considered upon receipt of a claim

When caseworkers consider an item they will not be determining the decision from the solicitor to claim VAT or whether the individual expert is VAT registered

The caseworker shall verify only that the VAT rate applied is within those that can accurately be sought. This would be either:

- the VAT rate claimed at the time the expert invoiced, or
- The VAT rate at date of final work.

As a general rule, travelling expenses incurred by a provider in the performance of his or her clients instructions are not VAT disbursements and must be included as part of the provider's overall charge. This means that they are not true VAT disbursements, but are subject to VAT at the same rate as for profit costs unless the provider is not VAT registered.

VAT on travel		
Goods or Services	VAT rate	More Information
Houseboat moorings	Exempt	<a href="#">VAT Notice 742</a>
Parking spaces or garages supplied with houseboat moorings	Exempt	<a href="#">VAT Notice 742</a>
Passenger transport in a vehicle, boat or aircraft that carries not less than ten passengers	0%	<a href="#">VAT Notice 744A</a>
Tolls for bridges, tunnels and roads operated by public authorities	outside the scope of VAT	Privately-operated tolls for bridges, tunnels and roads are standard-rated  <a href="#">Update 1 to VAT Notice 700</a>

Rail fares are 'zero rated' so therefore it is unlikely that we will pay double VAT on travel

Example:

*Train ticket bought for £50*

*Solicitors can claim from LAA £50 + VAT*

*Rail fares are zero rated on VAT and therefore solicitors can claim VAT in addition as the rail fare doesn't include VAT.*

**VAT in Cases Where the Client does not have the right to reside in the UK.**

*S4.23 – S4.35 Costs Assessment Guidance 2018*

Where a funded client's right to stay in this country has not been determined the costs of any legal services will not attract VAT, as they are deemed to be supplied in the client's place of residence. VAT is not claimable on any case unless the client has residential status. Even where a client may be physically present in the UK this doesn't mean that the UK is their 'place of residence'. Their place of residence can only be in the country from which they originated, or where they have a right to remain. ([4.23 Cost Assessment Guidance](#))

Once an individual has been granted leave or permission to remain in the UK VAT will be applicable even if they "overstay"

Q: Is VAT claimable on detention centre standby claims?

*A: Where a client is detained this is because they do not have a right to reside in the UK or because they do not have any status. Their place of residence would therefore be considered to be their country of origin and so VAT would not apply.*

Should leave to remain be granted, VAT is triggered for work undertaken from that point, it is not retrospective for the whole of the work incurred. No apportionment should be necessary unless other work is done after the determination of the right to stay, when the client would be resident and VAT chargeable. For controlled work, if a client acquires residential status during the course of a case, then VAT can be claimed from the start of the next form of service. This approach has been adopted due to the billing method on controlled work.

Q: If temporary leave to remain is granted during legal help but the matter proceeds to CLR what VAT can be claimed?

*VAT can be claimed for work undertaken under CLR as the client has leave to remain. No VAT can be claimed for work undertaken under legal help (even for work undertaken after the grant of leave to remain).*

### **VAT and Interpretation Costs**

The general position on the treatment of the costs of interpretation services is as follows:

Where the interpreter is instructed to allow the provider to communicate with the client, the service is supplied to the provider, as part of his or her supply of legal services to the client. The costs of the interpreter will not be viewed as a true disbursement. The provider will charge VAT on these services to the client (LAA) if and only if the provider is registered for VAT.

Where the interpreter is instructed to allow the client to communicate with the provider, the interpretation is viewed as being provided directly to the client. The costs of the



interpretation will constitute a true disbursement for VAT purposes. VAT will be chargeable if and only if the interpreter is VAT registered.

The LAA's approach on assessment will be to assume that the client has been the recipient of interpretation services. Therefore, the fees of interpreters will always be treated as a true VAT disbursement. In instances where there is the potential that VAT will not attach, it is the provider's job to provide evidence and justification for why VAT should attach.

#### Interpretation where the client has no right to reside in the UK

Whether or not it is supplied in the context of legal services, interpretation is viewed as a service that is supplied in the physical location where it takes place, irrespective of the place of residence of the client. Hence VAT will be chargeable if the interpreter is registered for VAT.

Where a provider is not registered for VAT and is unable to reclaim from HMRC any VAT it incurs, it should take the approach of passing the gross fees of the interpreter, inclusive of VAT, directly on to the LAA ([paragraphs 4.17 to 4.20 Costs Assessment Guidance](#)).

#### **VAT and services abroad**

VAT is claimable at the country in which the service was provided.

For example, if a toxicology test is undertaken in France, the toxicologist is subject to VAT in France, and the applicable rate for that country rate would apply.

#### **Counsel's VAT**

Counsel Fees can attract the rate applicable at the time the service was provided, however they can also elect to apply the rate at the time that the total bill is presented.

# 12: Claims Assessed by the Court (Taxed Bills)

[Additional guidance can be found on the Legal Aid Training and Support Website](#)

- [Court Assessed Bill Advanced Guide](#)
- [Court Assessed Bill Quick Guide](#)

Please also see 13.2: Rights of Assessment

## 12.1: Costs and Scope Limitations

### Scope checks on a taxed bill

Checks should be made in the bill that

- Work has not been undertaken before the start of the certificate or after the withdrawal of the certificate
- Work has not been undertaken in the intervening period where there is a gap between the expiry of the emergency certificate and the start of the substantive certificate
- Work has not been undertaken whilst a show cause is in place
- Work undertaken relates to the proceedings the certificate was issued for

### Scope limitations

When scope limits are exceeded in a bill assessed by the court

The assessment certificate represents the court's view of the allowable costs which, is binding on us only to the extent that our contract provides that it is binding – it does not require us to pay costs outside of the scope of the certificate.

There is no provision for a mixed LAA and Court assessment of a bill; the LAA cannot carry out a further assessment to override an assessment carried out by the Court. The assessment by the court informs the amount payable under the contract and is binding on both parties in certain respects (essentially reasonableness and proportionality). It does not ultimately bind the LAA to pay the final assessed amount. The contract is clear that,

notwithstanding any court assessment, we will only make payments within the terms of the contract.

Hence, if a claim is clearly outside the terms of the contract – e.g. wrong rates, outside the scope of the certificate or for work that was not carried out (e.g. because there was nothing to check in relation to the provisional assessment) then there is no provision to make payment.

In order to make this decision we must be clear that the costs are truly outside of the scope of the funding giving rise to a contract breach in seeking payment for such work. If we can't identify that the work was truly not payable under the contract, then we have to pay according to the detailed assessment

Where a claim is submitted containing work that is out of scope of the certificate, in the first instance, this will be returned requesting that the claim be amended to remove this work. It is not necessary to resubmit the bill to the court for assessment or have the assessment certificate updated. We would not refund the provider's extra costs arising from this as it is due to their submitting a defective bill in the first place and there is no right of appeal in this respect as the refusal to pay arises from a contract breach rather than an assessment by the LAA.

Where there is a continued disagreement over scope the LAA will pay the costs it believes to be within scope and cap/disallow the out of scope costs within the terms of the contract to prevent numerous rejects of the same bill for the same issue. There will be no formal right of appeal as the LAA is not the assessing authority. However, the issue can be considered through the firm's Contract Manager should the matter not be resolved.

### **When costs limits are exceeded in a bill assessed by the court**

#### [Additional Guidance](#)

#### [11.3 Costs Assessment Guidance 2018](#)

As the LAA does not have the power to undertake any assessment of a taxed bill the claim must be limited to the costs limit. Notification should be sent to the provider (via remittance or separate letter/notification) and memo noted (as best practice) confirming costs have been limited. For paper claims the amount payable should be calculated manually and the adjusted/limited amounts paid. For claims within CCMS an overall adjustment should be undertaken.

## 12.2: Costs of Assessment

### Additional Guidance

15.14 – 15.21 Cost Assessment Guidance 2018

The costs of assessment are exempt from the statutory charge and cost limit calculations.

Work that can be considered to form part of the costs of assessment:

- Completing N258A (request for detailed assessment),
- Letter out to Court,
- Diarising,
- Completing EX80A/B/Legal Aid Assessment Certificate
- Drawing up the bill of Costs following assessment
- Attendance on the detailed assessment
- Time Spent Checking Any Provisional Assessment

The following items are not considered to form part of the costs of assessment

- Drawing up the Bill of Costs
- Completing claim 1/1A/2
- Claiming for Provisional Assessment

The allowance for checking a provisional assessment can only be granted in the event that a provisional assessment has been made of the substantive costs. If a claim for checking a provisional assessment is included in a bill for assessment it will not be payable if the costs are allowed as claimed. This work is allowable only on the basis that the provider is giving consideration as to whether to request a full detailed assessment hearing.

In order to pre-empt a provisional assessment, it is appreciated that providers will include time for checking/considering provisional assessment, calculating effect of any reductions made, preparing detailed request assessment and attending detailed assessment hearing in the Bill of Costs before submitting for assessment. Where the claim is assessed as

drawn, providers should ensure that these items are removed from their costs prior to submission to the LAA and assessment certificate amended accordingly.

Where no provisional assessment has taken place and costs have been allowed as claimed, an allowance can be made where a provider is checking the claim after detailed assessment to ensure it is correct prior to submission to the LAA. In these circumstances, providers should not claim time spent as “checking provisional assessment”, but make it clear the time spent relates to “checking the bill of costs” for the purposes of payment and statutory charge calculation, amending the Bill of Costs to remove reference to “checking provisional assessment”

For paper claims where costs of checking a provisional assessment have been incorrectly claimed we will cap these costs off the claim rather than returning for the provider to remove from their claim. No allowance is payable in respect of checking an assessment by the LAA since no payment is allowable in respect of such assessments generally – where this has been claimed incorrectly the claim should be returned with a request that the provider remove these costs from the claim.

### Legal Aid Exemption

When entering LAEXEMPT summary bill line on CIS caseworkers should ensure that they only use one line to enter the LA Exempt costs, adding all LA Exempt costs together and including in the one line. By only using one bill summary line for this entry it will ensure that any balancing and refunds needed on the certificate can be correctly actioned

## **12.3: Recording Date of Assessment**

When processing Taxed Bills – Claim 1’s or Claim 2’s we must record on memo pad the date of the assessment of the Costs. This will normally be the date on the Assessment Certificate or may be found within the Taxed Bill.

The reason for this arises from our authority to recoup POA. This arose from the judgement in *Legal Services Commission v Henthorn*

## **12.4: Documentation Required**

### **Assessment Certificate**

Assessment certificate must be provided

An EX80A is required when

- The claim is paid at hourly rates. This does not include those cases where the case escapes the fixed fee scheme

- There are inter partes costs. This includes fixed fee cases.

In the following situations an EX80B is required

- Cases that fall within or have escaped the fixed fee schemes
- Cases excluded from PFLRS/CPGFS but that fall within FAS

### **Bill of Costs**

An annotated copy of the bill of costs must be provided. If the court no longer returns annotated copy taxed bills where the costs have been assessed as drawn, we can accept a letter from the court confirming the amount allowed on assessment with a non-annotated copy of the bill of costs. This is also confirmed in the taxed bill reject checklists.

## **12.5: Claim Incorrectly Assessed by the Court**

Where the claim has been erroneously sent for assessment by the court, the claim should not be rejected to the provider for re-drawing. The principles on assessment undertaken by either the court or the LAA should be the same. As such, the LAA will consider any bills incorrectly assessed by the court for payment provided that all the costs are allowable per the Contract and Cost Assessment Guidance, subject to the following points:

- The Assessment Fee will not be allowable as it should never have been incurred. This should be removed from the claim by the caseworker and notification sent to provider explaining why along with a reminder that the claim had not passed the LAA's assessment limits;
- Where there are any issues arising from the court's assessment, such as having allowed work beyond the scope limitations or terms of the Contract, then the claim will need to be rejected to the provider to be re-drawn on an LAA claim form and assessed in full.

## **12.6: Breakdown of advocacy costs**

Where the solicitor has undertaken advocacy under the FAS scheme each hearing must be entered individually on CCMS. This applies to all claims submitted from 30/10/2017.

# 13: General Claiming

[Additional guidance can be found on the Legal Aid Training and Support Website](#)

- [Submit an LAA assessed bill](#)

## 13.1: Submission of the Claim

### Copy Documentation

Photocopied documentation can be accepted where the provider can confirm they hold the original paperwork on file in case of audit. This applies to all documentation, including claim forms, EX80a/b forms and Advocates Attendance Forms.

For paper claims where the claim has been mislaid we will accept a copy of the claim and enclosures. The solicitor must detail the reasons for submitting a copy claim and they must resign the form

### Electronic Signatures

Where a copy of the original paper claim is submitted electronically (for instance following a request for the form via e-mail) the scanned copy of the original signature is acceptable. If a signature and date is not provided, then the claim form cannot be accepted and must be rejected to obtain the same. Please note that the name in the signature section must not be the name of the firm with ownership of the matter.

### Electronic Documentation

Guidance on submission of documentation can be found in the following places. Providers should ensure that any documentation submitted is in a readable format.

[Additional guidance can be found on the Legal Aid Training and Support Website](#)

- [CCMS Quick Guide – Uploading Large Bundles](#)
- [CCMS quick Guide - Submitting Electronic Evidence](#)

Further guidance can be found on the legal aid pages on gov.uk

- [Secure File Exchange Guidance Page](#)
- [Model File Submission Guidance Page](#)
- [News Article – Guidance on Removable Media](#)

### **Incorrect Rates**

Where the incorrect rate has been claimed then the claim should be returned for the provider to amend to the correct rates

### **Incorrect Totals**

For paper claims where the totals page has been added up incorrectly for example where there is a calculation error or letters and calls have been omitted from the claim these cannot be changed by the processing caseworker. The solicitor will need to provide an updated totals page of the claim form.

### **Supplemental/Adjustment Bill**

Where a final bill has been paid but the solicitors have omitted to include something on that bill we will only accept supplemental bills in exceptional circumstances and it will be for the provider to justify why we should accept an amended claim.

When submitting their claim there is an obligation within the contract for the provider to ensure that the claims submitted are correct and properly completed. The following points should be considered before allowing the submission of the claim

If the client has a financial interest in the claim then the agreement of the client should be obtained before accepting a further bill

If a refund has already been made to the client no further claims can be accepted

If the claim has been assessed by the court the claim will need to be reassessed by the court and the assessment certificate amended. As this was an error by the solicitor then we will not pay for any additional court fee.

With the transfer of court assessed claims to the LAA additional claims for disbursements may be considered by the LAA. Any claims for omitted profit costs will still need to be considered by the court as this may result in the original assessment being reopened.

For paper claims, where we are paying an amended claim then the entire claim should be resubmitted with any previous payments being recouped. Supplemental claims must be submitted this way so it can be confirmed there is no loss to the Legal Aid Fund. Any not submitted as above run the risk of being refused.

For electronic claims we will require an adjustment bill to be submitted detailing the costs that you wish to claim.

[Additional guidance can be found on the Legal Aid Training and Support Website](#)

- [Adjustment Bill Quick Guide](#)



## Recoupment

Where monies are being recouped we should inform the provider (solicitor and counsel) in writing of the recoupment or adjustment to their claim.

## Recoupment of Payments on Account

Where we are processing an interim claim and we are able to match payments on account to that specific claim we should recoup these payments on account on payment of that claim.

## 13.2: Rights of Assessment

The Legal Aid Agency right to assessment

Additional guidance can be found in the following documents

- 6.36 – 6.37 Standard Civil Contract Specification 2018
- S14 Costs Assessment Guidance 2018

Further support can be found on the Legal Aid Training and Support Website

- [Advanced Guide: Bills formerly assessed by the court](#)

Previously the court would assess civil proceedings that concluded in front of a District Judge or higher, where the assessable costs incurred were over £2,500. Providers may now choose to continue to follow this process or have your claim assessed by the LAA. The only exception to this relates to inter partes costs which continue to be assessed by the court

Scenario	Assessing Authority
Proceedings have not been issued	Claim will be assessed by the LAA
Proceedings conclude in the magistrates/family proceedings court	Claim will be assessed by the LAA
Claim is for a fixed fee (plus any disbursements and FAS costs)	Claim will be assessed by the LAA
Assessable costs are under £2500	Claim will be assessed by the LAA
Assessable costs are over £2500	Provider has a choice whether to have costs assessed by the LAA or the court.
There are interpartes costs that have not been agreed and paid	Claim will be assessed by the Court

Guidance on the transfer of court assessed claims to assessment by the LAA can be found on the [dedicated guidance page on the website](#). [An advanced guide for submission of these claims is also available on the legal aid learning website](#)

Where a bill of costs has been prepared for assessment by the wrong assessing body where possible we will process the claim and write to the conducting solicitor informing them of the error for future reference. This will help avoid further rejections.

### Interim Bills

There are only very limited circumstances where an interim bill can be accepted

- In family cases under the care (CPGFS) or private law family (PFLRS) scheme where work on a specific aspect has concluded.
- In family cases under the care (CPGFS) or private law family (PFLRS) scheme where there has been a transfer of solicitor and the claim has not escaped the fixed fee.

## 13.3 Change of Solicitor

Where there has been a change of solicitor the preferred option is that the final solicitors should submit the costs of all firms at the same time. Where there are inter partes costs providers should be aware of their obligations under the contract. If the bills are received together and there is an issue leading to rejection for the first provider, but the second provider's bill has no such issues, then the second solicitor's claim can be authorised as an interim payment provided all the relevant POAs are recouped and a note recorded to explain the situation.

Where there is an ability to pay each firm's costs individually (e.g. fixed fee bills) the final solicitor's claim should not be paid until all previous solicitors' claims have been processed although the final solicitor can submit claims for all solicitors at the same time.

*Q: I have a claim for a fixed fee for the first solicitor in a case as they have no further work to complete. The second solicitors however are still working on the case – when I process the claim should I mark the claim as final on CIS as this claim is the final claim for that solicitor?*

*A: The claim should be marked as interim as there are further claims to be submitted by the second solicitors. You will need to recoup any payments on account that have been paid to that firm. If you process the claim as final it will discharge the certificate and recoup all payments on account from all firms*

### **Mergers of firms**

Where a firm has merged this is not considered to be a change of solicitor for the purposes of calculating the applicable fee. Similarly, a change of solicitor within a firm is not considered to trigger the change of solicitor payment rules on fixed fees

### **Fixed Fee Cases**

Where a Certificate is transferred to a new firm of solicitors during the course of proceedings, and both the first and second firm of solicitors carry out work which is within the scope of the Standard Fee the guidance on change of solicitor costs outlined above and in the Contract apply.

In addition please see [guidance on Court/Advocates Bundles](#) in fixed fee cases and [5.3: Change of Solicitor Costs](#)

Q: I have a claim where there has been a change of solicitor and the total amount of counsels fees on one claim covers both solicitors claims – is this okay to accept?

A: Yes providing the amount on the claims reconciles with the amount we have paid. You should ensure you note memo to confirm this.

Q: Is the enforcement fee on a change of solicitor half of the half fee?

A: Where the change of solicitor payment is half of the applicable fee then in private law children and finance cases the applicable fee will be one quarter of the level 4 fee. In domestic abuse cases the enforcement fee is the full level 4 fee so a half fee will be paid where there has been a change of solicitor.

For paper claims please note that CIS will not calculate this payment therefore you will need to override the details on CIS.

Q: A certificate is issued to the first firm but transferred prior to the first hearing [or alternatively closed down and new certificate issued] to another firm, who conclude matters. Are the first firm entitled to any costs?

A: Even though the first firm acting have not attended the first hearing, if they have undertaken any work from the issue of the certificate until it is transferred to the new firm, they are entitled to claim whatever proportion of the fixed fee [usually half] that is due to them.

### **Recoupment of Payments on Account**

Where an interim bill has been submitted on a case and it is clear that the disbursements on the claim are the same ones as claimed as a payment on account these should be recouped upon payment of the bill.

Where there has been a change of solicitor on a case and a claim has been received for the first firm independently of the second firm's claim the payments on account that have been paid to the first firm should be recouped.

Where the costs of the first firm have been submitted by the final firm the claim should be made to the final firm and all payments on account should be recouped from the final firm.

For interim claims on CCMS providers are required to confirm which payments on account should be recouped.

## 13.4: Bill Preparation

Additional guidance

2.63 and 15.20 Costs Assessment Guidance 2018

On paper hourly rate bills an allowance of 30-60 minutes is considered reasonable in the majority of cases. For larger bills we may consider higher allowance of 30-60 minutes per page 4 of the claim 1.

For CCMS hourly rate bills and allowance of 24 to 30 minutes per 10 items is considered appropriate.

No bill preparation is claimable for cases where only the fixed fee is claimable.

These costs cannot be taken into account in determining whether the costs escape the fixed fee nor should they become a mechanism to escape the fixed fee. This means that:

- The provider considers the value of the costs arising as recorded on their system.
- If they are below the escape threshold then the costs have not escaped and the fixed fee is due.
- Only where the costs have escaped would it be reasonable to draw a bill;

An escape from the fixed fee threshold solely as a consequence of costs arising from drawing the bill would be inappropriate, the costs arising would not be considered reasonable and should be assessed.

For claims assessed by the court the costs of assessment are never included towards the escape threshold of a fixed fee.

The only exemption to the above is where a bill is drawn under the old 'phase 1' fixed fee provisions, advocacy is paid at hourly rates alongside a fixed fee for non-advocacy work

and the costs of advocacy alone take the claim over the LAA assessment threshold. In this scenario, it becomes a requirement to draw a Bill of Costs for the Court and, as such, that time can be claimed towards the escape threshold.

<ul style="list-style-type: none"> <li>• Profit Costs excl bill preparation £1450</li> <li>• Bill preparation £100</li> <li>• Escape threshold £1500</li> <li>• No LAA assessment of profit costs</li> </ul>	Bill preparation should not be used to take costs over escape threshold	A fixed fee is payable No bill preparation in addition
<ul style="list-style-type: none"> <li>• Profit Costs excl bill preparation £1550</li> <li>• Bill preparation £100</li> <li>• Escape threshold £1500</li> <li>• LAA assessment of profit costs to £1450 including bill preparation</li> </ul>	Total costs allowed including bill preparation are below the fixed fee threshold	A fixed fee is payable No bill preparation in addition
<ul style="list-style-type: none"> <li>• Profit Costs excl bill preparation £1650</li> <li>• Bill preparation £100</li> <li>• Escape threshold £1500</li> <li>• LAA assessment of profit costs to £1550 including bill preparation</li> </ul>	Despite the costs only escaping the fixed fee threshold due to bill preparation the claim was 'reasonably' drawn as escaped	Bill preparation payable at hourly rates
<ul style="list-style-type: none"> <li>• Bill drawn as £2450 without bill prep</li> <li>• Bill preparation £200</li> <li>• Cost of assessment £200</li> <li>• Escape threshold £2550</li> </ul>	Drawing up the bill should not be used to take costs over escape threshold	A fixed fee is payable No bill preparation in addition

## 13.5: Counsels Fees and the Solicitors Bill

### Inclusion of counsels fees within the bill

For paper claims, unless payable under either the Family Advocacy Scheme (FAS) or Family Graduated Fees Order (FGF) solicitors are responsible for claiming Counsel's fees within their bill. Within CCMS counsels claims must be submitted at the same time as the solicitors claim.

For FAS and FGF cases the solicitors must include details within any paper claim (and attach confirmation) of all sums paid to counsel in the proceedings on any claim for costs you make on assessment. For both paper and CCMS claims where Counsel has carried

out work in the proceedings to date that has not yet been paid, the solicitors must await the receipt of confirmation of payment before submitting their claim.

If you are processing an interim bill checks should be made to determine what payments (if any) relate to that bill. This may be particularly relevant in private law fixed fee cases where different bills can be submitted for different aspects. In these cases the payments should be checked to determine which fees relate to which aspects.

A fee note is only required where payment to counsel is being made outside of the FAS/FGF scheme

### **Completion of CF1/CF1a**

Where this form is required, as with solicitor's completion of the claim form, time spent completing the form is claimable from the Fund. As the form is very brief, in all but the most unusual or lengthy of cases, 6-12 minutes would be considered reasonable.

## **13.6: Late Submission**

### Additional guidance

- 6.31 – 6.35 Standard Civil Contract Specification 2018
- S15.22 – s15.24 Costs Assessment Guidance 2018

All claims must be submitted within three months.

### **Late Submission where client has a financial interest**

Where the client has a financial interest in the claim and it is submitted late we may serve notice requiring the solicitors submit their claim within two months of the date of that notice.

Where providers fail to submit the claim or provide a satisfactory explanation, we may disallow the claim to the extent of the financial interest of the client.

### **Certificates Issued Prior to October 2007**

The penalties are detailed in [old cost assessment guidance](#)

For certificates issued prior to October 2007 late submission penalties could be applied to the providers profit costs. The guideline deductions are detailed in the table below:

Late Submission	Guideline deduction
Up to 9 months late	5%
Between 9 and 18 months late	10%
Between 18 and 27 months late	15%
Between 27 and 36 months late	20%
Between 36 and 48 months late	30%

Generally, it should be possible for late claims to be submitted within 48 months (or 4 years) of the conclusion of the matter but if the claim is submitted later a higher deduction may be applied

# 14: Processing Claims

## 14.1: Checks made on processing

### Signature

The paper claim should be signed and dated. This should be an original signature

### Rate Checks

On bills assessed by the LAA checks should be made that all rates claimed are correct

On bills assessed by the court the rates detailed in the narrative should be checked and three rates checked at random throughout the bill. The rates checked should be highlighted on the bill

For all bills where the funding was granted after 03/10/11 checks should be made on all expert fees and barrister fees

### Amount paid to counsel under FAS/FGF

When processing any bills that have counsels fees paid on them (either FAS or FGF), these fees should always be checked to ensure that the correct fees have been claimed and that all work claimed is within the scope of the certificate. Any linked certificates should also be checked. Counsels fees paid under FAS/FGF should have been checked by the FAS/FGF caseworker to ensure these costs are in scope. Billing caseworkers should check the narrative of their bill for scope and if work is being claimed that is out of scope then counsels' fees should be checked to determine if these are in scope.

Where counsel is being paid as part of the bill checks should be made that these costs are in scope.

When counsels fees do not reconcile checks should be made as to whether counsels fees have been provisionally assessed as this may not have been considered by the solicitors when completing the details on the claim form. If this is the reason for the discrepancy the claim can be paid and the claim annotated as to the reason for the discrepancy.

Where the court have assessed FGF/FAS payments to counsel our position has to be that we adjust according to the assessment certificate, irrespective of the FGF payments made. It would be up to counsel to have raised arguments in relation to the payments under the Funding Order.

The table below summarises the checks that should be made and our approach to processing the claim



Issue:	Solution:
1 The LAA has paid items we shouldn't have. For example, where too many court bundles have been paid.	Adjust counsel payment to the correct amount (court bundles are paid on a first-come-first-served basis) and notify counsel of the adjustment. As we are now confident in the correct payment being made, we can pay the solicitor's claim.
2 Payments on our records are not mentioned within the claim.	Reject claim and ask for reasons for discrepancies.
3 Payments to counsel have been made on the wrong certificate.	Initially this should be a reject to allow providers to confirm the position
4 Solicitors are relying on out-of-date information from Chambers	As above.
5 There is sometimes an unclear alignment of different certificate aspects and the counsel payments that reconcile with them.	If all totals match, then the solicitor's bill can be paid; any interim bills should have a clear note linking them with any counsel payments under that aspect.
6 Discrepancies can arise through costs to counsel being provisionally assessed or from assessed costs being reinstated on appeal.	We can accept claims where this is the case.
7 The apportionment of FAS hearings on multi-certificates is not always clear.	Caseworkers should already be checking every certificate for counsel. If all payments match, the bill can be paid. If there are discrepancies this should be investigated further
8 Hearings paid to counsel and are in the solicitor's bill, but the amounts do not reconcile.	This can be accepted and a note left on the system to confirm the position. The exception to this is where it impacts the costs limit or financial interest of the client through the stat charge or revocation.
9 Counsel payments on taxed bills	These scenarios and answers will apply where the Court or the LAA is the assessing authority.
10 Inaccurate information provided by counsel to solicitors. For example, fee note submitted to solicitors before payment has been made to counsel. Solicitors then submit bill for payment when counsel's claim has been rejected and not paid.	Claim should be priority rejected in the usual way; there is no way of ensuring counsel's claim is received promptly if payment to the provider can be made.

Q: Is it mandatory for solicitors to complete the breakdown of counsel on the paper claim form?

*A: Our preference is that this section is completed as it helps us to easily identify any discrepancies. If, however counsels fees reconcile with the amount on the claim form the claim should not be rejected for that section to be completed*

### **Linked Cases/Multiple Certificates**

Where there are linked/related certificates checks should be made on all linked certificates.

For family cases submitted on CCMS the provider should submit all the costs on the lead case. Nil bills should be submitted on the related cases and where possible all claims should be processed at the same time. For CCMS cases a short narrative explaining that this is a linked/related certificate is required.

For non-family cases submitted on CCMS and for paper claims, details of all linked certificates should be provided and the costs should be apportioned between the certificates. The apportionment should be an accurate representation of the work undertaken on each certificate.

For paper claims, where a claim has been apportioned between certificates the full costs show on the billing screens. You will need to check if a multi bill has been entered.

Where you have failed to link certificates when processing a bill a dummy nil bill will need to be processed linking the certificates. This will ensure that all payments on account are recouped.

*Where you are rejecting a linked claim the link should not be entered into CIS as this records multiple rejects*

*Where you process a linked claim the link should be entered before you enter the costs details in the summary screen.*

### **Final Bill**

Where the claim is a final bill the final bill indicator box must be ticked – this ensures that the payments on account made on a case are recouped.

### **Assessment Decisions**

All decisions must be justifiable and clear reasons for assessment sent

## 14.2: Under-Claims

Please note that, where there is potential for a supplemental claim, it must be submitted in line with the guide lines on submitting Supplemental/Adjustment Bill.

Scenario	Answer
A provider has submitted their claim. As the caseworker is going through the file, they locate several hours worth of file notes that do not appear to have been claimed for.	The bill should be paid as claimed.
Provider has claimed the wrong hourly rates, meaning they will be underpaid.	The bill should be rejected. The rate claimed should always be correct.
Provider has miscalculated their totals, they are claiming less as a total than is listed in the bill.	The bill should be rejected. This approach also applies to fixed fees.
Expert with a codified rate of £135 is claiming £130 per hour.	The bill should be rejected.
A disbursement voucher is attached to the bill, but not claimed within the bill.	Pay the bill as claimed. If the provider wishes to claim the disbursement at a later date, they may do so as a supplemental /adjustment claim.
Amount claimed for a disbursement is lower than listed on the disbursement voucher.	If there is no apparent reason (such as apportionment), then the claim should be rejected in the first instance as the LAA must be sure it is paying the correct amounts.
A fixed fee under the Family Advocacy Scheme with a bolt-on has been authorised on the advocates attendance form, but the bolt-on is not claimed in the bill itself?	The claim should be paid as claimed.  If the bolt on had not been authorised we would still pay as claimed

The totals on the claim are lower than the assessment certificate.	The claim should be returned as we need to ensure that we are making the correct payments
Cost Limit breached and the claim is assessed by the court. The provider has limited their costs, but included the £200 cost of taxation as part of the Cost Limit.	If the limited amount has been authorised by the court, then pay as claimed. If the full amount has been authorised by the court then adjust the payment so the cost of assessment is exempted from the cost limit. This is allowable as we can see the full correct amounts and it is only the cost limit preventing them from being paid.
A provider or counsel has claimed an exceptional travel bolt-on under the FAS, but is not claiming any mileage as a disbursement,	Pay as claimed. They will be entitled to submit a supplemental/adjustment bill if they realise the costs should have been claimed.

### 14.3: Delegated Authority

Delegated authority is an internal process to verify payment above specific financial limits.

Please see the delegated authority guide, checklist and authority levels (this is an internal document only)

# 15: Payments On Account

Additional guidance can be found on the Legal Aid Training and Support Website

- [POA training](#)
- [Quick Guide: Payment on Account of Disbursements](#)
- [Quick Guide: Payment on Account of Profit Costs](#)
- Advocate [Payment on Account Quick Guide](#)
- [Quick Guide – Claiming 100% POA on Very High Cost Billing](#)
- [Quick Guide: Payment on Account Recoupment](#)

## 15.1: Payment on Account of Disbursements

A payment on account in relation to disbursements can be applied for in respect of disbursements incurred or about to be incurred under a certificate. They can be applied for at any point providing the final bill has not been submitted.

Disbursement vouchers must be submitted with any payment on account of disbursements of £20 or over (including VAT).

## 15.2: Profit Costs Payments on Account

Additional guidance

6.21 Standard Civil Contract Specification 2018

No payment on account can be made within the first three months of the certificate

Solicitors may claim four profit cost payments on account within a twelve-month period. This is a rolling twelve-month period and starts from when the first profit costs payment is authorised (as opposed to being based on the anniversary of the certificate issue)

*For Example*

*If we authorise the 1<sup>st</sup> profit costs claim on 10/3/20 with a second claim authorised on 23/04/20 and a third claim authorised 10/07/20. If the provider submits a further claim in September, the next time profit costs can be authorised will be no earlier than 10/3/21.*

We can make a payment on account of up to 80% of profit costs under the certificate. The payment is cumulative taking into account the profit costs to date and the profit costs payments on account already paid under that certificate.

In family cases the costs of all proceedings should be included within the payment submission to give the total profit costs figure, which will be paid up to, but not in excess of, 80% of the relevant fixed fee until the escape threshold is passed. Providers are unable to claim separate profit cost payments for FAS or where the certificate covers multiple aspects. A temporary change was introduced from 03/08/20 to 21/06/21 as part of our Covid Contingency measures to allow for 100% of solicitor FAS payments to be paid on account. These were paid separately as “non expert disbursements” and providers should ensure that these costs are not also included in their profit costs POA submission.

We will only authorise payments on a certificate (including payments on account) up to the amount of the cost limitation.

*Q: Can I include my claim for enhancement on a profit cost POA?*

*A: In principle, yes: a profit cost POA can include any uplift you are planning to claim. However, it should be noted that payment of a POA is not confirmation that the enhancement will be paid as part of the final bill, which will still be subject to assessment.*

### **15.3: Payments on Account to Counsel**

Paper Forms must include an original signature from counsel or counsel’s clerk.

Counsel cannot claim VAT unless they are VAT registered and their client is VAT applicable from outset of case.

In all cases a fee note must be provided to include client details and a breakdown of work carried out (hourly rates must be provided except for events cases).

Payments will be for 80% of the amount claimed, except in events cases where counsel will receive 100% of their claims.

The total claimed must be a running total of all costs incurred by that counsel to date.

On certificates that fall under the FGF scheme POA’s for counsel are inappropriate, unless an escape arises (see below). In these circumstances any prior payments under the FGF scheme, unless recouped, should be excluded from the POA running total. Otherwise a duplicate payment may result.

On certificates that fall under FAS, POA are inappropriate.

	Family Graduated Fees (FGF)	Family Advocacy Scheme (FAS)	Codified Rates
Effective Dates	Family certificates applied for between 01/05/2001 and 09/05/2011	Family Certificates applied for on/after 09/05/2011	Non- family fee cases applied for on/after 03/10/2011
Exclusions	<u>Yes</u>	<u>Yes</u>	<u>Only specific counsel</u>
Escape mechanism	Yes	No	No

### 12 Monthly Periodic Claims (POA Reason E)

Payment can be made within a six-month window on the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> anniversaries of the certificate issue date. The payment window arises from two months before that anniversary until four months after. For certificates issued under LASPO the window has changed to two months before and two months after

Only one payment per individual counsel can be made in each payment window.

Example Payment Windows		
	AJA Example Certificate Issued 09/11/11	LASPO Example Certificate issued 09/11/13
1 <sup>st</sup> payment window	09/09/12 until 09/03/13	09/09/14 until 09/01/15
2 <sup>nd</sup> payment window	09/09/13 until 09/03/14	09/09/15 until 09/01/16
3 <sup>rd</sup> payment window	09/09/14 until 09/03/15	09/09/16 until 09/01/17

Claims can still be made on a certificate after it has been discharged or revoked. Caseworkers may however wish to query with the conducting solicitors why the claim has not been submitted.

Claims cannot be paid under reason E after the close of the 3<sup>rd</sup> payment window.

### No Final Payment Received (POA Reason F)

A date must be provided in the notes column of the POA1 form. This date must either be the date the court ordered an assessment of costs or the date the certificate was discharged/revoked. This date must be at least 6 months prior to payment request.

There will be an expectation that only one request for POA is made in this context, the case has finished and the total Counsel fees should be known.

# 16: Rejects

Our requirements for submission of the claim are detailed within this handbook and within checklists that we have made available on the website.

Where a claim has been rejected providers should ensure that all relevant documents are submitted including those that were included within the original rejected claim.

The approach detailed below applies to all certificated claims including those subject to a high cost case contract.

[Additional guidance can be found on the Legal Aid Training and Support Website](#)

- [Avoiding Secondary Billing Requests](#)
- [Billing Document Request](#)
- [Resubmitting a Rejected Bill](#)

## CCMS Initial Document Request:

Please note that the initial document request you will receive from CCMS is system generated. As a result, only headline information will be requested. Please ensure you upload the standard requirements based on the details of the bill submitted (disbursement evidence over £20 for example). It helps us pay your claim first time where you follow the requirements for documentation for each bill type as outlined in the handbook.

## 16.1: Reject, Document Request or Assess

If we are unable to pay a claim in full we may take one of the following options:

- **Reject:** The claim is returned to the provider to amend or provide the information required. This will be recorded within the key performance indicators (KPI) for the provider.
- **Telephone call:** For paper claims we may call where the information can be obtained instantly over the phone.



- **Document Request:** A document request will be used where we require the file of papers or associated specific information (such as a note of a hearing). These only relate to claims submitted on CCMS and they do not impact on a provider KPI. We will only request the information once; if the information is not provided or the Document Request is not responded to within the time allowed or any extension of that period it will move to a reject.
- **Cap:** This is where we limit the costs or remove a specific element, usually where there is no provision to pay e.g. because of the financial limit on the certificate being breached. There is no right of appeal, but providers may query this where they feel this has been applied incorrectly.
- **Overall adjustment:** For CCMS claims this will be applied where there is an overall assessment in the specific circumstances below.

Caseworkers should ensure that where possible they get the complete documentation they require to process the claim before undertaking an assessment. Where there is a reject and a document request on the same claim the reject will take precedence.

The tables below show our general approach however this is not an exhaustive list.

#### Reject

Paper Claims	CCMS Claims
<ul style="list-style-type: none"> <li>• Incorrect rates or fee scheme</li> <li>• Duplicate claim</li> <li>• Disbursement vouchers not provided</li> <li>• Schedule of disbursements</li> <li>• Work out of scope of the certificate for FAS hearings</li> <li>• FAS hearing dates are incorrect</li> <li>• Bolt on is incorrect e.g. more Advocates Bundles than the prescribed maximum</li> <li>• FAS bolt on does not meet criteria</li> <li>• Advocates attendance form is incomplete/missing</li> <li>• EX80 A/B not provided</li> <li>• Work out of scope – claim assessed by court</li> <li>• Incomplete form (for example not signed)</li> <li>• Work claimed at hourly rates not itemised</li> </ul>	<ul style="list-style-type: none"> <li>• Information has previously been requested (via a document request)</li> <li>• Information required does not fit within any other categories</li> <li>• Additional documentation is required</li> <li>• At provider request</li> <li>• Incorrect rates or fee scheme</li> <li>• Duplicate claim</li> <li>• Disbursement vouchers not provided</li> <li>• Disbursement vouchers do not provide the information needed in respect of work undertaken and rates</li> <li>• Ledger provided rather than disbursement voucher (other than travel expenses or court fees) and with no explanation</li> <li>• Further information is required in relation to work undertaken by an expert</li> </ul>

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Statutory charge decision is outstanding and information required to make decision has not been provided.</li> <li>• Costs awards are unresolved</li> <li>• No provision to bill</li> <li>• Claim should be assessed by court/LAA</li> <li>• Escape case submitted that does not meet the costs threshold to escape the fixed fee</li> <li>• Discretionary request for the file of papers other than as specified in the checklists</li> <li>• Counsels fees do not reconcile with the amount paid under FAS/FGF</li> <li>• FAS claims where no justification has been given for travel</li> <li>• Court order for drug and/or alcohol testing</li> <li>• Disbursement voucher does not provide information in relation to work undertaken and rates</li> </ul> | <ul style="list-style-type: none"> <li>• Court order for drug and/or alcohol testing</li> <li>• Advocates attendance form is incomplete or missing</li> <li>• FAS hearing dates are incorrect</li> <li>• Bolt on is incorrect e.g. more Advocates Bundles than the prescribed maximum</li> <li>• Court order required in respect of FAS payment</li> <li>• FAS bolt on does not meet criteria</li> <li>• Incorrect FAS hearing unit calculated/claimed</li> <li>• No breakdown of FAS in claim for payment of court assessed claim</li> <li>• Incorrect fee level claimed</li> <li>• Work claimed at hourly rates not itemised</li> <li>• Enhancement – No justification provided</li> <li>• Counsels fees incorrectly included within solicitors bill</li> <li>• Outstanding solicitor or counsel bills</li> <li>• Counsels fees do not reconcile/not paid/not submitted (discrepancy is over £20)</li> <li>• Counsel cost allocation is incorrect (discrepancy is over £20)</li> <li>• Work out of scope – claim assessed by court</li> <li>• Dates of work do not reflect scope or evidence provided</li> <li>• Cost allocation is incorrect</li> <li>• In mental health cases – has the standard authorisation been extended and the evidence provided</li> <li>• Cost of assessment are recorded incorrectly</li> <li>• Missing bill of costs</li> <li>• Sealed EX80A/B</li> <li>• Non- claimable work included in court assessed claim</li> <li>• No provision to bill</li> <li>• Escape case submitted that does not meet the costs threshold to escape the fixed fee</li> </ul> |
|--|---|

	<ul style="list-style-type: none"> <li>• Claim should be assessed by court/LAA</li> <li>• VAT incorrect or additional clarification is required</li> <li>• Action required on outcome (usually in relation to statutory charge or costs)</li> </ul>
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Further Information/Document Request

Paper Claims – telephone call	CCMS Claims – Document Request
<ul style="list-style-type: none"> <li>• Information required can be obtained instantly over the phone</li> </ul>	<ul style="list-style-type: none"> <li>• File of papers</li> <li>• Case narrative</li> <li>• Insufficient information to support “other” codes</li> <li>• Discretionary request for file of papers</li> </ul>

Assess – claims assessed by LAA

Paper Claims	CCMS Claims
<ul style="list-style-type: none"> <li>• Work is out of scope</li> <li>• Exceeded cost limitation</li> <li>• Non- claimable work is included</li> <li>• Work is considered excessive</li> <li>• Work cannot be justified</li> <li>• Insufficient information to support DOT/ROT/OOT codes</li> <li>• Work has not been evidenced</li> <li>• A subjective issue or a time without a published time standard</li> <li>• No/Insufficient justification for enhancement</li> <li>• No/Insufficient justification for travel costs claimed</li> <li>• Local travel claimed</li> <li>• Information within disbursement vouchers does not support claim</li> <li>• Incorrect or excessive experts/counsel rates</li> <li>• Escape case whereby you reduce the profit costs to a fixed fee on assessment</li> </ul>	<ul style="list-style-type: none"> <li>• Work is out of scope</li> <li>• Non- claimable work is included</li> <li>• Work is considered excessive</li> <li>• Work cannot be justified</li> <li>• Work has not been evidenced (following document request or reject)</li> <li>• A subjective issue or a time without a published time standard</li> <li>• No/Insufficient justification for enhancement</li> <li>• No/Insufficient justification for travel costs claimed</li> <li>• Local travel claimed</li> <li>• Information within disbursement vouchers does not support claim</li> <li>• Cost allocation insufficient to pay (solicitor claims only)</li> <li>• Incorrect or excessive experts rates</li> <li>•</li> </ul>

## Other Costs Reductions

• Paper Claims - Cap	• CCMS Claims – Overall Adjustment
<ul style="list-style-type: none"> <li>• Claims assessed by the court where the overall costs exceed the cost limitation</li> <li>• FAS claims where items of work are not permitted in accordance with FAS rules (court bundles already claimed)</li> <li>• Cost of checking provisional assessment claimed where costs have been “assessed as drawn”</li> <li>• VAT incorrect</li> </ul>	<ul style="list-style-type: none"> <li>• Exceeded cost limitation</li> <li>• Escape case whereby you reduce the profit costs to a fixed fee on assessment</li> <li>• Exceptional travel does not meet criteria</li> </ul>

## 16.2: Claim Completion Checklists: Paper Claims

The claim completion checklist details all the mandatory checks that providers should make prior to submission of their claims. It also details the checks that caseworkers should make on receipt and the process is as follows:

- If having checked the stage one checks and one or more errors have been found the claim should be rejected to the provider without any of the remaining checks being made.
- If no errors are found with the stage one checks then checks should be made on the remainder of the checklist.
- If a reject reason is identified on a claim it will be rejected
- Where the claim has been returned on three occasions for the same reason we will make the contract manager aware. Where possible we will assess the claim based on the information submitted.

There are separate checklists for paper and CCMS claims

## 16.3: Civil Claim Fix

The civil claim fix service enables providers to challenge rejects received or to raise queries. Challenges in relation to document requests can also be submitted where it is

considered that the information has already been provided or is unnecessary to process the claim.

The civil claim fix service has a 24-hour turnaround target and providers must e-mail details to the following address: [laacivilclaimfix@justice.gov.uk](mailto:laacivilclaimfix@justice.gov.uk). Reports are provided to the contract management teams and feedback is also given to individual caseworkers.

## 17: Case Outcomes

Additional guidance can be found on the [Legal Aid Training and Support Website](#)

- Outcome Training
- [Quick Guide: Reporting outcomes or discharge including those with a costs or damages award](#)
- [Quick Guide: Outcomes, Partial Claim and Other Party Liability](#)
- [Providing a cost undertaking](#)
- Recording outcome and discharge
- [Quick Guide: Reporting the statutory charge](#)

The outcome must be resolved and recorded before the claim can be processed. Where providers submit the Outcome and then immediately submit the bill afterwards, CCMS will hold the bill until the Outcome is completed before releasing the Bill for processing.

An outcome should be submitted for every certificate on CCMS even where a nil bill is to be submitted and should include a copy of the final order or agreement or relevant documentation.

A discharge reason should be provided unless the certificate has been revoked or discharged.

Where money or property has been recovered and/or preserved details should be provided when reporting the outcome so that a statutory charge decision can be made

Where there are inter partes costs these should be recorded within the outcome

Where this information has not been provided the outcome will be rejected. Where a duplicate outcome is submitted in error these should be cancelled to allow the bill to be processed

### **Emergency Certificates**

An outcome should not be processed on a live emergency certificate, the outcome should be rejected pending discharge/revocation of the emergency or the grant of a substantive certificate.

### **Client Paying Contributions**

Where there are ongoing negotiations in respect of inter partes costs this will prevent the recording of the outcome and subsequent discharge of the certificate. If the client is paying contributions the provider can request that these are suspended by submitting a case enquiry to the means assessment team.

# 18: Appeals

Where costs have been assessed by the LAA there is a right of appeal.

Further guidance can be found on the Legal Aid Training and Support Website

- [Appeal Bill – Interactive Guide](#)
- [Appeal Bill Advanced Guide](#)
- [Appeal Bill – Appealing Enhancement Reduction](#)
- [Appeal Bills Quick Guide](#)

## 18.1 Time Frames to Appeal

Any appeals against the assessment of costs must be submitted within 28 days although an extension may be granted of up to 14 days if requested within the first 21 days, and a good reason given. Appeals received after the deadline has elapsed will be rejected.

## 18.2: Points of Principle of General Importance

With the introduction of the 2018 contract there is no provision for a point of principle application. Previously certified points of principle can be found in the [points of principle manual](#)



# 19: Inter Partes Costs

Further guidance can be found on the Legal Aid Training and Support Website

[Outcomes, Partial Claim and Other Party Liability](#)

## 19.1: Assessment of Costs

### Rights of assessment where costs have been ordered or agreed

The assessment of costs payable to the legally aided client by another party (the paying party) can only be carried out by the court. The LAA cannot conduct this process as it would have a contrary financial interest to the paying party.

Where such an assessment of inter partes costs is to take place the assessment of legal aid costs should also be carried out by the court, concurrently with the inter partes assessment<sup>1</sup>. That ensures that the inter partes and legal aid assessments of the same work are consistent and permit proper balancing of costs paid in to the LAA against the legal aid payment due to the provider. It also allows any interest due on the costs correctly to be apportioned between the LAA and provider.

There are a number of circumstances where the costs payable under an inter partes order or agreement do not need to be assessed:

- The amount of costs has been agreed with the paying party
- The costs order is for a specific amount. That, in principle, should not occur; under the CPR<sup>2</sup> the court should not carry out a summary assessment of inter partes costs payable to a legally aided party, for reasons given above. However, in practice the courts do sometimes make such orders.
- A Default Costs Certificate has been obtained

### Default Costs Procedure:

Where there is a costs order or agreement in favour of the legally aided client and the amount of costs has not been agreed with the paying party, the client must commence the assessment process by serving a copy of his/her bill with a Notice of Commencement on the paying party. The paying party has to respond with points of dispute to the client's bill

<sup>1</sup> Paragraph 6.39(a) 2010 Standard Civil Contract Specification; Paragraph 6.37(a) 2013 Specification

<sup>2</sup> Paragraph 9.8 Practice Direction to CPR Part 44

within 21 days. If the paying party fails to do so the client can apply for a default costs certificate (submitting the appropriate court fee). That is an order that the paying party must pay the full amount on the client's bill plus the client's costs of obtaining the default costs certificate, without any assessment by the court taking place.

Full details on the default costs procedure can be located at Part 47 – Procedure for Assessment of Costs and Default Provisions of the Rules and Practice Directions:  
<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-47-procedure-for-detailed-assessment>

### **Legal Aid Assessments**

Note that in all the above cases, where costs have been recovered under the inter partes costs order or agreement, the provider has a choice between:

- paying those costs into the LAA and seeking a legal aid assessment of the full costs of the case; or
- Retaining the inter partes costs, reporting to us on an outcome or Civ Claim 2 (and, if it wishes, including a claim for any legal aid only costs permitted under the contract).

In some cases, particularly where a default costs certificate has been obtained, it may be that the inter partes costs have not been recovered at the point the provider wishes to claim legal aid costs, in which case the provider may seek our authority to enforce the inter partes order or agreement. There may, however, be doubts as to whether the costs order or agreement can be enforced at all (for instance, because of the financial position of the paying party) in which case the position may essentially be as if the inter partes order or agreement had not been made at all.

If there is doubt as to the likelihood of recovery under the costs order or agreement, providers should contact the LAA to consider whether the costs of drawing up an inter partes bill and obtaining a default costs certificate will be justified.

The default costs certificate procedure may present difficulties for hourly rate bills, as the bill will have been drawn up for assessment by the court, whereas if it transpires that a legal aid assessment is to be carried out by the LAA, the bill should normally take the form of a Civ Claim<sup>1</sup> or submission on CCMS. In this circumstance the LAA should adopt a flexible approach to the form of claim for assessment. For profit costs payable as a fixed fee there is no such difficulty, as any legal aid claim could not be assessed by the court in any event.

*Q: When obtaining a default costs certificate there is a court fee to pay and fixed costs of £80 added to the value of the bill. How should these costs be included within the claim 1 to be assessed by the LAA?*

*A: This work is claimable as part of the detailed assessment proceedings and is usually claimable at hourly rates. The contract however allows for payment of the amount allowable for detailed assessment and therefore on that basis we could allow payment of the fixed costs and the court fee. These costs should be included within the costs of assessment box on the claim form with a covering letter detailing why these costs are to be assessed by the LAA.*

*For caseworker processing these claims the costs should be entered as inter-partes costs of assessment*

## **19.2: Processing**

### **Costs Award entry on CIS**

The cost award must be entered into the costs screens on CIS and referred to our Recovery Services Team.

## **19.3: Guidance on Inter Partes Costs in Fixed Fee Cases**

This guidance applies where costs have been ordered on a case ordinarily paid under the care proceedings graduated fee scheme (CPGFS) or the private family law representation scheme (PFLRS).

Section 7.177 of the Standard Civil Contract Specification 2018 confirms the position with inter partes costs in fixed fee cases

“Where you recover costs from another party to proceedings or potential proceedings, whether by way of court order or agreement, and those costs relate to work which falls within the scope of any standard or graduated fee, you must choose one of the following options

Accept and retain the costs recovered from the other party but make no claim from the fund for any work which falls within the scope of the standard or graduated fee (for the avoidance of doubt you may not in that situation claim any legal aid only costs under paragraph 6.52: or

Pay all costs recovered from the other party into the fund but claim remuneration under this specification in the normal way”

### **Assessment of Costs and Bill Preparation where costs are ordered**

#### Assessment of costs:

Where costs have been ordered the costs of the case must be assessed by the court. The LAA are unable to do this as they could be seen as having an interest in the case that is adverse to the opponent

Market Rates:

Where the claim is being made from the LAA fund the costs must be claimed at the prescribed rate or fixed fee. Where the costs have been recovered these can be claimed at the market rates. This is pursuant to Regulation 15(2) of the CLS costs regulations 2000; under LASPO it's regulation 21(3) of the Civil Legal Aid (Costs) Regulations 2013

Preparation of the bill of costs:

The costs of drawing up the bill of costs cannot be claimed where a fixed fee is payable. This applies even where the claim is for a fixed fee but, owing to the costs order the claim must be assessed by the court. The solicitor can include the costs of drawing up the bill in the inter partes bill for payment by the other party although the maximum that can be claimed from the LAA is the fixed fee.

Legal Aid Only Costs

Costs can only be claimed from us in addition to inter partes costs received which strictly meet the requirements of the [Contract Specification definition \(6.51 2018\)](#). Other than this, the assessment of costs under an inter partes costs order and for legal aid payment is precisely the same (standard basis under CPR 44.3)

This includes the costs of assessment, which cannot be claimed from us in addition to receipt of inter partes costs other than legal aid only costs

**Costs Orders in Family Cases (CPGFS and PFLRS)**

● Scenario	● Process
<ul style="list-style-type: none"> <li>● Solicitors receive an order for costs where assessment not required– i.e. the other side pay £500 a specific amount towards the costs.</li> <li>● No escape from fixed fee</li> <li>● These costs have been recovered</li> </ul>	<ul style="list-style-type: none"> <li>● Claim can be assessed by LAA</li> <li>● Solicitor can either accept those costs as full payment OR submit a claim to the LAA for their costs/Fees and enclose cheque for recovered amount.</li> <li>● For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>● Solicitors receive an order for costs where assessment not required– i.e. the other side pay £500 towards the costs.</li> <li>● No escape from fixed fee</li> <li>● These costs have <u>not</u> been recovered.</li> </ul>	<ul style="list-style-type: none"> <li>● Claim can be assessed by LAA</li> <li>● Solicitor to submit a claim to us for their costs Fees</li> <li>● Claim/Costs Order referred to LAA recovery services for consideration of costs recovery</li> </ul>

	<ul style="list-style-type: none"> <li>For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>Sols receive an order for costs</li> <li>Other side do not respond to request to agree costs so default costs certificate produced</li> <li>No escape from fixed fee</li> <li>These costs have been recovered</li> </ul>	<ul style="list-style-type: none"> <li>Claim can be assessed by LAA</li> <li>Solicitor can either accept those costs as full payment OR submit claim to the LAA for their costs/fees and enclose cheque for recovered amount</li> <li>For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>Sols receive an order for costs</li> <li>Other side do not respond to request to agree costs so default costs certificate produced</li> <li>No escape from fixed fee</li> <li>These costs have <u>not</u> been recovered</li> </ul>	<ul style="list-style-type: none"> <li>Claim can be assessed by LAA</li> <li>Solicitor to submit a claim to us for their costs Fees</li> <li>Claim/Costs Order referred to LAA Recovery Services for consideration of costs recovery</li> <li>For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>Costs to be assessed (as cannot be agreed)</li> <li>Fixed fee payable</li> <li>These costs have been recovered</li> </ul>	<ul style="list-style-type: none"> <li>Claim must be assessed by court (as indeterminate costs order) if claiming costs from LAA</li> <li>Sol prepare bill for assessment</li> <li>Claim and assessment certificate reflect cost at fixed fee (it is not necessary for there to be a separate legal aid schedule)</li> <li>Solicitor can either accept those costs as full payment (CLAIM2) OR submit a claim to us for their costs/Fees and enclose cheque for recovered amount</li> <li>For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>Costs to be assessed (as cannot be agreed)</li> <li>Fixed fee/FAS payable</li> <li>These costs have <u>not</u> been recovered</li> </ul>	<ul style="list-style-type: none"> <li>Claim must be assessed by court (as indeterminate costs order)</li> <li>Sol prepare bill for assessment</li> <li>Claim and assessment certificate reflect cost at legal aid rates/fixed fee (it is not necessary for there to be a separate legal aid schedule)</li> <li>Solicitor to submit a Claim to us for their costs</li> </ul>

	<ul style="list-style-type: none"> <li>• Costs Order referred to LAA Recovery Services for consideration of costs recovery</li> <li>• For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>• Costs to be assessed (as cannot be agreed)</li> <li>• Fixed fee/FAS payable but hearing where cost order applies is paid at hourly rates</li> <li>• These costs have been recovered</li> </ul>	<ul style="list-style-type: none"> <li>• Claim must be assessed by court (as indeterminate costs order) if claiming costs from LAA</li> <li>• Sol prepare bill for assessment</li> <li>• Claim and assessment certificate reflect cost at fixed fee (it is not necessary for there to be a separate legal aid schedule)</li> <li>• Solicitor can retain payment for specific hearing claiming only legal aid costs (CLAIM2) OR submit a claim to us for their costs/Fees and enclose cheque for recovered amount</li> <li>• For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>• Costs to be assessed (as cannot be agreed)</li> <li>• Fixed fee/FAS payable, but hearing where cost order applies is paid at hourly rates</li> <li>• These costs have <u>not</u> been recovered</li> </ul>	<ul style="list-style-type: none"> <li>• Claim must be assessed by court (as indeterminate costs order)</li> <li>• Sol prepare bill for assessment</li> <li>• Claim and assessment certificate reflect cost at legal aid rates/fixed fee (it is not necessary for there to be a separate legal aid schedule)</li> <li>• Solicitor to submit a claim to us for their costs</li> <li>• Claim/Costs referred to LAA Recovery Services for consideration of costs recovery</li> <li>• For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>• Costs to be assessed (as cannot be agreed)</li> <li>• Costs escape fixed fee, however advocacy at FAS</li> <li>• These costs have been recovered</li> </ul>	<ul style="list-style-type: none"> <li>• Claim must be assessed by court (as indeterminate costs order) if claiming costs from LAA</li> <li>• Sol prepare bill for assessment at hourly rates</li> <li>• Claim and assessment certificate reflect cost at legal aid rates</li> </ul>

	<ul style="list-style-type: none"> <li>• If costs fall within fixed fee after removal of IP costs only fixed fee is payable if claimed from fund</li> <li>• Solicitor can either accept those costs as full payment (Claim 2) OR submit a Claim to us for all the costs and enclose cheque for recovered amount</li> <li>• For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>
<ul style="list-style-type: none"> <li>• Costs to be assessed (as cannot be agreed)</li> <li>• Costs escape fixed fee, however advocacy at FAS</li> <li>• These costs have <u>not</u> been recovered</li> </ul>	<ul style="list-style-type: none"> <li>• Claim must be assessed by court (as indeterminate costs order)</li> <li>• Sol prepare bill for assessment at hourly rates</li> <li>• Claim and assessment certificate reflect cost at legal aid rates</li> <li>• Solicitor to submit a Claim 1A to us for their costs</li> <li>• Claim/Costs referred to LAA Recovery Services for consideration of costs recovery</li> <li>• For CCMS cases details of the costs order should be confirmed when completing the outcome.</li> </ul>

Please Note:

Where ordered inter partes costs will only need to be assessed where the costs cannot be agreed and therefore assessment of the costs is required to arrive at the costs figure payable. In these circumstances only the court can undertake the assessment and so all costs should be court-assessed regardless of the amount being claimed.

Where the amount of costs have been agreed between the parties, a fixed costs order has been made, or the Default Costs Procedure followed (and a Default Costs Certificate obtained) the inter partes costs will not require assessment. In these circumstances there is no requirement for the court to undertake the assessment because no assessment of the inter partes costs will be carried out

## 19.4: Interest on Costs

Further guidance

[6.53](#) Standard Civil Contract Specification 2018

The interest on costs section on the CIV CLAIM2 or the Outcome Report needs to be completed in the following scenarios:

- All High Court, Court of Appeal and House of Lords judgments and orders;
- County Court orders of £5000 or more (this £5000 includes costs and damages).

The section needs to be completed in the above scenarios because providers are entitled to interest on costs in these cases and the claim will therefore need to be returned if the section is left blank. Where the total award for costs and damages is less than £5000 in the County Court, there is no need to return the claim or the Outcome if the section is left blank. This is because interest on costs would not be payable in these cases.

If the provider confirms that the interest on costs box is nil or not applicable the claim should not be returned to investigate the reason further unless the client is due the benefit of the interest on costs (see the section [Cases where legal aid costs are also being claimed](#) for the process to follow in those cases). This is because the provider is not obligated to recover interest for the benefit of the Agency and the statement of the provider that no interest was recovered will be accepted. The provider may also state the reason for no interest on costs being recovered, e.g. that a global figure in respect of costs was agreed without any interest breakdown and the reason given should be accepted.

The global figure in respect of costs recovered referred to above does need to be distinguished from the position in which a global settlement is reached covering both damages and costs (and interest). In these types of cases, no specific amount of costs has been recovered and the provider has a duty to treat the settlement as one of damages only so the question of interest on costs becomes irrelevant. The provider will need to claim all costs as legal aid costs to form a statutory charge on the damages in these cases.

### **Calculating the interest on costs due to the Legal Aid Agency**

The Agency is only entitled to the interest on costs recovered for the Legal Help/Family Help (Lower) costs and certificated costs, calculated at legal aid rates. Therefore, interest on pre-certificate private client costs and interest on the market rate element of any costs recovered will not be due to the Agency.

Where interest on costs has been recovered, the provider will need to provide a breakdown to show how the interest on costs has been calculated and the claim should be returned if this is not provided. The breakdown should be calculated on the costs recovered (including VAT) at legal aid rates. Interest is recoverable whether or not the costs award exceeds any damages award and is payable from the date of the costs order but any interim payments made by the other party will need to be factored into the calculation. The current rate of interest is 8%.



### Example

(assuming no interim payments and interest paid 100 days after the order date):

- Profit costs at legal aid rates: £10,000.00
- Disbursements: £5000.00
- Counsel fees: £5000.00

Total costs at legal aid rates: £20,000.00

- £20,000.00 x 8%= £1600.00
- £1600.00/365 days = £4.38 due per day
- £4.38 x 100 days = £438.00

Therefore the total interest due to the Agency is £438.00.

### **Cases where legal aid costs are also being claimed**

A Claim 2 may include a claim for legal aid costs that were not payable by the other party. Where interest has been recovered on the legal aid component of the costs recovered these will be retained by the agency. **In the example calculation given above, £438.00 would be recouped from the provider account when processing the Claim2 using the APO bill type. When processing an APO bill, CIS will offer the option to enter and recoup the interest.**

Under the Access to Justice Act and LASPO it is not possible to credit interest recovered against the statutory charge.

In accordance with contractual requirements to work with the LAA to achieve value for money and to pursue a client's costs order as they would a private fee paying client, the provider will owe an obligation to the client to recover interest on costs due (or treat any agreed costs as including interest). The Lord Chancellor's consent under Regulation 18 (4) of The Civil Legal Aid (Statutory Charge) Regulations 2013 for a provider to pursue a costs order in which the LAA has a financial interest is conditional upon interest being sought. This only applies where the total of any damages and costs exceeds £5,000 (i.e. it doesn't have to be costs alone) in the County Court or for any costs award in the higher courts

### Example 1

*Legal aid costs claimed: £200.00*

*Interest on costs recovered: £10*

*Client contributions paid: £500.00*

*In this case a refund of £300.00 is due, as the £10.00 interest on costs recovered is not used to offset the client's liability. Similarly, if interest on costs had not been recovered, the client would have only been due a refund of £300.00.*

## **Example 2**

*Legal aid costs claimed: £200.00*

*Interest on costs recovered: £40*

*Client contributions paid: £500.00*

*In this case a refund of £300.00 is due, as £200.00 is due to the fund, taken from the £500 client contribution. If interest on costs had not been recovered, the client would be due a refund of £300.00.*

*In both examples the interest on costs recovered is retained by the Lord Chancellor and not credited against any statutory charge liability.*

## 20: Very High Cost Cases

Further guidance can be found on the Legal Aid Training and Support Website

Guidance on submitting high cost bills can be found in the [CCMS quick guide](#)

### **When to Refer**

*All Family cases with costs predicted to or already in excess of £25,000 should be referred to South Tyneside to consider. This is applicable where costs are predicted to exceed £25,000 as per an App8 or a contract has already been agreed. Claim 1's for this work should all be referred to ST. Please check for a High Cost Tick on the front screen or an Area 3 tag/case. Reference may be made to a case plan being considered on memopad or that this matter will be high cost as per a certain date. Correspondence and Claim 1's should be referred to VHCC team in South Tyneside*

### **Exceptions:**

*Queens Counsel requests, Child Abduction or Court of Protection applications/case plans to London HCC (or Cardiff if firm in Wales). Claim 1's still to South Tyneside.*

### Mental Health Cases:

*All high cost Mental Health cases to be sent to South Tyneside (this includes claim 1's and associated correspondence). These are identifiable by proceedings being 'Mental Health' on front screen or in case summary. All other mental health bills should be sent to Liverpool.*

*Mental health case plans should be sent to London*

### **Clinical Negligence cases:**

*Only cases with an Area 17 tag should be dealt with by SCU London/Brighton. Clinical Negligence cases issued by the Regional Office and without any notes from SCU on memo pad should be considered under normal non-family assessment. Check Assess Events and memo pad for any details of funding checklists or stages being agreed and refer to SCU if correspondence/case plan, app 8; South Tyneside if Claim 1.*

### **Events cases Family and SCU:**

*Any cases agreed under an events case plan for either Solicitor's, Counsel or both should be referred to South Tyneside if Family and SCU if otherwise. All Claim 1's for these cases to South Tyneside*

*Under an events agreement, both solicitor and counsel can claim 100% payment on account of any agreed stage under a certificate. It should be clear from memo pad that work is being claimed under the events model*

*Counsel Fees agreed by SCU will be done so with reference to the rates payable under the Family Graduated Fee Scheme (including the 10% reduction to fees for applications made on/after 01/12/12) but should be billed on a POA1 form and not paid on a Claim 5 – they can claim 100% of their costs.*

*Family Events cases in South Tyneside will be paid via FAS or POA1 depending on what has been agreed in case plan/contract.*

**Multi-Party Action Cases (MPA):**

*These are dealt with by Brighton SCU and any Claim 1's should be referred to South Tyneside initially*

**Agreed approach on considering Counsel Fees under High Cost Contract**

For those Family cases that become High Costs, the pricing model for payment to Counsel should be under FGF/FAS (FAS applicable for certificates dated 9/5/11 onwards). Although High Costs cases are excluded from FGF/FAS we elect to apply the rates within these schemes.

Where there are no prescribed rates under High Cost Contract there is a significant amount of discretion in deciding what rate to apply. For those cases where proceedings are excluded from FAS what is appropriate to pay may entail having regard to the Solicitor rate, FGF rates or what is reasonable; reasonableness will be determined by the facts of the case.

Historically for cases excluded from FAS it has been High Costs practice to apply, as a valid comparison, the applicable Civil Counsel rate i.e. pre 3/12/13 harmonisation):

- £150 for counsel with more than 10 years of call; and
- £125 for counsel with less than 10 years of call.
- Subsequently reduced, 1<sup>st</sup> December 2012, to £135 and £112.50 respectively.

In order to ensure continuity and consistency of practice in VHCC Family proceedings excluded from FAS under *Paragraph 7.102 & 7.108-7.110 of the Family Specification* (Paragraph 5.1 CAG 2018) it has been approved that as general practice we will continue to apply £135 for counsel with 10 years of call or more, or £112.50 for counsel with under 10 years, excluding where proceedings arise from separate representation of a Child in Private Law.

The Counsel fees in proceedings arising from Separate representation of a Child in Private Law are excluded from this provision because generally the degree of responsibility is potentially less when acting for a child in this context and the complex issues may not be such as to require substantial conduct by counsel.

However in all proceedings there may be circumstances where the application of £112.50 or £135 per hour is not reasonable, and as a consequence an exercise of a greater degree of discretion is required. This may entail applying a solicitor's hourly rate, amounts less than those identified or in excess up to an amount of £150 per hour.

In such circumstance where a decision is made to pay outside of the Counsel "guide rates" a case manager is required to note the reasons why the course of action was appropriate. This will authorise the finance caseworker to make payment outside of expected profile.

Further, in all circumstances, all appropriate effort should be made to ensure decision consistency is applied across the case Stages and also across linked cases, i.e. joined parties and opponent's files. However, there may be valid reasons why consistency is inappropriate the degree of responsibility and complexity is not always equal and discretion exists to arrive at an amount that is not consistent but reasonable on the facts arising. In this context a clear note of the decision should be recorded on memo pad.

# 21: Case Balancing

## 21.1: Revoked Cases

Where the certificate has been revoked the client is deemed never to have been legally aided so they are liable for the entire costs of the case.

If the client has paid a contribution this must be retained towards payment of the costs. Unfortunately CIS will attempt to refund the contributions as the revocation cancels the contribution mandate.

To resolve this please e-mail Mandate Refund – Recode Requests (LAA) and request that the mandate contributions are recoded to revocation. Cash Office will need the receipt numbers for each payment. These can be found through the line journal screen accessed through the case review screen.

## 21.2: Contributions

Where a contribution has been paid on a case checks should be made that a refund of contributions is not due to the client and where necessary this should be referred to a case balancing caseworker. Refunds of contributions may occur in the following scenarios

- Client has paid more contributions than the costs of the case (including costs incurred under legal help/family help lower)
- Client has paid contributions after the discharge/withdrawal of the certificate
- Client has paid money in for the statutory charge which is more than the costs of the case – paid in as statutory charge or damages.

Where a client has a financial interest, the client's certificate should be discharged/withdrawn and the date of discharge/withdrawal backdated to the date the final work was undertaken by the provider as stated within the claim form. This will have the effect of generating a refund to the client of any contribution payments made after the date of discharge. This should be checked and, where necessary, referred to a case balancing caseworker.

Discharge of a certificate should never be backdated to a date before the issue of the client's substantive certificate; discharge should be after the substantive issue date, never earlier or on the same day. Discharging before the substantive issue date will have the effect of generating a refund of the client's initial contribution payment, which is always payable by the client.

## 22: The Statutory Charge

When reporting the statutory charge on CCMS this must be through the Outcome process.

Additional guidance can be found on the Legal Aid Training and Support Website

- Outcome Training
- Quick Guide: Reporting outcomes or discharge including those with a costs or damages award
- Quick Guide: Reporting the statutory charge

### 22.1: Basic Elements of the Statutory Charge

The basic requirements for the statutory charge to apply are as follows:

- Sums must be spent by the LAA in funding services for the client
- Property must have been recovered or preserved by the legally aided client in the dispute
- Regulations must not make the recovered property exempt from the charge, or the costs incurred excluded from calculation of the statutory charge

#### Recovery and Preservation

Additional guidance

2.2.4 – 2.2.5 Statutory Charge Manual

Hanlon v Law Society [1981] AC 124

Recovery is where the client has gained as a result of the proceedings. This could be where the client succeeds in claiming ownership of someone else's property or in

compelling the sale and distribution of the proceeds of sale. Where the level of recovery is sufficient to protect the deficit to the fund there is no need to consider preservation

Preservation is where the client succeeds in fending off a claim by someone else to their property or to possession of the property i.e. at the end of the dispute the client keeps all or part of what they regard as their own. If they keep only part they may be worse off at the end of the dispute than at the start but the statutory charge will attach to the property they have kept (*Till v Till* [1974] 1 All ER 1094)

Even where there is no dispute to the title of the property there may be

**Recovery of Possession** where someone else's claim to the property has been defeated (*Curling v Law Society* [1985] 1 All ER 705) or **Preservation of Possession** where the client avoids an order for sale of the property (*Parkes v Legal Aid Board* [1996] 4 All ER 271)

The statutory charge may arise even if the client is only partially successful. For example

- A client seeking an outright transfer of property may recover only a part of the beneficial interest in that property or a share in the proceeds of sale of the property. The statutory charge applies to whatever is recovered
- A client defending property may lose part of it but manage to hold on to part of what is being claimed. Even if they end up worse off than they were before the proceedings began the statutory charge still attaches to that part of the property preserved. (*Till v Till* [1974] 1 All ER 1096)

## In Issue

Additional guidance

3.4 Statutory Charge Manual

For the statutory charge to apply the property must have been in issue in the proceedings or obtained as a result of any compromise or settlement to bring an end to the proceedings (a substitution)

In order to consider whether property has been at issue we may need to review

- Information provided within the outcome report on CCMS
- The completed Admin 1
- A copy of the final order or agreement



- Details of any correspondence/documentation sent by the solicitor to enable a charge decision to be made. In particular reviewing the statement of issues, without prejudice offer letters or Form E (of both parties) may give a clear indication of the assets and what was at issue between the parties.
- Information contained in the application for funding detailing what was at issue
- Where the above information is unclear we can request the solicitors file of papers.

### **Meaning of “Property”**

The statutory charge can apply to anything of value including (but not limited to)

- Money, objects, intangible and financial assets. This can include money used to pay debts.
- Stocks and shares, insurance policies
- Debts owed to the client
- Real Property – this can mean land or an interest in land including leases, land or property abroad
- A life interest in capital which includes a right to interest (the charge attaches to the interest)

## **22.2: Application of the Statutory Charge in Specific Circumstances.**

### **Recovery of Possession**

Additional guidance

3.2 Statutory Charge Manual

Curling v Law Society [1985]1 All ER 705

The statutory charge arises if, as a result of the proceedings, the client unlocks their interest in the property.

Also see [Recovery and Preservation of Possession](#)

## Preservation of Possession

Additional guidance

3.2.6 – 3.2.13 Statutory Charge Manual

Parkes v Legal Aid Board [1996] 4 All ER 271

The charge arises if, as a result of the proceedings, the client prevents the property from being sold.

Also see [Recovery and Preservation of Possession](#)

### Life Interest in a Home

Recovery or preservation of a life interest in a home will not usually attract the statutory charge as the client will not, by virtue of the life interest own any equity in the property and will not normally be able to sell their interest which will lapse on their death. There is therefore usually nothing to which the statutory charge can attach.

Similarly if a client receives a lump sum of money from her opponent, which is to be used to buy property, but the opponent has the right under the order to repayment of that amount in full at a trigger event in the future, such as the child reaching 18, then it will not be considered recovery for the purposes of the charge as that property will return to the opponent

Where a client obtains a right to occupy for life a property in which the client owns equity, this will constitute a recovery or preservation of that equity.

### Payments to others (including a child of the legally aided client)

Additional guidance

3.10 Statutory Charge Manual

Where the client pursues applications on his or her own behalf and an order is made providing payment to a child of the client, the LAA will need to consider why the order was made. The fact that an order makes provision for property or money to be settled on children does not stop the statutory charge from applying. S10 (7) AJA 1999 and section 25(1) LASPO provides that the charge applies to “any property recovered or preserved whether for himself or any other person”.

## Pensions

Pensions are exempt from the charge. However, if the pension was actually surrendered post funding grant and the money held pending resolution of the proceedings, the money is no longer “pension”, but liquid cash and subject to provisions for recovery and preservation

## Maintenance Payments

Additional guidance

3.12 Statutory Charge Manual

Periodical payments of maintenance are exempt from the statutory charge by virtue of Regulation 44 of the CLS Financial Regulations and Regulation 5 of the Civil Legal Aid (statutory charge) Regulations 2013.

Where however a lump sum payment has been made in respect of maintenance this will be subject to the statutory charge. This applies to both lump sum payments for arrears of maintenance and payments in lieu of future maintenance. *Stewart v The Law Society* [1987] 1 FLR 223 confirms that “A payment of what is in reality a lump sum despite being described as maintenance or as payment in lieu of maintenance is subject to the charge”

In both cases, where a lump sum payment is said to represent maintenance – either for a future period or for arrears - the statutory charge would arise on the basis that the property recovered is not a periodical payment but a lump sum.

Where payments have been ordered the Agency will consider whether the payments made are in fact a series of payments that is in reality a lump sum payable in instalments rather than true periodical payments. Factors which might suggest this are that the total payment adds to a round figure, or if the total figure corresponds to an amount or the value of property claimed by the client in the proceedings; or that the number of payments is small (for example, we are unlikely to consider two payments as “periodical”). We will also consider whether the total amount being paid relates to something other than maintenance where it appears to relate to a particular asset or purpose

## Claims for general damages

### *4.3 Statutory Charge Manual*

The charge cannot attach where the other side sues the client for a sum of money owed but the claim is made in general terms (i.e. no specific bank account or asset is identified). This is because the other side has not identified a specific account or asset, and therefore the client cannot be perceived to have preserved the sum sought

**Boundary Disputes**

Boundary disputes cannot be funded under the AJA 1999 however disputes concerning rights of way can be funded and similar statutory charge issues can arise. Each case should be judged on its own merit as to the applicability of the charge, with consideration given to whether the client has benefitted from proceedings and if not, whether they were unjustifiably pursuing proceedings, which may lead to deferment of the providers costs.

The property recovered or preserved in these cases is the value to the client of successfully having taken or defended the proceedings. This may be

- The ability to sell the property when previously it was unsalable; or
- The enhancement to the value of the clients property, as a result of (say) gaining an additional strip of land at its boundary, or unimpeded use of a right of way.

**22.3: Timing of Recovery and Preservation****Withdrawn/Revoked Certificates**

Additional guidance

5.8 Statutory Charge Manual

Regulation 49 Community Legal Service (Financial) Regulations 2000

Regulation 10 Civil Legal Aid (Statutory Charge Regulations 2013)

The statutory charge can arise after revocation and therefore should always be considered. Taking the costs out of any property recovered or preserved is likely to be the easiest way for the LAA to recover the cost of the service provided under any revoked certificate.

**Recovery or Preservation Prior to the Issue of Funding**

Additional guidance

3.8 Statutory Charge Manual

The statutory charge cannot apply to property already recovered or preserved before the certificate is issued. If there is an order or agreement providing for recovery or preservation before the grant of the certificate, the statutory charge will not apply.

However, the mere fact that a client has received an offer of money or property before obtaining public funding does not mean that there was an agreement in respect of that money or property.

If there is an order or agreement and the client gets a certificate to enforce it because the opponent refuses to comply with it, or seeks to vary it, then the statutory charge will arise.

### **Recovery or Preservation after the withdrawal of Funding**

Additional guidance

Regulation 49(1) CLS Financial Regulations 2000

Regulation 10 Civil Legal Aid (Statutory Charge) Regulations 2013

Where a certificate has been revoked or discharged, the statutory charge applies to any property recovered or preserved as a result of the client "continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings" by virtue of Regulation 10 Statutory Charge Regulations/ 49(1) of the CLS Financial Regulations. This is so even if the proceedings were never actually issued under the certificate.

*Caseworkers should write to solicitors to remind them of this provision when processing claims where this situation may arise*

### **Recovery Superseded by later events**

Additional guidance

3.9.10 – 3.9.14 Statutory Charge Manual

Sometimes an order or agreement providing for recovery or preservation is never implemented because

- The parties subsequently agree, formally or informally to deal with the property in some different way, or, because
- A superseding event prevents the order taking effect or unscrambles what has previously been agreed.

Where the order has not been implemented consideration should be given as to whether we should seek to protect the fund via a charge pending implementation of the order or whether it is appropriate to refer to DRU to enforce the charge in the clients favour in order to give rise to the charge.

## 22.4: Valuing Property Recovered or Preserved

Under S10 (7) of the Access to Justice Act 1999 the value of the statutory charge will be the cost of the funded services in the clients dispute.

The value of the property is relevant in two ways

- If the LAA postpones enforcement of the statutory charge and the value of the property at the time of recovery or preservation is less than the cost of the funded services, interest accrues on the net value of the property recovered or preserved at the time of the recovery
- On enforcement the LAA can only get back money to repay the statutory charge to the extent of the value of the property at the time of the enforcement. Any balance which the LAA is unable to recover does not become a personal debt owed by the client.

### Examples:

*The client recovers a lump sum of £20,000 and the cost of funded services is £30,000.*

*Where the lump sum of £20,000 is paid straight away the statutory charge is enforced straight away. The client has discharged his charge liability despite the £10,000 deficiency to the fund*

*If the client chooses (and the LAA agree) to postpone enforcement of the statutory charge in order for money to be utilised to purchase a home, the statutory charge will be secured on the equity in the home. Interest will accrue on the £20,000 but the charge is not limited to the original amount recovered.*

*In this scenario or in a case where a client recovers a flat or house with low or negative equity which subsequently increases in value, the person may end up paying more than the original amount recovered and the LAA may be able to get back the value of the charge, not merely the value of the property at the time of recovery.*

### Recovery and Preservation of Possession

Additional guidance

4.4.10 Statutory Charge Manual

Where possession is recovered or preserved the value of the property subject to the statutory charge is the whole value of the property recovered or preserved and not the value to the client in obtaining possession early or in preserving exclusive possession.

### **Valuing Assets other than land (including houses and flats)**

Additional guidance

4.3 Statutory Charge Manual

Where the client recovers or preserves money whether in the form of damages or a lump sum the charge can only attach to the money actually paid by the opponent.

Where other types of property are recovered or preserved, the LAA must assign a value to each item to be able to quantify the value of the property subject to the charge. For stocks and shares in a publicly quoted company there is published information on what the shares are worth at a given time.

If a policy is linked to a mortgage (so that in reality the funded client cannot surrender it) it is likely that there is no value on which the statutory charge may arise.

#### **Disputes over Valuations**

If the client's interest in the property is not quantified or quantifiable at the time of recovery then the LAA will assume that the equity recovered is at least equal to the costs spent on funding the services. It will be the responsibility of the conducting solicitor to report on the outcome of the case, including obtaining where necessary a valuation of the recovered or preserved property.

Notional sale costs will only be taken into account when the asset is to be sold immediately

#### **Contributions from parents**

Where the parent's money has been given a genuine beneficial interest and is not contrived to prevent the charge arising, that interest will reduce the net equity in the property. The parents' interest does not need to be registered in any way

## **22.5: Capital Reassessments**

Additional guidance

2.4.4 Statutory Charge Manual

Where the client has received capital that is not subject to the statutory charge a reassessment based on the clients increase in capital may be appropriate.

*Example:*

*A client gets an asset from the other side during proceedings. At the end of the case there is a dispute as to whether the asset was in issue in the proceedings and therefore whether the statutory charge arises. If the charge does not arise the case should be referred to the means assessment team for a reassessment to be undertaken. The means assessment team will reassess the clients means if his/her capital appears to have increased by the sum set out in the regulations at the time the asset was acquired and shall call for a retrospective contribution to cover the costs incurred under the certificate prior to discharge. The client may therefore as a result be required to pay their full funding costs whether or not the statutory charge arises.*

A reassessment should not be undertaken where the capital has been recovered and/or preserved but the statutory charge does not apply because it is exempt from the statutory charge

## 22.6: Exemptions to the Charge

Additional guidance

3.12 Statutory Charge Manual

Regulation 44 of the CLS financial Regulations

Regulation 5 Civil Legal Aid (statutory charge) Regulations 2013

The following are exempt from the charge

### Interim Payments

Additional guidance

Regulation 20 (3) CLS Costs Regulations

Regulation 5 Civil Legal Aid (statutory charge) Regulations 2013

These are generally ordered if the claimant would suffer hardship if they had to wait for the outcome of the case.



Where an interim payment has been made the LAA may authorise the release of these monies prior to the conclusion of the case and a subsequent statutory charge determination. The statutory charge cannot be avoided by securing an interim payment and then discontinuing proceedings as this would then make the interim payment a final one and therefore subject to the charge.

**Payments under section 5 of the Inheritance (provision for family and dependants) Act 1975**

*Regulation 44(1) CLS Financial Regulations*

*Regulation 5(1) b (ii) Civil Legal Aid (statutory charge) Regulations 2013.*

These are also a form of interim payment to alleviate hardship pending resolution and final disposal of an action. The same principles apply as to interim payments

**Payment under part IV of the Family Law Act 1996**

*Regulation 44(1) CLS Financial Regulations*

*Regulation 5 (1) b (iii) Civil Legal Aid (statutory charge) Regulations 2013.*

These payments usually relate to payment of rent or mortgage following an occupation order or payments to maintain or repair a dwelling. The statutory charge will not apply to these payments

**Periodical Payments of Maintenance**

*Regulation 44(1) CLS Financial Regulations*

*Regulation 5(1) a Civil Legal Aid (statutory charge) Regulations 2013.*

Please see [Maintenance Payments](#)

**Payment under S25B or 25C of the Matrimonial Causes Act 1973**

*Regulation 5(1) b (i) Civil Legal Aid (statutory charge) Regulations 2013.*

**Payment under pensions**

Clients clothes, furniture or tools of the trade

*Regulation 5(2) a and b Civil Legal Aid (statutory charge) Regulations 2013.*

These are exempt unless exceptional in value or quantity

**One half of any redundancy payment**

*Regulation 5(1) c Civil Legal Aid (statutory charge) Regulations 2013.*

**Any sums which by virtue of parliament cannot be assigned or charged**

*Regulation 5(1) d Civil Legal Aid (statutory charge) Regulations 2013.*

These are usually state benefit payments

## 22.7: Quantifying the Charge

The statutory charge is calculated by reference to the cost of funded services. This will be:

Costs Paid (including profit costs, disbursements, counsels fees and VAT

*Plus*

Costs of legal help (this includes legal help, help at court and family help lower but not family mediation)

*Less*

Costs of assessment (unless certificate revoked)

*Less*

Any contribution paid

*Less*

Inter partes costs recovered from the other side

Please note any [10.10: Costs of Communication](#) Support Professionals (for example sign language costs) are exempt from the statutory charge. These should be clearly indicated on the claim form.

### Legal Help Costs

Additional guidance

5.1 and 5.12 Statutory Charge Manual

Regulation 45 and 46 CLS Financial Regulations 2000

Regulation 7 and 8 Civil Legal Aid (statutory charge) Regulations 2013

The statutory charge is calculated by reference to the cost of funded services. Where a certificate has been issued the amount of the statutory charge will include costs claimed under the certificate and any costs claimed under controlled work (legal help, help at court and family help lower). Where it is clear that the provider has undertaken controlled work but the costs are indicated as nil this should be queried with the provider. The solicitor should not be accepting payment direct from the client for this work and recording a nil where a certificate has been issued

Where a certificate has not been granted but a client recovers or preserves property (which is not their main or only dwelling) under family help lower the statutory charge will arise if the claim escapes the standard fee. A case will escape the standard fee where the costs calculated at hourly rates are 3x the standard fee and the amount of the charge will be the costs above the fixed fee escape threshold together with any disbursements. In these cases the charge will be in favour of the provider and should be reported within CWA.

Where the statutory charge arises after a certificate has been granted, then the charge will be in favour of the LAA and the decision will be made by the LAA.

In cases where the certificated work is not of a financial nature the provider should indicate whether work undertaken prior to the issue of certificated involved a financial settlement to which the statutory charge may apply. Caseworkers will be required to make a statutory charge decision in these cases and cases where the certificate has been issued in respect of financial matters.

## **Multiple Proceedings in Matrimonial Cases**

### *5.6 and 5.9 Statutory Charge Manual*

The statutory charge is calculated with reference to all of the costs incurred under the certificate/s, as the costs of the whole dispute give rise to a charge on any property recovered or preserved. The sensible test to adopt is that the whole dispute arises out of the relationship breakdown, and so all of the costs associated with the dispute attach as a charge to property recovered in those family proceedings. In family proceedings it is considered that all private law proceedings (domestic violence injunction, Children Act applications, and Ancillary relief proceedings) arise out of a relationship breakdown and are considered to be connected proceedings

Where the court assigns a new claim number in the proceedings merely for administrative reasons (for example because a case is transferred from one court to another or there are enforcement proceedings) the costs of the whole dispute give rise to a charge on any property recovered or preserved.

See [12.2: Costs](#) of Assessment for more information

## 22.8: The Statutory Charge in Inquest and Human Rights Act Proceedings

### The Statutory Charge in Care and Human Rights Act Proceedings

A [position statement](#) has been drafted to confirm the position in relation to the statutory charge within Care and Human Rights cases. This relates to cases where damages are awarded in Human Rights Act cases.

#### The certificate covers both Human Rights and Care Proceedings

Where damages are awarded in relation to the Human Rights element they will apply to the entire costs of the certificate

#### Separate certificates are issued for the Human Rights and the Care Proceedings

Where damages are awarded in relation to the Human Rights element they will only apply to the costs on the human rights certificate

**The judicial guidance also confirms that providers should in future apply for separate certificates**

### The Statutory Charge in Inquest Cases

Where the outcome of an Inquest case is liability being made against a public body the parties involved may seek further funding to pursue costs and damages against that party.

A further certificate may then be issued for Damages or they may continue under a non Legally aided Conditional Fee Agreement (CFA).

Where damages are recovered under the subsequent certificate or the CFA the Statutory Charge *will only attach to any claim on the fund made on that certificate.*

The Charge should not be attached to the original Inquest certificate costs.

## 22.9: Paying the Statutory Charge

Where the statutory charge applies on a certificate payment of the solicitors costs is made through the legal aid fund not out of the statutory charge. The solicitor and counsel must therefore claim payment from the Fund even though the client may bear the ultimate cost.

### Postponing Enforcement of the Charge

Additional guidance

7.1 Statutory Charge Manual

Regulation 52 (1) CLS Financial Regulations

Regulation 22 Civil Legal Aid (statutory charge) Regulations 2013

When the statutory charge attaches to a house, flat or land recovered, the LAA has discretion to postpone enforcement of the charge if it appears that it would be unreasonable for the client to repay the amount of the charge immediately. Postponed enforcement is only applicable in family cases.

The discretion to postpone may depend on the following factors

- Whether the client (or dependents) will be using the property as a home
- Whether the property will provide appropriate security
- Whether a land charge can be registered (for example- we are unable to postpone against a mobile home)
- Whether this is the clients only home
- Whether the final order provides for postponement

### Money used to Purchase a New Home

*7.2 Statutory Charge Manual*

When a lump sum has been recovered/preserved and is used to purchase a new home the money may be used towards the following:

- Purchase price of the property

- Conveyancing fees
- Removal fees
- Reasonable structural repair work

There is no provision for the money to be used towards making improvements to the property unless it is necessary to meet the needs of the client or their dependents. A client with a disabled child would be entitled to modify the property to meet the needs of the child.

### **Interest Payable on Postponed Charges**

#### *7.6 Statutory Charge Manual*

Interest accrues on the statutory charge by virtue of Regulation 53 of the CLS Financial Regulations (or its equivalent under LASPO).

Where the interest agreement is dated on or after 1st August 1994 the interest runs from the date of registration or the date a bill is paid, whichever is the later.

It is not necessary for the client to sign the interest declaration on the admin 1, however if the client has signed this it is a good indication that they are aware of the statutory charge and any potential registration implications.

## **22.10: Provider Obligations in Respect of the Statutory Charge**

Additional guidance

6.2 Statutory Charge Manual

Regulation 18 and 20 CLS Costs Regulations 2000

Regulation 13 and 15 Civil Legal Aid (statutory charge) Regulations 2013

Property and costs payable under any order or agreement must be paid to the solicitor who has to pass them (unless they are exempt) to the LAA

Providers should report the outcome of a case in a timely manner (forthwith), which should mean that the question of the statutory charge is resolved prior to bill submission.

Providers also have an obligation to ensure all monies received on behalf of their client are paid into the fund pending the charge decision.

### **Release of Money following an undertaking**

Discretion under Regulation 20(4) of the CLS Costs Regulations 2000 allows a solicitor to release money to the client provided the regional office is satisfied that the Fund will be safeguarded. The Fund can only be fully safeguarded if the solicitor provides a professional undertaking that their costs will not exceed a certain amount, and also, pays that amount in from the client's damages/ recovered money. The solicitor's undertaking on costs must cover everything which might count towards the statutory charge

## **22.11: Interest on the Charge**

### *7.6 Statutory Charge Manual*

Where the charge has been postponed interest is payable. Interest is simple interest rather than compound – it is on the principal amount and there is no interest on interest.

<b>Applicable dates</b>	<b>Interest Rate</b>
01/12/1988 to 31/12/1991	12%
01/01/1992 to 31/08/1993	10.5%
01/09/1993 to 31/03/2002	8%
01/04/2002 to 30/09/2005	5%
01/10/2005 to date	8%

Where the interest agreement is dated on or after 01/08/1994 the interest will run from the date of registration or the date a bill is paid, whichever is the later.

Interest will be charged on the costs of funded services unless the value of property was less than the cost of funded services, in which case interest is charged on the lower sum.

If a recovered interest in a property is in negative equity at the time of the recovery then the postponed charge is effectively non - interest bearing because interest is charged by reference to the value of the equity in the property at the time of recovery which is zero if the property is in negative equity. Similarly if a recovered interest in a property has a low equity value at the time of the recovery, for example £1000 then interest will be calculated on the £1000

In a case where the solicitors have not reported the exact amount of the equity which the client has recovered, it is appropriate to assume that the value of the property recovered is at least equal to the amount of the solicitor's costs (less the costs of assessment) because otherwise the private client test would not have been satisfied. This presumption could be

rebutted by the client producing evidence to demonstrate the value of the property at the time of recovery (i.e., realistic valuation, and mortgage statement from the relevant period).

Interest runs on an interim bill, provided that property has at that point been recovered and a charge registered.

## 22.12: Contract Breaches in respect of the Statutory Charge

Additional guidance

6.2 Statutory Charge Manual

7.11 & 14.11-12.12 Standard Civil Contract Standard Terms 2018

The decision to withhold payment must be based upon an identifiable inaction on the providers' part giving rise to the actual loss. The Provider should be notified of the decision to withhold/recoup in writing giving them 28 days to make any representations. After that time period has elapsed any payments due will be withheld and any payments already made will be recouped from their account.

## 22.13: Table of Regulations

Regulation	Civil Legal Aid Regulations 1989	CLS (Financial) Regulations 2000	Civil Legal Aid (Stat Charge) Regulations 2013
Money paid to Provider, who can give good discharge	Regulation 87(1) of the Civil Legal Aid (General) Regulations 1989	Regulation 18(1) of the CLS (Financial) Regulations 2000	Regulation 13(1) of the Civil Legal Aid (Statutory Charge) Regulations 2013
Inform Agency immediately and provide copy of any order/agreement	Regulation 90(1)(a) of the Civil Legal Aid (General) Regulations 1989	Regulation 20(1)(a) of the CLS (Financial) Regulations 2000	Regulation 15(1)(a) and 15(1)(b) of the Civil Legal Aid (Statutory Charge) Regulations 2013
Pay to the Agency all money received by him	Regulation 90(1)(a) of the Civil Legal Aid (General) Regulations 1989	Regulation 20(1)(b) of the CLS (Financial) Regulations 2000	Regulation 15(1)(c) of the Civil Legal Aid (Statutory Charge) Regulations 2013
Inform the Agency where they believe an attempt has been made to circumvent	Regulation 87(2) of the Civil Legal Aid (General) Regulations 1989	Regulation 18(3) of the CLS (Financial) Regulations 2000	Regulation 13(3) of the Civil Legal Aid (Statutory Charge) Regulations 2013



the statutory charge provisions			
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## Appendix 1 – Case Law

### **Legal Services Commission v Henthorn**

This decision will apply to all certificates where Regulation 100(8) applies (see below).

Regulation 100(8)

Where, after taxation or assessment payments made under this regulation are found to exceed the final costs of the case, the solicitor or counsel (if any) shall, on demand, repay the balance due to the Fund and, where the total costs exceed any payment made under this regulation, the balance shall be paid from the fund.

This will apply to any Payments on Account made up to 31 March 2007 which are either governed directly by Regulation 100 or under the General Civil Contract specification, are governed by a contract term having the same effect. Payments on Account made on or after 1 April 2007 are governed by more restrictive rules under the Unified Contract or Standard Civil Contract.

## Appendix 2 – Hourly Rates (Civil)

The below table is intended to highlight the general types of proceedings and under which table of the relevant Payment Annex or Remuneration Regulations the correct rates can be found. The list is not intended to be exhaustive.

<b>Table 9(a) relevant Remuneration Regulations / Payment Annex</b>	
Care (parent, child and joined party) pre-April 2014	Discharge Care
Supervision (parent, child and joined party) pre-April 2014	Vary/Discharge Supervision
Emergency Protection	Extend Emergency Protection
Extend Emergency Protection	Contact Child in Care
Secure Accommodation	Refuse Contact Child in Care
Education Supervision Order	Appeal and Care/Supervision Order (including post-April 2014)
Section 37 Order (when standalone)	Child Assessment Order
Recovery of a Child (Public Law)	
<b>Table 9(aa) relevant Remuneration Regulations</b>	
Care (parent, child and joined party) post-April 2014 only	Supervision (parent, child and joined party) post April-2014 only
<b>Table 9(b) relevant Remuneration Regulations / Payment Annex</b>	
<b>Proceedings involving Children</b>	
Parental Responsibility	Vary/Discharge Parental Responsibility
Prohibited Steps	Vary/Discharge Prohibited Steps
Specific Issue	Vary/Discharge Specific Issue
Enforcement of any Section 8 Order	Appeal of any Section 8 Order
CAO Contact (including variation and discharge)	CAO Residence (including variation and discharge)
Declaration or Parentage	Remove Children from Jurisdiction
Disclose Child's Whereabouts	Recovery of Child (Private Law)
Placement (stand-alone)	Adoption (stand-alone)
Special Guardianship (stand-alone)	Wardship (post-2007 only)
Child Abduction	

Proceedings involving Domestic Abuse	
Non-Molestation	Occupation
Extend/Vary/Discharge and Domestic Abuse Order	Forced Marriage
Proceedings involving Finance	
Ancillary Relief	Vary/Discharge/Suspend Ancillary Relief
Transfer of Tenancy	Section 37 Matrimonial Causes Act
Appeal any Financial Order	Enforcement of any Financial Order
Defended Divorce	Validity of Divorce in England & Wales
Table 10(a) relevant Remuneration Regulations / Payment Annex (with Schedule Authorisation)	
Recover possession	Housing Disrepair
Wrongful Eviction	Housing Counterclaim
Homelessness	Harassment Injunction (non-family)
Trusts of Land and Appointment of Trustees Act (TOLATA)	Inheritance Act 1975
Anti-Social Behaviour Order (ASBO)	Injunctions under Section 1 Anti-Social Behaviour Crime & Policing Act (ASBCPA)
Court of Protection (Medical Issues)	Court of Protection (Non-Medical Issues)
Court of Protection (Deprivation of Liberty)	Unlawful Detention (Mental Health)
Displace Nearest Relative (Mental Health)	Habeas Corpus (Mental Health)
Upper Tribunal (Mental Health)	Judicial Review

## Appendix 3: Expert Rates

	Funding Granted 3/10/11 – 31/3/13		Funding Granted 1/4/13- 1/12/13		Funding Granted on/after 2/12/2013	
	<u>Non Lon</u>	<u>London</u>	<u>Non London</u>	<u>London</u>	<u>Non London</u>	<u>London</u>
<b>A &amp; E Consultant</b>	£126.00	£135.00	£126.00	£135.00	£100.80	£108.00
<b>Accident Reconstruction</b>	£90.00	£68.00	£90.00	£68.00	£72.00	£54.40
<b>Accountant</b>	£50-£135	£50-£144	£50-£135	£50-£144	£64.00	£64.00
<b>Accountant (general staff)</b>					£40.40	£40.40
<b>Accountant (manager)</b>					£86.40	£86.40
<b>Accountant (Partner)</b>					£108.00	£115.20
<b>Anaesthetist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Architect</b>	£99.00	£90.00	£99.00	£90.00	£79.20	£72.00
<b>Cardiologist</b>	£144.00	£144.00	£144.00	£144.00	£115.20	£115.20
<b>Cell Telephone site</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Child Psychiatrist</b>	£135.00	£90.00	£135.00	£135.00	£108.00	£108.00
<b>Child Psychologist</b>	£126.00	£90.00	£126.00	£126.00	£100.80	£100.80
<b>Computer Expert</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Consultant Engineer</b>	£90.00	£68.00	£90.00	£68.00	£72.00	£54.40
<b>Dentist</b>	£117.00	£117.00	£117.00	£117.00	£93.60	£93.60
<b>Dermatologist</b>	£108.00	£108.00	£108.00	£108.00	£86.40	£86.40
<b>Disability Consultant</b>	£68.00	£68.00	£68.00	£68.00	£54.40	£54.40
<b>DNA (per person) testing sample</b>	£315 per test	£315 per test	£315 per test	£315 per test	£252 per test	£252 per test
<b>DNA prep of report (per person)</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Doctor (GP)</b>	£99.00	£90.00	£99.00	£90.00	£79.20	£72.00
<b>Employment Consultant</b>	£68.00	£68.00	£68.00	£68.00	£54.40	£54.40

<b>Enquiry Agent</b>	£32.00	£23.00	£32.00	£23.00	£25.60	£18.40
<b>ENT Surgeon</b>	£126.00	£126.00	£126.00	£126.00	£100.80	£100.80
<b>General Surgeon</b>	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
<b>Geneticist</b>	£108.00	£108.00	£108.00	£108.00	£86.40 *	£86.40 *
<b>GP (Records report)</b>	£63 fixed fee	£90 fixed fee	£63 fixed fee	£90 fixed fee	£50.40 fixed fee	£72 fixed fee
<b>Gynaecologist</b>	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
<b>Haematologist</b>	£122.00	£90.00	£122.00	£90.00	£97.60	£72.00
<b>Handwriting Expert</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Interpreter</b>	£32.00	£25.00	£32.00	£25.00	£28.00	£25.00
<b>Lip Reader/Signer</b>	£72.00	£41.00	£72.00	£41.00	£57.60 *	£32.80 *
<b>Mediator</b>	£126.00	£126.00	£126.00	£126.00	£100.80	£100.80
<b>Medical Consultant</b>	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
<b>Medical Microbiologist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Meteorologist</b>	£126.00	£180 fixed fee	£126.00	£180 fixed fee	£100.80	£144 fixed fee
<b>Midwife</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Neonatologist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Neonatologist Clin Neg – cerebral palsy</b>					£180.00	£180.00
<b>Neurologist</b>	£153.00	£90.00	£153.00	£90.00	£122.40	£72.00
<b>Neurologist Clin Neg – cerebral palsy</b>					£200.00	£200.00
<b>Neuropsychiatrist</b>	£158.00	£90.00	£158.00	£90.00	£126.40	£72.00
<b>Neuro Radiologist</b>	£171.00	£171.00	£171.00	£171.00	£136.80	£136.80
<b>Neuro Radiologist - Clin Neg C'bral palsy</b>					£180.00	£180.00
<b>Neurosurgeon</b>	£171.00	£90.00	£171.00	£90.00	£136.80	£72.00
<b>Nursing Expert</b>	£81.00	£81.00	£81.00	£81.00	£64.80	£64.80
<b>Obstetrician</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Occupational Therapist</b>	£68.00	£68.00	£68.00	£68.00	£54.40	£54.40

<b>Oncologist</b>	£140.00	£140.00	£140.00	£140.00	£112.00	£112.00
<b>Orthopaedic Surgeon</b>	£144.00	£144.00	£144.00	£144.00	£115.20	£115.20
<b>Paediatrician</b>	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00 *
<b>Pathologist</b>	£153.00	£540 fixed fee	£153.00	£540 fixed fee	£122.40	£432 fixed fee
<b>Pharmacologist</b>	£122.00	£122.00	£122.00	£122.00	£97.60	£97.60
<b>Photographer</b>	£32.00	£23.00	£32.00	£23.00	£25.60	£18.40
<b>Physiotherapist</b>	£81.00	£81.00	£81.00	£81.00	£64.80	£64.80
<b>Plastic Surgeon</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Process Server</b>	£32.00	£23.00	£32.00	£23.00	£25.60	£18.40
<b>Psychiatrist</b>	£135.00	£90.00	£135.00	£135.00	£108.00	£108.00
<b>Psychologist</b>	£117.00	£90.00	£117.00	£117.00	£93.60	£93.60
<b>Radiologist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Rheumatologist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Risk Assessment Expert</b>	£63.00	£63.00	£63.00	£63.00	£50.40	£50.40
<b>Speech Therapist</b>	£99.00	£99.00	£99.00	£99.00	£79.20	£79.20
<b>Surveyor (non-disrepair)</b>	£50.00	£50.00	£50.00	£50.00	£40.00	£40.00
<b>Surveyor (housing disrepair)</b>			£85.00	£115.00	£85.00	£115.00
<b>Telecoms Expert</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Toxicologist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Urologist</b>	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
<b>Vet</b>	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
<b>Voice Recognition</b>	£117.00	£90.00	£117.00	£90.00	£93.60	£72.00

Hourly Rates in Excess of Codified Rates *			Hourly Rates Not Set Out in Remuneration Regulations	
Geneticist	£171		Endocrinologist	£108
Lip Reader/Signer	£56.60		Genetic Testing	£2250
Paediatric Neuroradiologist	£180		Nephrologist	£108
Paediatrician (London)	£108		Ophthalmologist (including Paediatric Ophthalmologist)	£108
			Paediatric Haematologist	£122.40

## Appendix 4: Legislation Details

### Proceedings under Part IV and V of the Children Act 1989

#### Part IV

- Care and Supervision
- Care orders: care plans
- Care orders
- Parental contact etc. with children in care.
- Supervision orders
- Education supervision orders.
- Interim orders.
- Discharge and variation etc. of care orders and supervision orders.
- Orders pending appeals in cases about care or supervision orders.

#### Part V Protection of Children

- Child assessment orders.
- Orders for emergency protection of children.
- Power to include exclusion requirement in emergency protection order.
- Undertakings relating to emergency protection orders.
- Duration of emergency protection orders and other supplemental provisions.
- Removal and accommodation of children by police in cases of emergency.
- Local authority's duty to investigate.
- Powers to assist in discovery of children who may be in need of emergency protection.
- Abduction of children in care etc.
- Recovery of abducted children etc.



### **S41 (6) Children Act 1989**

In this section “specified proceedings” means any proceedings—

- a) on an application for a care order or supervision order;
- b) in which the court has given a direction under section 37(1) and has made, or is considering whether to make, an interim care order;
- c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- d) on an application under section 39(4);
- e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- f) with respect to contact between a child who is the subject of a care order and any other person;
- g) under Part V;
- h) on an appeal against—
  - i. the making of, or refusal to make, a care order, supervision order or any order under section 34;
  - ii. the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order; or
  - iii. the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii);
  - iv. the refusal of an application under section 39(4); or
  - v. the making of, or refusal to make, an order under Part V; or
- hh) on an application for the making or revocation of a placement order (within the meaning of section 21 of the adoption and children act 2002)
- i) which are specified for the time being, for the purposes of this section by rules of the court. This includes a secure accommodation order, an order permitting the local authority to arrange for a child in care to live outside England and Wales and the extension of a supervision order.

## Appendix 5: Counsel Local Bar

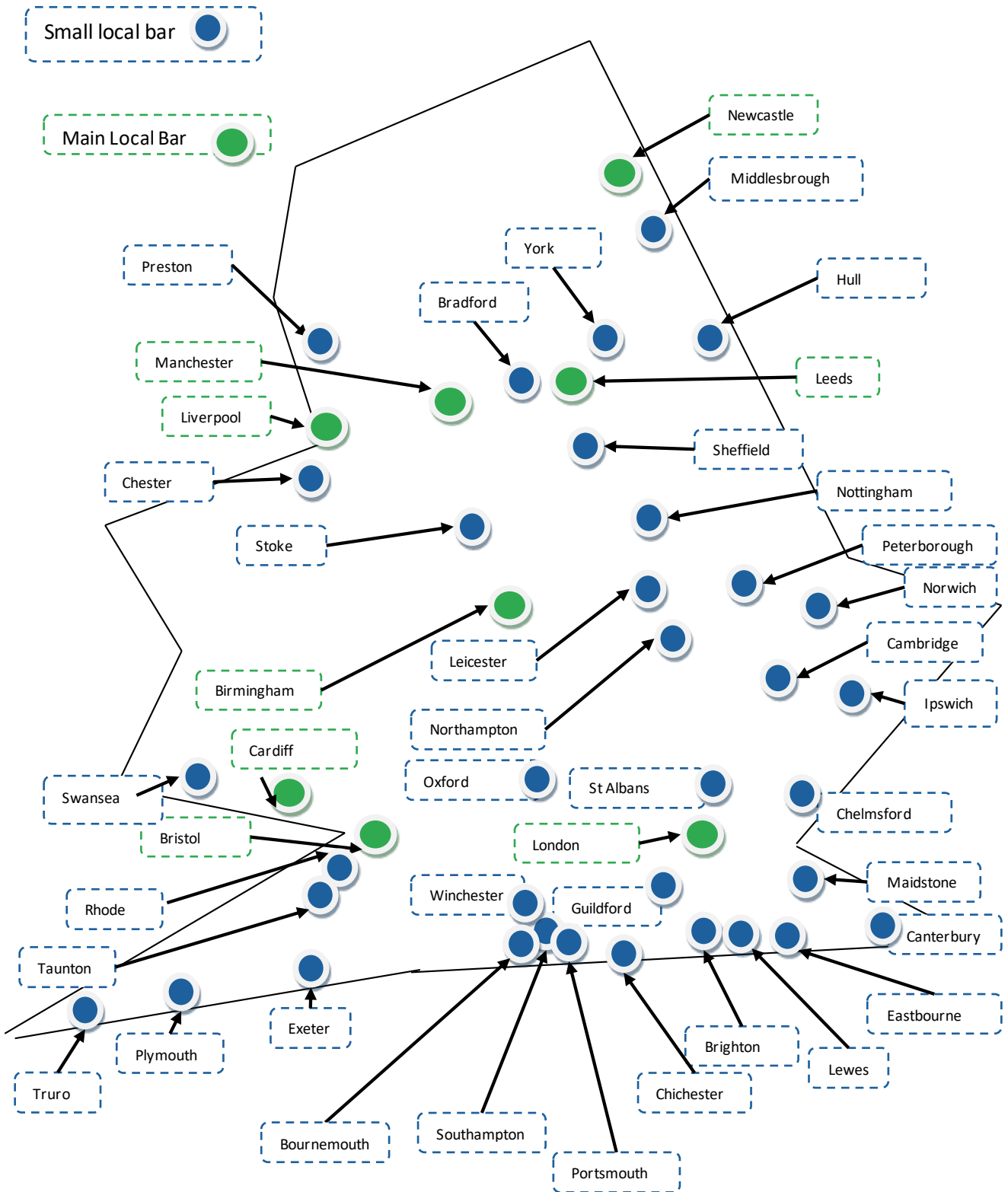
### Table of Circuits and Respective Local Bar's

The table below will assist in establishing which is the main local bar in each region/circuit. When considering which is the most appropriate main local bar caseworker should chose the closest even if this may be in a different circuit.

Details on small local bars has been provided to assist with local knowledge

Circuit	Main Local Bar	Region	Small Local Bar
<b>South Eastern Circuit</b>	London	London and South East	Brighton Cambridge Canterbury Chelmsford Chichester  Eastbourne Guildford Ipswich Maidstone Norwich Oxford Peterborough St Albans Southampton
<b>Western Circuit</b>	Bristol  Southampton London	South West England	Bournemouth Brighton Chichester Exeter Guildford Lewes Plymouth Portsmouth Rhodes (nr Bridgenorth) Taunton Truro Winchester
<b>Midland Circuit</b>	Birmingham	West Midlands, Welsh Borders and mid Wales	Cambridge Leicester Northampton Nottingham Peterborough Stoke Wolverhampton

<b>Wales and Chester</b>	Cardiff	Southern Wales	
	Chester	Northern Wales and Cheshire	
	Swansea	Southern Wales	
<b>North Eastern Circuit</b>	Newcastle	North and Northeast England (incl Cumbria)	Bradford Hull Middlesbrough Sheffield York
	Leeds	Yorkshire and Teesside	
<b>Northern Circuit</b>	Liverpool	North West England, North West Midlands and North Wales	Chester Preston Stoke
	Manchester	North West England, North West Midlands and North Wales	



# Appendix 6: Standard Brief to Counsel

IN THE XXX COURT

CASE NO: XXXX

IN THE MATTER OF THE XXXX ACT XXXX  
AND IN THE MATTER OF (CHILD D.O.B)

BETWEEN:

APPLICANT  
-and-  
1<sup>ST</sup> RESPONDENT  
-and-  
2<sup>ND</sup> RESPONDENT

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**BRIEF TO COUNSEL COVERSHEET**

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<b>Hearing date</b>	
<b>Hearing type</b> (e.g. Directions, IRH, CMC, Review, Finding of Fact, Final etc)	
<b>Listing time</b>	
<b>Time Court has directed parties to attend if earlier</b>	
<b>Application before the court</b> (i.e. contact, residence, care applications, etc.)	
<b>Time counsel instructed to attend client conference if appropriate</b>	
<b>Advocacy meetings</b> (Dates and times if known including date of order providing for advocacy meetings. Or arrangements if dates not known)	
<b>Reason for instruction of counsel from outside the local bar</b> (e.g. Continuity of Counsel and why this was significant; Counsel's specialism or expertise and why this was required; no more local advocate available or willing to work under this fee scheme, etc.)	

# Appendix 7: Standard Disbursement Template

These have been introduced to confirm the information required on a disbursement voucher. Submission of disbursement vouchers in this format is not mandatory.

Expert Letterhead

Client Name

Expert Address

Expert Name:	Area of expertise:
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## Work Undertaken:

Date of work	Description	Rate	Time	Quantity (unit)	Net claim	VAT	Total
<b>TOTAL</b>							

## Travel Costs

Travel date	Reason for travel	Where travel to/from	Miles	Rate	Travel cost	Net claim	VAT	Total
<b>TOTAL</b>								

<b>Additional Information Box</b>
-----------------------------------

Total Net Costs

Total VAT

Amount payable if apportioned

Expert Letterhead

Client Name

Expert Address

Solicitor Firm

Expert Name:	Area of expertise:
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**Work Undertaken:**

Date of work	Description	Rate	Time	Quantity	Net claim	VAT	Total
	This section should include details of work undertaken on each date including a description of work undertaken – for example writing report/ travel/mileage						
	For psychological reports the breakdown in the expert witness guidance will assist – for example <ul style="list-style-type: none"> <li>• Assess mum/dad</li> <li>• Psychological test mum/dad</li> <li>• Assess child/Children</li> <li>• Time with professionals</li> <li>• Time with others (foster carers/family)</li> </ul>						
	For process servers we require details of Work undertaken for example <ul style="list-style-type: none"> <li>• Steps and time taken to serve documents</li> <li>• Associated costs relating to service</li> </ul>						
	For DNA testing this section should include <ul style="list-style-type: none"> <li>• Details of who was tested in initial sample</li> <li>• Who was tested in any additional samples</li> <li>• Sample collection fees</li> </ul>						
	For drug testing this section should include details of work undertaken, the rate and the quantity For example <ul style="list-style-type: none"> <li>• Sample Collection</li> <li>• Segmented hair drug test (quantity and size of sample and cost)</li> <li>• Report</li> </ul>						
<b>TOTAL</b>							

**Travel Costs**

Travel date	Reason for travel	Where travel to/from	Miles	Rate	Travel cost	Net claim	VAT	Total
	This should contain reasons why travel necessary (court, assess client etc.)	Please confirm where you are travelling to and from	How many miles		Train fare, parking cost etc.			
<b>TOTAL</b>								

**Additional Information Box**

This section can be used to provide additional detail on work undertaken

*Where cancellation fees are being charged you should provide details of when you were informed of the cancellation*

Total Net Costs

Total VAT

Total

Amount payable if apportioned

*Payment Method: Fees to be paid by BACS/Cheque etc.*



Expert Letterhead

Expert Name (individual and firm)

Client Name

Expert Address

Solicitor Firm

<b>Expert Name:</b>	<b>Area of expertise:</b> Drug Testing
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**Work Undertaken:**

Date of work	Description	Time	Rate	Quantity (hr./unit)	Net claim	VAT	Total	
	Hair testing monthly - Cannabis		£120	3 (1cm section)	£120	£24	£144	
	Hair testing monthly – Cocaine		£120	3 (1cm section)	£120	£24	£144	
	Sample collection		£50	1	£50	£10	£60	
	Expert Report for court	1.5 hrs.	£90	1	£135	£27	£162	
<b>TOTAL</b>						<b>£425</b>	<b>£85</b>	<b>£510</b>

**Travel Costs**

Travel date	Reason for travel	Where travel to/from	Miles	Rate	Travel cost	Net claim	VAT	Total
<b>TOTAL</b>								

**Additional Information Box**

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Total Net Costs

£425

Total VAT

£85

Total

£510

Amount payable if apportioned

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## Appendix 8: News Articles

Category of work	Summary and Hyperlinked document	Date of News Article
Appeals	<ul style="list-style-type: none"> <li>• <a href="#">Documentation to Submit</a></li> </ul>	12/07/2017
Checklists	<ul style="list-style-type: none"> <li>• <a href="#">Revised Checklists Issued</a></li> <li>• <a href="#">Launch of the checklists</a></li> </ul>	23/11/2016 22/11/2012
Claiming Guidance	<ul style="list-style-type: none"> <li>• <a href="#">Speedier Payments and Claiming Guidance</a></li> <li>• <a href="#">High Cost Claims</a></li> <li>• <a href="#">Transfer of Court Assessed Bills</a></li> <li>• <a href="#">Guidance on use of removable media</a></li> <li>• <a href="#">Claiming Guidance</a></li> <li>• <a href="#">Claiming Guidance – Judicial Review</a></li> <li>• <a href="#">Claiming Guidance</a></li> <li>• <a href="#">Claiming guidance – Evidence, Emergency Certificate, FAS</a></li> <li>• <a href="#">Breakdown of FAS on court assessed claims</a></li> <li>• <a href="#">Claiming guidance – avoid rejects</a></li> </ul>	01/07/2021 20/05/2021 01/06/2020 20/12/2019 05/06/2019 08/02/2019 12/12/2017 26/07/2017  20/09/2017 26/05/2016
Disbursements – Voucher Requirements	<ul style="list-style-type: none"> <li>• <a href="#">Requirements for disbursement vouchers</a></li> <li>• <a href="#">Confirmation of need to submit disbursement vouchers</a></li> <li>• <a href="#">Reminder to submit disbursement vouchers</a></li> <li>• <a href="#">Confirmation that we require vouchers where disbursement is over £20 including VAT</a></li> </ul>	13/06/2016 25/05/2011 19/01/2011 02/04/2013
Disbursements - Travel	<ul style="list-style-type: none"> <li>• <a href="#">Require vouchers where claiming travel and also details on why travel necessary</a></li> </ul>	19/12/2012
Disbursements - Experts	<ul style="list-style-type: none"> <li>• <a href="#">Guidance on when to apply for prior authority, benchmarks and document requirements</a></li> <li>• <a href="#">Requirement to pay experts promptly</a></li> <li>• <a href="#">Experts Standards</a></li> </ul>	17/01/2013 15/09/2011 08/10/2014
Disbursements – Expert Rates	<ul style="list-style-type: none"> <li>• <a href="#">Publication of rates</a></li> <li>• <a href="#">Publication of revised rates</a></li> </ul>	27/10/2011 28/03/2013
Disbursements – Experts in clinical negligence cases	<ul style="list-style-type: none"> <li>• <a href="#">Fees for specified experts in clinical negligence cases</a></li> </ul>	03/06/2013
Disbursements –Risk Assessments	<ul style="list-style-type: none"> <li>• <a href="#">Guidance on payment for risk assessments</a></li> </ul>	11/10/2012
Disbursements – Drug Testing	<ul style="list-style-type: none"> <li>• <a href="#">Confirmation that we require court orders where drug testing is being claimed</a></li> </ul>	12/04/2013
FAS	<ul style="list-style-type: none"> <li>• <a href="#">Guidance on claim submission for FAS</a></li> <li>• <a href="#">CCMS changes for FAS submissions</a></li> </ul>	21/12/2011 23/01/2018

<b>Documents with claim</b>	<ul style="list-style-type: none"> <li>• <a href="#">Confirmation on when we need the file</a></li> <li>• <a href="#">Checklist of documents to submit with FAS claim</a></li> <li>• <a href="#">Documentation with CCMS claim</a></li> <li>• <a href="#">Process checks with court assessed bills</a></li> <li>• <a href="#">Model File Submission</a></li> </ul>	27/09/2012 21/11/2011 20/04/2017 09/11/2011 06/07/2017
<b>Form Completion</b>	<ul style="list-style-type: none"> <li>• <a href="#">Form completion guidance published</a></li> <li>• <a href="#">Form Completion Guidance Revised</a></li> <li>• <a href="#">Form Completion Guidance Revised</a></li> </ul>	25/04/2012 18/10/2012 16/08/2012
<b>Hardship Payments - Counsel</b>	<ul style="list-style-type: none"> <li>• <a href="#">Guidance and contact points for hardship applications</a></li> </ul>	02/11/2012
<b>High Costs Cases and counsel</b>	<ul style="list-style-type: none"> <li>• <a href="#">Where there is a high cost case plan solicitor advocacy costs should be claimed under hourly rates and not FAS</a></li> <li>• <a href="#">Payments to counsel in family cases guidance</a></li> </ul>	17/01/2013 02/11/2012
<b>Outcomes</b>	<ul style="list-style-type: none"> <li>• <a href="#">Documentation required</a></li> <li>• <a href="#">Submission of outcomes</a></li> </ul>	04/10/2017 09/03/2017
<b>Payment on account rules</b>	<ul style="list-style-type: none"> <li>• <a href="#">Confirmation on payment on account processing on emergency certificates</a></li> </ul>	15/09/2011
<b>Payments on Account - Counsel</b>	<ul style="list-style-type: none"> <li>• <a href="#">Requirements for counsel fee notes when submitting a counsel POA</a></li> </ul>	29/11/2012
<b>Rates</b>	<ul style="list-style-type: none"> <li>• <a href="#">Reminder to use correct rates</a></li> <li>• <a href="#">Confirmation of rates changes following LAR remuneration cuts</a></li> <li>• <a href="#">Confirmation of rates changes following LAR remuneration cuts</a></li> </ul>	28/09/2012 29/09/2011 01/02/2012
<b>Rejects</b>	<ul style="list-style-type: none"> <li>• <a href="#">Changes to reject process</a></li> <li>• <a href="#">Changes to reject process</a></li> </ul>	24/07/2019 22/03/2018
<b>Rejects – Civil Claim fix</b>	<ul style="list-style-type: none"> <li>• <a href="#">Extension of civil claim fix to outcomes</a></li> <li>• <a href="#">Extension of civil claim fix to document requests</a></li> </ul>	18/12/2018 07/03/2018
<b>Scope</b>	<ul style="list-style-type: none"> <li>• <a href="#">Extension of care and supervision orders</a></li> <li>• Check scope before submitting claim</li> </ul>	19/07/2017 03/08/2016
<b>Travel</b>	<ul style="list-style-type: none"> <li>• <a href="#">Revised Approach to local travel</a></li> <li>• <a href="#">Confirmation on travel costs</a></li> <li>• <a href="#">Local Travel reminder</a></li> <li>• <a href="#">Documentation required</a></li> </ul>	22/05/2014 31/03/2011 14/08/2014 14/06/2017
<b>Travel costs for counsel</b>	<ul style="list-style-type: none"> <li>• <a href="#">Guidance on travel costs for counsel under FAS and FGF</a></li> </ul>	28/09/2012

## Appendix 9: Which Contract/Cost Assessment Guidance

Contract	Start Date	End Date	Matters covered	Amendments	Applicable cost assessment Guidance
<b>Unified Contract 2007</b>	01/10/2007	October 2010 (non family) Feb 2012 (family)	All matters		<a href="#">Cost Assessment Guidance 2007</a> For Family there is additional guidance on fixed fee schemes
<b>Standard Civil Contract 2010</b>	October 2010	<b>To 01/08/2014</b> Mental Health Community Care <b>To 01/11/15</b> Actions against the Police Public Law Clinical Negligence	Clinical Negligence Mental Health Community Care Actions against the Police Public Law Family Mediation	01/04/13 – LASPO 23/03/15 - ASCBPA	<a href="#">Cost Assessment Guidance 2010</a> (for matters started on/after 01/04/2013) <a href="#">Cost Assessment guidance 2012</a> (for matters started prior to 01/04/2013)
<b>Standard Civil Contract 2012</b>	01/02/2013	31/03/2013	Family Immigration and Asylum Housing and Debt		<a href="#">Cost Assessment guidance 2012</a>
<b>Standard Civil Contract 2013</b>	01/04/2013		Family Immigration and Asylum Housing and Debt	23/03/15 - ASCBPA	<a href="#">Cost Assessment Guidance 2013</a>
<b>Standard Civil Contract Welfare Benefits 2013</b>	01/10/2013		Welfare Benefits (in London, South East, Midlands and East)		<a href="#">Cost Assessment Guidance 2018</a>
<b>Standard Civil Contract Welfare Benefits 2013</b>	01/02/2014		Welfare Benefits (in North, South West and Wales)		<a href="#">Cost Assessment Guidance 2018</a>

<b>Standard Civil Contract 2014</b>	01/08/2014		Mental Health Community Care	23/03/15 - ASCBPA	<a href="#">Cost Assessment Guidance 2018</a>
<b>Standard Civil Contract 2015</b>	01/11/2015		Actions against the Police Public Law Clinical Negligence		<a href="#">Cost Assessment Guidance 2018</a>
<b>Standard Civil Contract 2018</b>	01/09/2018		All Matters		<a href="#">Cost Assessment Guidance 2018</a>

## Appendix 10: Desk Aids

### Fee Scheme Exclusions:

#### Excluded Proceedings

- Child Abduction and custody act proceedings
- Inheritance act proceedings under the Inheritance (provision for family and dependents act) 1975
- Trusts of Land and Appointment of Trustees Act 1996
- Applications for forced marriage protection orders/injunctions under Part 4A of the family law act 1996
- Defended divorce, defended judicial separation or applications for dissolution of a civil partnership
- Nullity proceedings or proceedings for annulment of a civil partnership
- Applications for a parental order under the human fertilisation and embryology act 2008
- Proceedings under the inherent jurisdiction of the high court in relation to children
- Separate representation of a child other than in specified proceedings (see separate box)
- Proceedings in the court of appeal and supreme court
- Very high cost cases (see separate box)
- Any proceedings where a QC has been instructed (with or without prior authority)
- Any work other than initial advice in relation to an appeal of a final order.

#### Separate Representation of a child

Separate representation of a child is excluded from PFLRS and FAS unless they are representing a child in specified proceedings or in proceedings heard together in specified proceedings.

Specified proceedings are:

- Application for a care or supervision order
- Interim care orders
- Application to discharge a care order
- Application to discharge or vary a supervision order or to replace with a care order
- Consideration of a residence order in relation to a child who is subject to a care order
- Contact in relation to a child in care
- Appeals in relation to the above orders
- Appeals against the making of or refusal to make an order under part V of the children act (child assessment, emergency protection orders)
- Making or revocation of a placement order
- Secure Accommodation Orders

#### VHCC (POA)

Cases paid under a very high cost case are excluded from the fee schemes and are paid either under contract or an events model.

- Payment for counsel will be claimed by counsel on a POA1 and 100% of the costs can be claimed and paid
- Where counsel are claiming under an events model this is managed by VHCC and memo pad will be noted with these cases as “events”
- SCU Cases will have an area 17 tag and should display the limitation “very high cost cases only”
- There will be a note on memo to confirm that we have agreed costs in a contract
- *Normal rules apply in non-family and non-contract SCU cases*

## Provider Travel Desk Aid:

### Local Travel to Court (CAG 3.14)

Claims for travel expenses to court for journeys of 10 miles or less each way will generally not be paid as this is considered local travel. The CPR rules confirm that local travel expenses to court cannot be paid. The definition of local is within 10 miles.

The disallowance of local travel expenses applies to certificates issued on/after 01/09/14.

The local travel rule does not preclude provider claims for the time spent travelling or other related expenses such as

### Checking Mileage and Travel Time

Checks should be made using the [court finder route checker](#) for court attendances or google maps (or equivalent) for any other travel. This should be checked against the highest travel estimate.

Providers should justify any discrepancy between the route finder and their claim.

Caseworkers should annotate any discretionary assessment on the claim

### Additional Casework Checks

The checks above do not preclude caseworkers making checks where they have concerns about the amount claimed. This is however not an expectation.

### Travel Expenses

- Mileage can be claimed at 45 pence per mile.
- A copy of the ledger and a file note should be provided detailing the mileage
- Rail Fares should be at standard class.
- A copy of the receipt or ticket should be provided
- Any supporting evidence will be retained by the LAA

### FAS Travel

Counsel travel costs may be justified if any of the following apply

- There is no local bar
- There is a need for continuity of counsel
- The case requires specific knowledge or skill
- There is no suitable local counsel available/no availability of local counsel

### No Local Bar/Local Counsel suitability or availability:

Where counsel state this on their claim this will be accepted. Travel will be allowed up to the amount payable if they had travelled from the main bar for that region

### Continuity

This will only be applicable where the nature of the hearing requires continuity of counsel

### Travel Time (2.42—2.46 CAG)

- Consider whether time spent is reasonable or if a local agent or telephone attendance would be more appropriate
- Travel for journeys over 5 hours or to visit the client may be reasonable but must be justified by the provider. Examples of where this may be justified are where the nature of the client requires it or it is a complex application before the court
- It may be appropriate to allow travel to the funded client, where for example the funded client is vulnerable: a child, is housebound, in prison or hospital. However the provider will need to detail the context necessitating the specific reasons why that travel was necessary on the claim form to allow a judgement on its appropriateness.

## Legal Aid Transformation Changes – 22/04/2014

### Single Family Court

In family cases proceedings will be issued in the single family court rather than the county court or FPC

- If the case concludes on/after 22/04/14 rates in family cases will be based on the level of judge rather than the level of court
- For FAS hearings on/after 22/04/14 fees will be based on the person before whom the proceedings were heard
- The limits for whether the costs should be assessed by the LAA or the court remain the same but the terminology changes. Previously all FPC costs would be assessed by the LAA, now if the case concludes before the following it will need to be assessed by the LAA
  - Assistant to Justices Clerk
  - Justices Clerk
  - Lay Justice

Old Terminology	New Terminology
Family Proceedings Court	Assistant to justices clerk Justices clerk Lay Justice
County Court	Judge of district judge level Judge of circuit judge level Costs Judge
High Court or Court of Protection	Judge of high court judge level or Court of Protection

### Other Changes

- New outcome codes have been introduced for interim family fixed fee bills in addition to those for JR cases. Queries in respect of these new codes should be subject to a priority return rather than a hard reject
- Child Arrangement Orders replace residence and contact orders
- There are changes to the domestic violence and child protection evidential requirements for caseworkers granting certificates
- There have been changes to the timetabling of care cases—the aim is for these to be concluded within 26 weeks.

### Form Revisions for Single Family Court Changes

There is a new advocates attendance form ([EX506](#)) and assessment certificate ([EX80B](#)). The changes relate to terminology and so should not be rejected where the old version has been used. Any queries should be a priority return.

### 10% Reduction to the Care Proceedings Graduated Fee Scheme

The care and supervision fixed fees have been reduced by 10% for certificates applied for on/after 22/04/14. Where these cases (s31 care & supervision only) are paid on an hourly rate the hourly rate has also been reduced by 10% and a new table has been included in the [remuneration regs \(table 9aa\)](#) to reflect these changes.

### Judicial Review Permission

Payment will no longer be made for permission work in judicial review applications if permission is not granted by the court. A new limitation has been introduced on certificates to reflect these changes. New outcome codes have been introduced to reflect these changes.



## Scope Desk Aid:

### Show Cause:

For cases under the access to justice act when a show cause is placed on a certificate it acts as an embargo preventing any further work being undertaken. Work can therefore not be claimed for the period when a show cause is in place.

For cases under LASPO providers can undertake work “at risk”. If the show cause is removed and funding continues then they are able to claim for work in the period when the show cause was in place. If the certificate is discharged/withdrawn it will be from the date of the initial show cause notice therefore any work after this date is post discharge and out of scope

We would usually allow three days for the solicitor to receive the notice to show cause.

### Dates of Funding

Please ensure that you check the dates on the certificate

- The date of issue of the certificate (emergency & substantive)
- Any gaps between the expiry of the emergency and the issue of the substantive)
- The dates of any show cause placed on the certificate
- The dates of any discharge/withdrawal or revocation

It may help to write the dates on the claim form to ensure that you do not overlook these

### Enforcement

The certificate should be specifically amended to cover enforcement work.

### Prior Authority

Payment can only be made over the codified rate where prior authority has been granted

### Enforcement

Initial advice in relation to an appeal against a final order immediately after the hearing does not require an amendment as it would be covered by the existing certificate. However, if an opinion is required as to merits of the appeal then an amendment is required

Counsel’s fees for the opinion will be paid under the FAS and for the solicitor would be at hourly rates and not covered by the fixed fee.

### Work between the emergency and substantive certificate:

Care should be taken by in calculating whether there is a gap in the dates from the expiry of the emergency and the granting of the substantive certificate. Caseworkers should use the rates calculator to ensure there are no gaps. Checks should also be made on CIS (including adhoc) for more restrictive limitations imposed by the legal caseworkers.

If the emergency is replaced by the substantive certificate before the emergency certificate lapses then the scope of the substantive certificate applies to the emergency as one continuous certificate (POP58). The one exemption to this is where the provider incorrectly exercised their devolved powers/delegated functions and we have limited the emergency certificate to one specific hearing. In these cases they are only covered for that one hearing until the substantive is issued—this should be noted.

### Final Hearing

Attendance at the final hearing is not covered within family help higher certificates (L3). For attendance at the final hearing the certificates should be covered for legal representation at Level 4

### Cost Limitations

Please remember to check the cost limitation on the certificate. The cost limitation includes all costs but does not include VAT or the cost of assessment

## Appendix 11: Version History

Version 3.2.1 February 2022	(version 3.2. not published)
<b>Reference to quick/advanced guides</b>	Links updated to reflect new LAA training website
	Reference removed to KPI and non KPI rejects – distinction has now been removed.
<b>1.1</b>	Additional advice on making sure that counsels cost allocation is correct
<b>4.1</b>	Q&A example on joined party status added
<b>6.5</b>	Additional clarity on lunchtime adjournments where hearing starts or finishes around lunch time.
<b>8.2</b>	Added reference to Inherent Jurisdiction in the deprivation of liberty table and header Updated guidance on submission of claims in these cases
<b>8.4</b>	Added reference to recorder in rates table
<b>11</b>	Updated and added references to Guidance on Remuneration of Expert Witnesses
<b>13.2</b>	Added guidance on rights of assessment Added guidance on when an interim bill can be claimed
<b>15.2</b>	Updated guidance to reflect removal of 100% POA for FAS
<b>16</b>	Added reminder that all documentation must be sent with resubmitted claims
<b>16.1</b>	Removed distinction between KPI and non KPI reject  Added reject where no justification has been provided for the enhancement
<b>22.1</b>	Added reference to outcome process
<b>22.7</b>	Reworded paragraph to make clear that providers charge is only applicable in family help lower
<b>22.8</b>	Changed reference from news article to position statement – charge in care/human right cases  Added reference to the statutory charge in inquest cases
<b>News Articles</b>	Links to additional news articles on claiming added
<b>Appendix 10</b>	DeskAid updated – Exclusions table clarified to make it clear that work (with the exception of initial advice) in relation to appeals against a final order is excluded

Version 3.1: December 2020	
Guidance Links	Table updated to reflect new LAA training website
6.5, 6.11	Updated evidence requirements for remote hearings
6.9	Revised IRH guidance as final hearing to bring in line with contract wording
8.2	Added guidance on billing deprivation of liberty cases
10.29	Removed reference to GDPR
11	Removed reference to EU in relation to VAT and right to reside
13.1	Added reference to Secure File Exchange
13.2	Confirmed revised position on rights of assessment
15.3	Corrected POA amount from 85% to 80%
16.1	Confirmed that assessment is appropriate where experts above codified rates



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