



Legal Aid
Agency

Escape Cases Electronic Handbook

Version	Issue date	Last review date	Owned by
1.1	17/07/2014	17/07/2014	Civil Certificated Billing Improvement Group

Version History

Version	Date		Reason
1	10/07/2014	10/07/2014	Initial Version
1.1	17/07/2014	17/07/2014	Removed form completion section in immigration and asylum escape cases chapter

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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 *green* relate to internal processing

Links to the relevant guidance and regulations are listed under [Appendix 5: Guidance Links](#)

Which contract applies

Under the Standard Terms of our contracts (Clause 1.27) the current contract held by the provider governs any cases they are conducting (insofar as the current contract includes the relevant Category of Law), other than in respect of fees and remuneration rates, whether the case began before or after the start date of the current contract.

Therefore Debt, Discrimination, Education (Special Needs), Family, Housing and Immigration and Asylum cases are governed by the 2013 Contract. All other categories (except Welfare Benefits which has its own Contract) are governed by the 2010 Contract, as amended.

1: Means Assessment

This section covers general means assessment guidance. There is additional category specific means assessment guidance

11: Civil Escape Cases

12: Mental Health Escape Cases

13: Immigration and Asylum Escape Cases

1.1: Failure to provide Means Information

3.24 Standard Civil Contract Specification 2013

3.26 Standard Civil Contract Specification 2012

Point of Principle CLA 55

There are a number of different situations that may arise regarding non provision of means information:

- 1) We never require evidence of means because the client is unlikely to be able to provide it (e.g. street homeless clients)
- 2) The client is able to provide evidence, but the provider may be justified in carrying out initial work before they have received the evidence – e.g. the client hasn't brought the evidence for their first appointment, but there is (urgent) work that needs to be carried out immediately without waiting for the client to go back and obtain the evidence.
- 3) The client does not provide evidence of means at the start of the case, and it would be reasonable for the provider to wait until s/he returns with the evidence, but the provider commences work anyway.

In the second situation the provider can claim for urgent work even if the client never subsequently supplies the evidence of means. Since 2007 this has meant that the provider can claim a full fixed fee in these situations (previously they were limited to two hours work), although any claim for disbursements must relate to the urgent work.

In the third situation the contract specification places the provider at risk of not being paid at all, if the client never provides the financial evidence (since we won't regard the provider as having acted reasonably in undertaking work before receiving satisfactory evidence)

The contract does not confirm the approach to take where the evidence is subsequently provided and therefore caseworkers should consider the facts of the individual case when determining which approach to take. This may be considered a contractual breach under 14.12(b) of the Standard Civil Contract or caseworkers may undertake a nil assessment as per POP CLA55

Please note where a nil assessment has been undertaken and the provider seeks to appeal this they must provide both evidence of client's financial eligibility **at the time** the application for legal aid was signed **and** reasonable justification for submitting their claim without this evidence.

1.2: Evidence of Means

Evidence of wages for clients who are paid on a weekly basis

Volume 2 Section E Para 2.1(5) of sec 4.1 of the LSC Manual

The computation period covers the period of one month prior to the date funding is granted (date the Controlled Work form is signed). If the client is paid on a weekly basis ideally provides should obtain documentary evidence of as many weekly wage slips as have been paid to the client in the computation period.

Despite the above if the provider only obtains one weekly wage slip from within the computation period as evidence of the client's eligibility this is acceptable. In such circumstances you should accept the wage slip and a calendar monthly figure can be obtained for assessment purposes by multiplying the figure by 52 to arrive at an annual figure and then dividing the annual figure by 12.

1.3: Accommodation Costs

A deduction is made for the amount **payable** during the computation period. Evidence should be obtained (e.g. copy of bank statement, mortgage statement, or rent book) to support the amount stated where housing costs exceed 1/3 of gross income – basically the evidence is necessary to confirm that the amount **payable** is as stated by the client, not to restrict the allowance to the amount actually paid out. Please note bank statements would only be considered appropriate evidence where it is clear what the payment relates to.

Thus if the accommodation costs are above 1/3 of gross monthly income, what we are looking for is proof of the liability, rather than proof it is being paid.

It should be noted that amount assessed will still be net of Housing Benefit (due to the fact that HB is a disregarded benefit for income purposes); effectively the two cancel each other out.

In addition all of the other provisions, such as the allowance being capped at £545 per month for clients with no dependents etc still apply.

2: Legal Help Form

Photocopied and Scanned Legal Help Form

Paper Files

The original Controlled Work forms are not always retained on file. Standard Civil Contract 2010 Rule 3.13 requires that the fully completed Controlled Work form be retained on file. The Commission requires sight of the original form signed and dated by the client. A photocopy is not acceptable.

Electronic Files

Where files are stored electronically a scanned version of the Controlled Work form is acceptable, provided it is an electronic PDF copy of the entire form. Photocopies will not be accepted.

Additional guidance can be found in the document [“Controlled Work and Audit Trends”](#)

3: Attendance and Preparation

3.1: Evidence on File

Section 1.7 Cost Assessment Guidance 2010/2013

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

3.2: Administrative Work and Overheads

Section 2.1 – 2.3 Cost Assessment Guidance 2010/2013

Subject to any express exceptions payment will not be made for time spent purely on administrative matters. This will include the opening and setting up of files, diarising the file, liaising with costs draftsmen, maintaining time costing records and other time spent in complying with requirement of the contract.

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 [5.8: 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 experts CV to determine whether to instruct them.

3.3: Perusal of Documentation

Section 2.8 – 2.14 and 2.39 – 2.41 Cost Assessment Guidance 2010/2013

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.

3.4: Preparation of Documents

Drafting Attendance Notes

Section 1.28 Cost Assessment Guidance 2010/2013

There is no requirement that file notes should be typed up. If they are, then a reasonable time (see 2.16 Costs Assessment Manual) 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

Section 2.58 – 2.63 Cost Assessment Guidance 2010/2013

Below are the time frames usually considered reasonable for form completion by providers although more may be justified in complex cases

Application for legal aid	30 minutes
EC Claim 1	30 minutes

3.5: Advocacy

What costs are included in solicitor advocacy?

Work which would be included within escaped cases and considered to be advocacy would be as follows:

- Acting as advocate for client at a tribunal hearing

The following are not considered to form part of advocacy and will be paid at the attendance and preparation rate

- 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
- Preparation will not be considered to form part of advocacy costs (other than as detailed above)

3.6: 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.

3.7: Travel Time

7.156 – 7.157 Standard Civil Contract 2013

2.42 – 2.51 Costs Assessment Guidance

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 costs assessment guidance confirms that the following questions should be considered:

- a) Was there a reasonable need for the journey?*
- b) 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 [Local Travel](#)

Travel to the funded client

2.47 Costs Assessment Guidance 2010/13

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.

Please see [5.29: Travel and Subsistence Costs](#) for details on travel expenses

3.8: Running Record of Costs

Q: Is a running total required after each item?

A: No, as long as the overall total of costs is included on the running record of costs it can be accepted for assessment purposes.

4: Rates

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

- Remuneration Regulations (matters applied for after April 2013)
- Payment Annex of the contract (matters applied for prior to April 2013)
- Tables in [Appendix 1: Rates](#)

London/Non London Rates

The following website will provide details on London Boroughs – this will help when considering whether the London rates apply

<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.

5: Disbursements

5.1: Irrecoverable Disbursements

4.24 and 6.63 Standard Civil Contract Specification 2010

4.24 and 6.62 Standard Civil Contract Specification 2013

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.

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.

Disbursements under Family Help Lower

Please see [11.2: Disbursements for Family Help Lower](#)

5.2: Requirement for disbursement Vouchers

Submission of Disbursement Vouchers

Where disbursements are being claimed we require the submission of a disbursement voucher for any amount which has a value of £20 or over (inclusive of VAT).

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.

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
GP Medical Records	Receipt Letter from medical centre confirming payment	Ledger entry
Police Disclosure	Receipt/Invoice Letter from police confirming payment	Ledger entry

Train Fare	Train Ticket	Ledger entry with screen print verifying rail fare.
Car Parking	Ticket/Receipt from car park detailing amount paid and date	Ledger Entry
DNA Testing	Invoice	Court Order Ledger entry Letter confirming payment
Drug and Alcohol testing	POA and Bill - Invoice Bill –court order confirming drugs tested. This isn't required if prior authority has been granted and it matches	Court Order/Attendance Note of hearing Ledger entry Letter requesting testing and letter confirming payment
Experts	Invoice	Ledger Letter confirming payment Copy report
Risk Assessments	POA and Bill – Invoice Bill – court order confirming risk assessment criteria. This isn't required if prior authority has been granted and the amount matches	Court Order/Attendance Note of hearing Ledger entry Copy Report

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.

5.3: Advocacy Support Services

Advocacy support services or witness intermediaries are services provided to the client to provide 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.

5.4: Apportionment between parties

Further guidance on apportionment of experts' fees can be found in section 1.6 of the ["Guidance on authorities and legal aid for cases in courts outside England and Wales"](#)

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

5.5: Cancellation Fees

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.

5.6: 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

5.7: Counsel or Solicitors as Experts

Counsel and solicitors providing advice on a matter are not considered to be 'experts'. Any advice or opinion will be remunerated at the appropriate solicitor or counsel rate, not the expert rate – for example the FAS opinion fee.

Please see the case of [R \(on the application of SP\) v THE LORD CHANCELLOR \(2013\)](#)

5.8: Courier Fees

Section 2.2 of the Cost Assessment Guidance 2010/2013

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.

5.9: Costs of Communication Support Professionals

Section 3.7 of the Cost Assessment Guidance 2010/2013

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.

5.10: Court Fees

Section 9.1 of the Cost Assessment Guidance 2010/2013

In controlled work matters, court fees are not a permitted disbursement

5.11: 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 matter started on 01/06/2012 the applicable rate would be £315 for the test plus an additional fee of £90 making a total of £405. If there were two children a further fee of £133 is allowable.

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.

Where a sample fee has been charged a fee of £50 would be considered reasonable.

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.

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

5.12: Drug and Alcohol Testing

There are no hourly rates for drug/alcohol testing, and these are generally not itemised on a time basis, consequently this causes issues for assessment and payment. Where a report is ordered however there is an expectation that there will be a breakdown of the time spent. 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. Each testing company has a tick box on-line 'request for quotation form', the laboratories will only quote for what has been requested on this form. Ticking the incorrect box could double if not more than double the cost of testing required.

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

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

Scram X bracelets for alcohol testing may be claimed if this has been ordered by the court and the legally aided client is not currently in therapy or a support programme.

Assessment

On assessment there will be requirement that both the invoice and the Court Order are submitted and on consideration if all three strands match then payment would 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/Segmented testing basis. Month-by-month/Segmented testing is a lot more costly method of testing, unless the court order specifies this method of testing solicitors should only request testing on an Overview/Standard testing basis.
- If the court specifies 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 specifically stated 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 is not payable by the LAA this includes split invoicing fees charged by laboratories.

5.13: Expert Administrative Costs

4.24 and 6.63 Standard Civil Contract Specification 2010

4.24 and 6.62 Standard Civil Contract Specification 2013

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:

- (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

5.14: Independent Social Workers

7.182 Standard Civil Contract Specification 2013

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 ss7.182 and 7.183 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.

Under the Family Specification any work relating to independent social work enquiries or expertise, whether carried out by Caf/CASS, a guardian or anyone else is not an allowable disbursement if it is provided outside England and Wales.

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 [Guidance on Remuneration Rates for Expert Services Determined as Risk Assessments](#).

5.15: Interpreters

Providers cannot claim work undertaken by in house interpreters as disbursements.

5.16: Observations of Contact.

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 in order to inform the report more generally but the purpose of the report must not be to assess contact.

5.17: 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

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.

5.18: Prior Authority

Please see [13.6: Disbursements](#) section in relation to Immigration and Asylum CW3 applications

5.19: Process Server Fees

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

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.

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

5.20: 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.

5.21: Psychotherapists

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.

5.22: Police Disclosure

We would usually expect an invoice to support this disbursement 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.

There are no codified rates for police disclosure fees and therefore payment of these will be subject to reasonableness on assessment. For payments on account it will be sufficient for an invoice (or its absence a ledger) to be provided

5.23: Rates

Expert Rates prior to 03/10/11

There are no codified rates for experts where funding is 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 where funding is applied for 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.

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

Please note the criteria for being an "expert" is not narrowly defined as somebody who is providing a medical, psychiatric report etc but will cover the wide range of services listed in the codified rates and others where there is no codified rate where an expert opinion or service has been provided.

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

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 (the address registered with HMRC) 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.

London rates can be applied for any location that falls within the London Boroughs. 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>

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 and also the qualifications of the expert.

5.24: Risk Assessments

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:

1. A court order in the proceedings specifies that a 'risk assessment' is required; and
2. 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.

5.25: 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.

5.26: Staged Disbursements

Please see 7.3: Staged Disbursements

5.27: Surveyor Fees

Correct Rate

The Payment Annex and Remuneration Regulations confirms that the correct rate for surveyors fees are paid at a rate of £50 per hour for non-disrepair 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

Outside London	Up to £85 per hour
In London	Up to £115 per hour

5.28: Transcription Fees

Transcription fees usually relate to the transcription of the judges reasons for coming to the decision contained in the order. These may be considered a reasonable expense where the client requires it for a possible appeal or evidence in other proceedings. Where these fees are incurred after the conclusion of the proceedings in other circumstances this would need to be justified as it may not be considered a reasonable expense.

There are no codified rates for transcription fees and therefore any assessment will be based on whether it was reasonable to incur the costs and if the costs are reasonable. A copy of the court order requesting the transcription should be provided.

5.29: 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 not be a mandatory reject reason as outlined in our reject checklist and as such should be accompanied by a Priority Return form to ensure no processing delay.

Travel Rate for Experts

The maximum hourly rate paid to experts for travel is £40. It would generally not be considered reasonable to pay more than the expert applicable hourly rate and, whilst a discretionary decision, it is considered that 2/3 of the hourly rate would be considered reasonable. 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 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

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
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.

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.

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. The mileage rate of 45p is a maximum rate. The cost assessment guidance 6.55 confirms that providers can only claim whatever disbursements have actually been incurred and therefore where the mileage rate incurred on the ledger is lower than the lower amount should be allowed.

Local Travel

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.

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 [3.7: Travel Time](#)

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.

Congestion Charge

3.20 – 3.22 Costs Assessment Guidance 2010/2013

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.

Travel & Mileage: When to check?

Checking Mileage and Travel Time:

Any checks should be made using the [court finder route checker](#) for court attendances or Google maps for any other travel. This should be checked against the highest travel estimate.

Providers should justify any discrepancy

Caseworkers should annotate any discretionary assessment on the database when the assessment is completed.

Additional Casework Checks

The checks above do not preclude caseworkers making checks where they have concerns about the amount claimed. This, however, is not an expectation.

Funded Client Travel Costs

3.23– 3.32 Costs Assessment Guidance 2010/2013

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.

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.

These costs should be included as disbursements within the solicitors' bill.

6: VAT

S4 Costs Assessment Guidance

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 2010/2013

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 2010/2013

It is the responsibility of the Solicitor to determine the basis of a claim for VAT either as a true disbursement or not. 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 providers 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.

Q: Is VAT payable on provider travel disbursements?

A: Yes we should pay VAT on travel expenses. Travel expenses are considered an integral part of the solicitors supply to the client and therefore attract VAT much the same way as their profit costs do. Rail fares are zero rates so therefore the likelihood of us double paying on VAT is small. If they claim VAT we should be paying it and if they don't we won't.

VAT on travel		
Goods or Services	VAT rate	More Information
Houseboat moorings	exempt	VAT Notice 742
Parking spaces or garages supplied with houseboat moorings	exempt	VAT Notice 742
Passenger transport in a vehicle, boat or aircraft that carries not less than ten passengers	0%	VAT Notice 744A
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 Update 1 to VAT Notice 700

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 on Immigration Cases.

[S4.26 – S4.34 Costs Assessment Guidance 2010/2013](#)

Where a funded client's right to stay in this country has not been determined and they are a non European Union (EU) resident, the Costs of any Legal Services will not attract VAT. 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. ([4.29 Cost Assessment Guidance](#))

The guidance on VAT in immigration cases was originally published in [Focus 49 \(December 2005\)](#). This confirms that:

“For VAT purposes, persons who have not been granted either permission or a right to remain in the UK should be treated as belonging in their country of origin. This will apply for example, to asylum seekers and those entering without permission. “Belonging” in this context involves something more than physical

presence alone – see above. In these circumstances, the country in which individuals have their usual or permanent place of residence can only reasonably be seen to be their country of origin unless and until they are granted the right to remain in the UK.

This policy applies to all supplies of legal services in relation to an application to remain in the UK (including services relating to that application, or costs, after a judgment has been made) even if a final bill is rendered after the recipient has been granted the right to remain in the UK. Consequently if work is done after determination to close the file VAT need not be apportioned.”

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 services abroad

An invoice for a service in France, the toxicologist is subject to VAT in France, and that countries rate would apply.

Counsels 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

7: General Claiming

7.1: Submission of the Claim

Copy Documentation

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.

Incorrect Rates

Where the incorrect rate has been claimed then the claim should be returned for the provider to include the correct rates

Incorrect Totals

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 claim will need to be rejected so that solicitor can provide an updated totals page of the claim form

Supplemental Bills

Where a bill has been paid but the solicitors have omitted to something on that bill we would need to consider whether the client has a financial interest in the claim. If so the agreement of the client should be obtained before accepting a further bill

Where we are paying an amended claim then the entire claim should be resubmitted with any previous payments being recouped. The solicitors can either amend CWA to reflect the amended claim or void the original claim allowing the revised claim to be considered afresh.

Recoupment

Where monies are being recouped we should inform the provider (solicitor and counsel) in writing of the recoupment or adjustment to their claim.

7.2: Document Clips

To assist processing we have suggested that the file of papers is organised into the following clips/sections.

Clip 1	Clip 2	Clip 3
<ul style="list-style-type: none">• EC Claim 1• Running Record of Costs• Counsels Fee Note• Evidence of Disbursements	<ul style="list-style-type: none">• CW1• Legal Help Evidence of Means• CW2• CLR Evidence of Means	<ul style="list-style-type: none">• Granted/Part granted CW3 applications

7.3: Staged Disbursements

Staged disbursements should **not** be included in the total disbursements figure of the EC Claim1 when the full claim is submitted; instead they should be listed in the stage disbursements section of the form.

By adding the staged disbursements figure to the outstanding total you will be able to calculate the full total for disbursements claimed in the case.

Example:

The provider opened a case in February 2013 and subsequently claimed a £200 staged disbursement through CWA in May 2012.

The Escape Case was billed on CWA in January 2013. All disbursements (including staged disbursements) amount to £500.

When submitting the EC Claim 1 the provider should claim £300 for disbursements and then list that they also claimed £200 for a stage disbursement, thus accounting for the total disbursement amount of £500.

Any VAT that disbursements attract should be claimed at the same time as the relevant disbursements. For example if the provider claims £1,000 as a staged disbursement in respect of an expert's report and the report attracts VAT this should be claimed as part of the staged disbursement, rather than the overall VAT for all disbursements when the full claim is submitted.

Appeals and Staged Disbursements

If deductions are made to a claim on entries made on staged disbursements and also the main claim both sets of deductions would be included as part of the same appeal process. It is not necessary for the items to be appealed separately.

7.4: Bill Preparation

On escaped cases an allowance of 30 minutes is considered reasonable in the majority of cases. For larger bills we may consider a higher allowance.

No bill preparation is claimable for cases where only the fixed fee is claimable.

These costs can however be taken into account when the costs escape the fixed fee however they should not 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.
- Where the costs of an escaped case claim have been assessed to below the threshold only the fixed fee will be payable and the costs of preparing the bill cannot be added as preparation of the bill was not justified.

Example

- Escape case threshold: £1000
- Profit costs (excluding claim preparation): £1200
- Bill preparation: £25

- Total profit costs claimed £1225.

On assessment claim reduced to £980 excluding bill preparation therefore the fixed fee is payable in this matter. The costs of drawing up the bill cannot be added to take it back over the threshold which would allow it to be paid at hourly rates.

7.5: Counsels Fees and the Solicitors Bill

Inclusion of counsels fees within the bill

Solicitors are responsible for claiming Counsel's fees within their bill. A fee note is required detailing the work undertaken

7.6: Which claim form?

All claim forms and checklists can be found on our [website](#)

7.7: Checks made on processing

Signature

The claim must be signed and dated otherwise this will be rejected. This should be an original signature of a representative of the firm.

Rate Checks

On bills assessed by the LAA checks should be made that all rates claimed are correct

For all bills where the funding was granted after 03/10/11 checks should be made on all expert fees and barrister fees

7.8: 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)

8: Rejects

The LAA has been working closely together with Contract Managers, Case Management Staff and Providers to reduce the amount of claims that are rejected. This has involved WebEx rejects training to providers and the introduction of the claim completion checklist and priority returns.

8.1: Claim Completion Checklists

The claim completion checklist was devised as an aid for caseworkers and providers and to encourage the reduction of rejects. The checklist details all of the mandatory checks that providers should make prior to submission of their claim and caseworkers once in receipt of the claim.

Providers are encouraged to complete the checklist and attach this to their claim before submission. It is mandatory for caseworkers to work through the reject checklists when processing claims. If caseworkers reject a claim that is not detailed on the reject checklist this will always be a priority return.

Reject Checklists	
EC Claim 1	Civil Checklist
EC Claim 1	Immigration and Asylum Checklist (NIAT)
EC Claim 1	Mental Health Claims

Immigration and Asylum Claims

Where the claim is submitted in respect of an immigration or asylum matter where a reject is found caseworkers will continue to check for a further five minutes after which point the claim will be rejected. Providers are encouraged to check the remaining points on the checklist are correct prior to resubmission.

8.2: Requesting Further Information or Documentation

Phone Calls to Providers

- If the claim form is incomplete and this information can be provided instantly over the phone (i.e. it has not been indicated that this is the final claim, or the outcome codes are incomplete), then the caseworker should call the provider for this information.
- When a claim is rejected for a second or subsequent time, then the caseworker must call the provider to provide notification of this reject. This also gives the provider an opportunity to discuss the reasons for the reject and for the caseworker to explain and explore any training/guidance requirements.

Priority Returns

The priority returns process was agreed with the Representative Bodies and introduced from 5th December 2011. This ensures that work is prioritised on re-submission and claims rejected in this way are not recorded when analysing reject levels and any associated key performance indicators of a provider.

A priority return should be used:

- If the reasons for rejection of the claim has not been clearly set out in checklist issued by the LAA then the claim should be returned by way of a Priority Return form
- In circumstances when a claim has been incorrectly rejected, then a Priority Return form should be issued. Providers can raise these concerns through the reject fix email :
laacivilclaimfix@legalaid.gsi.gov.uk

Where there are hard reject reasons alongside reasons that would be subject to a priority return the hard reject reasons take precedence.

Hard Rejects

If the claim has not been submitted in accordance with the checklist it will be classed as a 'hard reject' and will recorded as such on the reject data for the provider.

Examples of Hard Rejects

- Incomplete form –not signed
- Incorrect rates claimed (including where rate claimed is lower than correct rate)
- Disbursement voucher(s) not attached or insufficient evidence provided

Further Rejects

When a claim has been rejected three or more times, the Contract Manager who is responsible for the Provider must be notified by email.

A priority return will be appropriate if on a second or subsequent reject it is apparent the previous caseworker(s) failed to identify a reject reason within the checks they have made.

8.3: Reject Reasons

When claim is returned to providers by way of a reject, the correct reject reason(s) should be used and any correspondence should clearly confirm what information is needed or steps that should be taken to enable the claim to be processed.

8.4: Reject Fix

The reject fix service was introduced in the autumn of 2012 to enable providers to challenge rejects received or to raise queries. The reject fix team have a 24 hour turnaround target and providers must email details to the following address: laacivilclaimfix@legalaid.gsi.gov.uk. Reports are provided to the contracting teams and feedback is also given to individual caseworkers.

8.5: Reject or Assessment

This section is intended to provide guidance on whether we should reject, adjust by assessment, cap the costs or issue a priority return.

Reject

- 1) Where it is clear from the rejects checklist that one or more of the points has not been completed correctly, i.e. not signed/dated, no running record of costs provided, outcome codes, EC Claim1 fully completed correctly, correct fee scheme, disbursements evidence, incorrect hourly rates used etc.

Assess (claims assessed by LAA)

- 1) A subjective issue or a time without a published standard, i.e. bill preparation or enhancement claimed
- 2) Expert's Fees/Counsel Fees post LAR. Assess when over codified rate to correct figure.
- 3) Where on assessment a piece of work is not substantiated by a file note or piece of evidence
- 4) Experts' rates or Counsel fees which are deemed to be unreasonable in amount.
- 5) Exceptional case whereby you reduce the profit costs to a fixed fee on assessment
- 6) Exceptional travel and expenses

Priority return:

- 1) Where a previous reject and an issue arises which is a valid reject and should have been identified. However subject to the 5 minute checking rule
- 2) A piece of information not easily obtained by telephone which is required and is not referenced on the reject checklist.

Where there is also a hard reject on the claim form the priority reject will not apply and the hard reject takes precedence.

9: Appeals

Where costs have been assessed by the LAA there is a right of appeal.

In addition please see [Appeals and Staged Disbursements](#)

Where providers are appealing an assessment decision they should submit their full file of papers with their appeal submission.

9.1: Appeals in relation to Nil Assessment

If a claim that has been reduced to nil (this may be on the basis of the means assessment) is reinstated by the adjudicator we will carry out a usual assessment of the file once the same is returned to us from the adjudicator. Paragraphs 6.78 from 2010 contract/6.77 from the 2013 contract state:

“ Where in dealing with an appeal on the papers only the assessor identifies new issues the assessor will, as he or she considers appropriate in the circumstances, either:

- a) Adjourn the appeal and seek representations from the parties before making his or her final decision; or*
- b) Refer the matter back to us for a new decision”*

9.2: Points of Principle of General Importance

Points of Principle of General Importance (PoPs) are relevant for all providers working under Legal Aid Agency contracts. They are binding on all contract work under paragraphs 6.86 of the 2013 Standard Civil Contract Specification, 6.87 of the 2010 Standard Civil Contract Specification, and 8.38 of the 2010 Standard Crime Specification Part A.

PoPs are statements which seek to clarify a costs assessment principle or interpret a contractual assessment provision. Current PoPs can be found in the Point of Principle Manual published on the Justice website (<http://www.justice.gov.uk/legal-aid/funding/points-of-principle>). Anyone wishing to make an application for the certification of a new PoP should refer to this manual to see PoPs that have already been certified and refer to them as a guide to how PoPs should be worded.

Many applications which are received for PoPs to be certified do not contain a statement in an appropriate form or which could be generally applied. Commonly PoP applications are phrased as a question to be answered instead of a statement to be certified. In other cases the PoP refers to facts of the particular case, rather than a principle which could be applied more generally. When an application for certification of a PoP is made providers should ensure that they set out the exact wording of the PoP that they want the Costs Appeals Committee to certify. If this is not done then the PoP application may be rejected or delayed.

The procedures for applying for PoPs are set out in the following paragraphs

- 6.78 to 6.86 of the 2013 Standard Civil Contract Specification
- 6.79 to 6.87 of the 2010 Standard Civil Contract Specification

Applications can be made after the submission of an appeal to an Independent Costs Assessor (ICA) and must be made no later than 21 days after the receipt of the ICA's decision. On receipt of an application a report will be prepared for the Chair of the Costs Appeals Committee to consider. The report together with the application from the provider and a bundle of relevant documents is considered

by the Chair who decides whether or not the application should be referred to the Costs Appeals Committee for consideration.

If the Chair refers the application to the Committee the applicant will be provided with a copy of the papers that will be available for the Committee and given an opportunity to make representations. These representations should be made in writing as the Committee will usually deal with applications on the papers only unless permission to attend is granted by the Chair. The members are the Chair (who is the LAA's principal legal adviser), an ICA and a lawyer nominee of the Law Society. The Committee may meet when there are sufficient applications to consider or may consider the applications by telephone or email if the applications are suitable.

Once the Committee has considered the application it can either certify or refuse to certify the PoP. If the PoP is certified it may be in the exact form of wording in which it was submitted or such other wording as the Committee deems appropriate. The applicants will be notified of the Committee's decision. New PoPs are published, with any necessary guidance, in the Point of Principle Manual on the Justice website.

All certified points of principle can be found in the [points of principle manual](#)

Please note the LAA can also apply for PoPs if we think an ICA's decision is wrong as a matter of principle, but that we still have to comply with the 21 day deadline as detailed above.

10: The Solicitors Charge

10.1: Basic Elements of the Statutory Charge

The basic requirements for the statutory charge to apply are as follows:

- 1) Sums must be spent by the LAA in funding services for the client
- 2) Property must have been recovered or preserved by the legally aided client in the dispute
- 3) 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

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. 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.

10.2: The Statutory Charge under Legal Help

5.1 Statutory Charge Manual

Regulation 45 and 46 CLS Financial Regulations 2000

Regulation 7 and 8 Civil Legal Aid (statutory charge) Regulations 2013

The charge can arise in favour of the solicitor only where family help (lower) has been granted and no certificate issued in the same matter (in which case it relates to the costs of legal help and family help (lower))

Where a certificate has not been granted but a client recovers or preserves property (which is not their main or only dwelling) under legal help, help at court or 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.

The approach to the solicitors charge at the controlled work level is intended to incentivise early settlement. Where a settlement fee has been paid at level 2 is exempt from the statutory charge.

Example:

A provider in Leeds undertakes Level 1 and Level 2 work on a finance case, the case becomes exceptional and there has been recovery/preservation

The exceptional threshold is calculated on three times the standard fee in this case:

- Standard fee = £294
- £86 (legal help private law national fee) + £208 (Family Help (lower) Non London Finance Fee)

The costs (excluding VAT) are as follows:

- £1500 profit costs
- £25 disbursements

The charge will apply to all recorded profit costs above the exceptional threshold of £882 plus any disbursements and applicable VAT

- Profit Costs: £1500 *less*
- Exceptional threshold: £882 *plus*
- Disbursements: £25 *plus*
- Applicable VAT: £128.60
- Amount of Solicitors Charge = £771.60

Where the statutory charge arises in relation to the costs of legal help, help at court or family help lower where money or property has been recovered after a certificate has been granted, then the charge will be in favour of the LAA.

10.3: Waiving the charge

5.1.12 Statutory Charge Manual

Where the charge is in favour of the provider there is discretion to waive the charge where its enforcement would cause grave hardship to the client or distress or would be unreasonably difficult because of the nature of the property. Any decision to waive the Statutory Charge must be referred to the LAA

10.4: How to Report the Statutory Charge to the LAA

Where the charge arises the provider should fill in the CMRF (or online equivalent) as usual with information of the costs incurred on a case. Details of the total amount recovered/preserved by the client should be entered in the "value of costs/damages recovered" field. CWA will then calculate the amount payable.

10.5: Contract Breaches in respect of the Statutory Charge

6.2 Statutory Charge Manual

7.11 & 14.11 – 14.12 (b) Standard Civil Contract Standard Terms 2010/2013

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.

11: Civil Escape Cases

11.1: Means Assessment

Aggregation of Means between Foster Child as Client and Foster Carer(s)

If a child is granted Legal Help then their means should be aggregated with their parent(s)/guardian(s) (unless there is a contrary interest between them). In the case of Foster Children the child as a 'looked after' child is the responsibility of the local authority rather than the foster carer(s), therefore the assessment is based upon the child's resources only without aggregating the foster carer(s).

11.2: Disbursements for Family Help Lower

For family cases under Family Help (Lower)) we do not usually expect any disbursements other than out of pocket expenses to be incurred e.g. we would not expect expert fees to be incurred as any outstanding assessments would be undertaken by the local authority (paragraph 4.5 of Appendix 1 to the Costs Assessment Guidance). However, the exception to that might be if the provider wanted a report into a client's capacity to instruct a solicitor.

12: Mental Health Escape Cases

12.1: Mental Health Tribunal

MHT Conducted via Correspondence

9.70 Standard Civil Contract 2010

If the MHT is conducted via paper representations, rather than at an oral hearing, the provider cannot claim the Level 3 fee as the Level 3 fee was clearly intended to cover the act of advocacy in front of the tribunal. The Mental Health specification also clearly states that

'If no effective MHT hearing takes place, for example because the Client is discharged before the hearing, then you will not be entitled to claim a MHT Level 3 fee unless you are entitled to claim a MHT Level 3 fee in substitution for an Adjourned Hearing Fee'.

Adjourned Hearing Fees

Q: MHT decision is Deferred Conditional Discharge. How do I treat adjourned hearing fees in this matter?

A: It is not uncommon for the MHT to issue a client a deferred conditional discharge at an MHT hearing. This effectively means that the panel is satisfied that the client can be released, but usually subject to certain criteria being in place. This criterion is not usually in place on the date of the Tribunal hearing and will often require further work to organise. The MHT will set a future date for a reconvened hearing to ensure that their directions are being complied with and the necessary arrangements are being made to allow the client to be discharged.

Providers can claim in this scenario in the following ways:

- 1) The first hearing can be claimed as an adjourned hearing and the reconvened hearing can subsequently be claimed as the final (Level 3 fee) hearing. This is as long as the usual criteria for claiming an adjourned hearing fee is met, (i.e. attendance, possibility of adjournment/postponement not possible etc).*
- 2) The provider can treat the first hearing as the final (Level 3) hearing and the subsequent reconvened hearing will also fall under the Level 3 fee. This is on the basis that the Level 3 fee will cover all the sittings of the MHT until a decision (disposal) is reached.*

Given the above the discretion as to how to claim such an issue lies with the provider, and either way is acceptable for LAA assessment purposes. The claim should not be rejected by Caseworkers for either approach.

12.2: Fee Scheme Examples

Nearest Relative making applications for MHT under S2 when Nearest Relative is barred by Responsible Clinician

Facts:-

The case was claimed as a **L1 + L2 MHT** file where the client was the **Nearest relative (NR)** (i.e. the wife of the patient).

She had made an application to have her husband discharged from his section 2 using her NR rights.

The Responsible Clinician (RC) issued a barring order against her that then prevented her from making an application to the MHT for her husband's discharge because according to the rules no MHT application under section 2 can be made by a NR were a barring order has been made against that NR although under section 3 the NR would have been permitted to pursue such an application to the MHT

Proposed action by the firm:-

The firm initially advised the client under LH (L1) and moved to L2 on the basis that they would then submit a Tribunal application **in the full knowledge that it was likely to fail** because of the aforementioned rules for section 2 cases.

They did this on the basis that if it was refused then they would ask the **Secretary Of State** to intervene and use his discretion to refer the matter on their behalf to the Tribunal once again.

The Tribunal refused to accept the application.

The firm cited Article 6 of the Human Rights Act by way of persuading the Sec. of state to refer the matter to the MHT.

In effect they were saying that it was unfair that the rules governing a barred NR should be different under a section 2 compared to a section 3 where the NR could make an application to the Tribunal.

The Secretary of State was persuaded by the argument and so referred the application to the Tribunal who then in turn refused the MHT application stating that Parliament's rules on section 2 cases were very clear and that the NR should not be afforded the right to submit a MHT application having been barred by the RC.

The firm then began applying for a Funding Certificate to appeal to the Upper tribunal but in the interim **the client was then discharged by the RC** so there was no need to send in the App1 and the case was closed.

Question and Answers

Q: Can a LH be signed?

A: Yes – entitled to advice on the presenting issue.

Q: Can L2 CLR be granted knowing MHT application was doomed to failure?

A: Yes- the Sufficient Benefit test is met if firm need to test the route to appealing to the Upper Tribunal. However, if the firm had been able to finalise the test at the UT and had failed then any subsequent cases similar to this one are not then likely to meet the Sufficient Benefit test at L2 as effectively a precedent has been set. This would mean that we would only pay for a L1 on those subsequent cases.

Q: If the firm had merely been asking the Sec. Of State to refer a case to the Tribunal knowing that there was no right to a MHT hearing then can a file be opened?

A: Yes – a Non-MHT file could be opened and would “roll up” into a MHT file if the referral was successful and the barred NR was allowed to make an MHT application.

Conditional discharge not constituting new section/set of fees

Q: I represent a patient who is subject to a s37/41. He placed an application to appeal and requested a conditional discharge and the HQ2 (case management form for the tribunal) was completed as such.

It satisfied fee levels 1 and 2 and after the MHRT level 3 was satisfied. At the hearing issues were put forward that gave me the inclination that an absolute discharge may be a possibility. I took my clients instructions and he wanted to apply for the absolute. The conditional discharge was agreed however the Judge said to consider the absolute there would need to be notification to the MOJ (party to the proceedings) and statutory reports prepared and another hearing. I put forward the application and the tribunal accepted it. The Judge was very clear in that no matter what happened re the absolute discharge the conditional discharge still stood. New reports were prepared, my clients instructions were taken on them and when the hearing convened at a later date an absolute discharge was granted. My question is that as it was an application to consider a different request would that be a new case matter as again fee level, 1, 2 and 3 were satisfied.

A: In practice, I think that the only way that the tribunal could have achieved this end is through an adjournment, with the reconvened hearing taking place once the necessary reports had been prepared.

The other (less likely) alternative is that the tribunal made an order for a deferred conditional discharge, and, prior to this discharge taking effect, the tribunal reconvened and ordered an absolute discharge. We have historically treated these circumstances as tantamount to an adjournment for the purposes of 9.70 to 9.72 of the 2010 Standard Contract 2010 – Specification.

Otherwise, I don't think that this situation would justify an entirely new set of MHT Fees. In particular, it would not seem to me that there "is more than one than one set of MHT proceedings running concurrently", which would allow two (or more) sets of MHT Fees to be paid for tribunal matters arising within the same Period of Eligibility, nor has any event occurred requiring

13: Immigration and Asylum Escape Cases

13.1: Scope

Applications in respect of SET (Protection Route)

SET (Protection route) applications remain in scope post 1st April 2013 by virtue of Paragraph 30, Part 1, Schedule 1 of Legal Aid, Sentencing and Punishment of Offenders Act 2013.

Funding for Judicial Review Matters

Paragraph 19(1) Schedule 1 LASPO 2012

Para 19(1) Schedule 1 LASPO 2012 which sets out that ALL actions for JR are in scope (even where the underlying issue is out of scope e.g. an article 8 based immigration case). Providers should however consider whether the JR action they envisage is out of scope by virtue of Para 19(5) and (6) of Schedule 1 and not brought back in by 19(7).

Where the provider believes the JR is in scope as per paragraph 19 then we have the facility in the immigration specification for them to open a LH matter to comply with pre-action protocol where they are required to by the Civil Procedure Rules

13.2: Matter Starts

Matter starts where a Home Office decision is withdrawn

If the Home Office issue a decision and then at hearing (or before) the decision/appeal is withdrawn and a further decision is issued, providers are able to open a new matter start as opposed to continuing under the existing file

Dependants on asylum applications and matter starts

Generally speaking, if a client is applying for asylum as a dependant on another client's asylum application, this would count as one matter start because there is not a separate and distinct legal issue (2013 Standard Civil Contract Specification 3.39). If the client's were to make separate asylum applications in their own right, two matter starts could be opened, subject to other funding requirements being satisfied.

13.3: Means Assessment

Client is employed

Means should be assessed in the usual fashion

Client is in receipt of State Benefits

Means should be assessed in the usual fashion

Client with no leave to remain in receipt of passported benefits

If a client does not have leave to remain they are not entitled to claim state benefits (with the exception of NASS).

Clients can only be passported if they are properly in receipt of a prescribed benefit.

5.1 of LSC Manual, Volume 2, Part E, and Guide to Determining Financial Eligibility; *"If the client is properly in receipt (directly or indirectly) of Income support, Income-Based Jobseekers' Allowance...."*

If a client does not have leave to remain and they are in receipt of a passported benefit, they are claiming the benefit fraudulently and thus they are not properly in the receipt of the benefit.

Immigration fee earners should be aware of the laws surrounding status and entitlement to benefits and therefore they should be able to identify when a client is not properly in receipt of a benefit.

Files where a client with no leave to remain was pass-ported should be nil assessed (unless there is an explanation and evidence on the file to indicate the client was properly in receipt of the benefit).

Client is in receipt of NASS payments

The client is eligible on both income and capital (pre and post LASPO cases). Please note that the client must be in receipt of NASS support, rather than have made an application for such payments.

Client is in receipt of Third Party Support

For applicants who are being financially supported by friends/family as they have no recourse to public funds and are unable to take employment **it is not** necessary to consider the means of the third party providing the support for Legal Help purposes (unlike Full Representation).

Instead for Legal Help purposes a simplified approach is permitted and providers can assess the extent of the financial support being provided as per the guidance in LSC Manual Volume 2 part E section 12 (pre LASPO) and Legal Aid Manual Volume 3 Part C section 12 which states:

“Some clients will state that they have no access to any income or capital. It would be for the supplier to decide whether such a statement was credible and whether or not it was therefore impracticable to obtain evidence of means. However, a note of the circumstances should be kept on the file. Clients without any income at all are likely to be those whose circumstances have recently changed. This might be where, for example, they have just separated from a partner and have applied for benefit or have just arrived in this country and applied for asylum. The supplier should enquire how the client is meeting their day-to-day expenses. If a client states that a relative or friend is supporting them, a letter from the relative or friend should be obtained identifying the nature and extent of support.”

Given the above it will not be necessary to aggregate the finances of the third party providing the support; instead just the extent of the financial support provided by the third party will be assessed.

What should the letter from the third party include?

If the third party providing the support is simply providing subsistence support (accommodation and food etc) and does not give the client money the letter provided must confirm this. In this scenario this is all that is required as we are not looking to assess the value of the food & accommodation provided. Thus as long as the “nature and extent” of the support does not include cash payments the letter obtained can simply confirm the support provided and it is not necessary to place a financial value on the support provided.

Alternatively if the third party provides food, accommodation etc and also gives the client monetary payments the financial value of the monetary payments must be specified in the letter identifying the “nature and extent of support”.

It should be noted that the above provision works on the assumption that the client’s position is credible to begin with.

Aggregation of partners who are in a different country from the client

If the client has a partner who is in a different country from the client it would be usual to apply the ordinary aggregation rules, namely to aggregate income and capital unless the client and their partner have a contrary interest in the proceedings to which the funding relates.

This is with the following important provision (in LSC Manual Volume 2 part E section 12 for pre LASPO matters and Legal Aid Manual Volume 3 Part C for post LASPO matters)

4.2 (3) *“In asylum cases, there may be occasions where the client is physically separated from their partner due to the partner still being abroad, but the relationship is still intact. In such cases the normal rules of aggregation still apply and the client and their partner will still be treated as a couple for aggregation purposes. However in such cases it may be necessary to consider whether the assets and income of the partner, together with any of the client’s assets that have been left behind, are currently truly “disposable” as far as the client is currently concerned. In such cases the provider should make reasonable enquiries of the client to determine to what extent that income and those assets are available. If it is decided in an individual case that the partner’s income and assets are not available to the client and therefore excluded from the assessment then it would not be appropriate to make any dependant’s allowance for the partner (see s.6 below)”*

In instances in which it is decided that the client’s partner’s income and capital are not available to the client this should be noted on the file and the reasons why. Upon assessment this should reduce any confusion as it will show that the issue has been duly considered and a decision made in light of the individual circumstances of the case.

The guidance in respect of assessing eligibility for Legal Help matters can be found at the following [link](#):

13.4: Means Assessment – Computation Period

4.1.1 of the [Guide to Determining Financial Eligibility for Controlled Work and Family Mediation](#) states “the period of calculation when determining income is the calendar month up to and including the date of the application for civil legal services”

If an asylum seeking client arrived in the country less than one month prior to making an application for controlled work, evidence of income must be provided which relates to the entire computation period. Providers should not base the means assessment on the client’s financial circumstances since arriving in the UK. Enquiries should be made to establish how the client was supporting themselves in their country of origin and how they were able to fund the journey to the UK.

13.5: Transitional Means Arrangements

Where a Legal Help file opened pre LASPO progresses to CLR on/after 01/04/13, the case start date is the original start date for Legal help so the means rules in place at that time i.e. for AJA 1999 cases will apply to the reassessment for CLR.

Please note that the transitional savings provisions mean that the increased dependants allowances should be used when completing the completed reassessment.

13.6: Disbursements

Transcripts

If a provider requests for the first tier tribunal to be recorded and transcribed before the date of the hearing the Tribunal Service will make arrangements for it to happen.

Payments in Excess of 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.

13.7: Calculating the Applicable Fee

Substantive Hearing/ Adjourned hearing

A stage 2b should normally only be claimed if a substantive hearing takes place. However, if an adjourned hearing takes place and a substantive hearing does not, for the purpose of reporting the claim, the adjourned hearing should be treated as a substantive hearing and thus a stage 2b should be claimed ([Guidance for Reporting Controlled Work](#))

Unaccompanied Asylum Seeking Child (UASC) turns 18 during Legal Help stage

The Legal Help stage will continue at hourly rates. The subsequent stage, i.e. CLR, will then be paid under the Graduated Fee scheme, subject to relevant Contractual provisions (2010 Immigration Specification 8.83 and 2013 Immigration Specification 8.77)

Appendix 1: Rates

Actions against the police, Public law, Education, Community Care						
<i>Legal Help, Help at Court and Family Help Lower</i>						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation, Attendance & Advocacy	£57.35	£58.50	£52.65	£52.55	£53.60	£48.24
Travel & Waiting	£30.30	£30.90	£27.81	£29.45	£30.00	£27.00
Routine Letters and phone call	£4.40	£4.50	£4.05	£4.10	£4.20	£3.78

Employment and Housing (03/10/2012) and Family (03/02/2012)						
<i>Legal Help, Help at Court and Family Help Lower</i>						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation, Attendance & Advocacy	£53.10	£54.15	£48.74	£50.05	£51.05	£45.95
Travel & Waiting	£28.05	£28.60	£25.74	£28.05	£28.60	£25.74
Routine Letters and phone call	£4.10	£4.20	£3.78	£3.95	£4.05	£3.65

All Other Categories and Tolerance						
<i>Legal Help, Help at Court and Family Help Lower</i>						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation, Attendance & Advocacy	£50.70	£51.70	£46.53	£47.80	£48.75	£43.88
Travel & Waiting	£26.80	£27.35	£24.62	£26.80	£27.35	£24.62
Routine Letters and phone call	£3.90	£4.00	£3.60	£3.75	£3.85	£3.47

S202 Housing Act, Defending a Possession Hearing in County Court and S31 Care Proceedings
Legal Help, Help at Court and Family Help Lower

Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation, Attendance & Advocacy	£61.20	£62.40	£56.16	£52.75	£58.40	£52.56
Travel & Waiting	£30.30	£30.90	£27.81	£29.45	£30.05	£27.05
Routine Letters and phone call	£4.40	£4.50	£4.05	£4.10	£4.20	£3.78

Immigration and Asylum hourly rate cases

Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation, Attendance & Advocacy	£57.35	£57.35	£51.62	£52.55	£52.55	£47.30
Travel & Waiting	£30.30	£30.30	£27.27	£29.45	£29.45	£26.51
Routine Letters and phone call	£4.40	£4.40	£3.96	£4.10	£4.10	£3.69

Immigration and Asylum – Other Hourly Rates Cases

Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation & Attendance	£61.20	£61.20	£55.08	£57.25	£57.25	£51.53
Travel & Waiting	£30.30	£30.30	£27.27	£29.45	£29.45	£26.51
Routine Letters and phone call	£4.40	£4.40	£3.96	£4.10	£4.10	£3.69
Advocacy	£69.60	£69.60	£62.64	£69.60	£69.60	£62.64

Immigration and Asylum – Escape Fee Cases						
<i>Legal Help</i>						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation & Attendance	£57.35	£58.50	£52.65	£52.55	£53.60	£48.24
Travel & Waiting	£30.30	£30.90	£27.81	£29.45	£30.00	£27.00
Routine Letters and phone call	£4.40	£4.50	£4.05	£4.10	£4.20	£3.78

Immigration and Asylum – Escape Fee Cases						
<i>Controlled Legal Representation</i>						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation & Attendance	£61.20	£64.25	£57.83	£57.25	£60.10	£54.09
Travel & Waiting	£30.30	£31.80	£28.62	£29.45	£30.90	£27.81
Routine Letters and phone call	£4.40	£4.60	£4.14	£4.10	£4.30	£3.87
Advocacy	£69.60	£73.10	£65.79	£69.60	£73.10	£65.79

Representation in Mental Health Proceedings – Legal Help (non MHT & Level 1 MHT)						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation & Attendance	£57.35	£58.50	£52.65	£52.55	£53.60	£48.24
Travel & Waiting	£30.30	£30.90	£27.81	£29.45	£30.00	£27.00
Routine Letters and phone call	£4.40	£4.50	£4.05	£4.10	£4.20	£3.78

Representation in Mental Health Proceedings – Controlled Legal Representation (MHT Level 2 & 3)						
Activity	London rate			Non-London rate		
	Oct 07	July 08	Oct 11	Oct 07	July 08	Oct 11
Preparation & Attendance	£61.20	£64.25	£57.83	£57.25	£60.10	£54.09
Travel & Waiting	£30.30	£31.80	£28.62	£29.45	£30.90	£27.81
Routine Letters and phone call	£4.40	£4.60	£4.14	£4.10	£4.30	£3.87
Advocacy	£69.60	£73.10	£65.79	£69.60	£73.10	£65.79
Attending Tribunal with counsel	£32.55	£34.20	£30.78	£32.55	£34.20	£30.78

Appendix 2: Checklist for Submission of Escaped Cases Claims

In order to avoid rejected claims or reductions from your Escape Case Claims please ensure that the necessary supporting documents and evidence of means has been provided before submitting your claim.

Please refer to this document as a checklist for the documents that we require in support of your claim and what constitutes satisfactory evidence of means.

If the appropriate documents and evidence of means are not provided with your claim this will cause delay to the processing of your claim and could result in the costs of your claim being assessed to nil.

ESSENTIAL ITEMS TO INCLUDE

Have you included the following items with your Escape Case Claim?

EC CLAIM1 Form

- Has a fully completed EC Claim1 Form been provided?
- Is the EC Claim1 Form the current April 2013 version? (Civil – Version 5, Mental Health – Version 6, Immigration and Asylum – Version 7)
- Is the EC Claim1Form signed and dated?

File of Papers

- Has the correct file of papers for this claim been provided with the EC Claim1 Form?

IT Based Running Record of Costs

- Has an IT based Running Record of Costs been provided with the claim?
- Do the costs on the IT Based Running Record of Costs match the costs stated in the EC Claim1 Form?

Disbursements

- Have disbursement vouchers been provided for all disbursements in excess of £20.00 (including VAT)?
- Are the disbursement vouchers clearly identified on the file?
- Does the voucher include a breakdown of the work undertaken, time taken, hourly rate and the client's details?
- If an expert report has been obtained is a copy provided with the claim?
- If enhanced rates for Counsel have been authorised is a copy of the endorsed form provided with the file in addition to Counsel's invoice(s)?

Legal Help Form

- Is the appropriate controlled Work form provided with the claim?
- Is the form fully completed?
- Is the form signed and dated by the client?
- Is the form signed and dated by the Fee Earner (if appropriate)?

SATISFACTORY EVIDENCE OF MEANS

We must be satisfied that your client was financially eligible to receive funding and as such it is necessary to provide documentary evidence showing this to be the case.

Please note that the evidence must refer directly to the computation period, i.e., the calendar month running up to and including the date of the application for funding. Written evidence that does not refer directly to the computation may be accepted where it seems reasonable to do so. See below for full details.

Please refer to this list to ensure that your claim includes the relevant evidence in respect of your client's financial eligibility.

Source of Income- Passported Benefits:

- Was the client in receipt of a passported benefit when funding was granted (Income Support, Income Based Job Seekers Allowance, Income Related Employment Support Allowance & Guaranteed State Pension Credit)? Yes No

Satisfactory Evidence in Support of Passported Benefits – Have you provided one of the following?

- Bank/Building Society account statements from period in which funding was issued showing the relevant benefit in payment. The benefit type must be specified on the statement.
- Original benefit notification letter supported by a recent bank statement where the notification letter is dated more than 6 months prior to the granting of funding.
- Original benefit notification letter only if it is dated less than 6 months prior to the granting of funding.
- Letter from the Department for Work and Pensions confirming that the client was in receipt of the relevant benefit at the time funding was granted.
- If the relevant benefit details were confirmed via a telephone call with the relevant agency has a note confirming the details of the call, any unique reference number given and the name of the person spoken to been provided?

If the client was not in receipt of a passported benefit you must have completed a full assessment of your client's eligibility, including income and capital. You should have obtained documentary evidence from the period when funding was granted in respect of the areas listed below that relate to this particular client.

- Did the client have a partner/spouse? Yes No

If yes proof should also have been obtained and be provided in respect of all areas below relating to the client's partner/spouse (unless the partner/spouse was opponent or there was a conflict of interest between the parties).

Source of Income – Satisfactory Evidence:

Employment – Most recent payslips. Bank statements are not acceptable as evidence of wages as they do not show gross payment and net payments into accounts may include deductions that are not allowable under legal aid rules.

Provided with claim?

Self Employment – Most recent profit and loss accounts, cash book showing drawings, tax assessment or bank statements showing earnings.

Provided with claim?

State Benefits (various) – satisfactory evidence as per evidence of Passported benefits above:

Provided with claim in respect of each benefit in payment?

SATISFACTORY EVIDENCE OF MEANS

Asylum Seekers in receipt of NASS support – Confirmation from NASS or Local Authority that the individual was in receipt of support. The evidence should be within 6 months of when funding was issued. Remember that NASS payments are only passporting for asylum and immigration matters for Legal Help, Help at Court and Controlled Legal Representation.

Provided with claim?

Deductions – Satisfactory Evidence:

Income Tax & National Insurance – For employees, most recent wage slips. For self employed, most recent tax calculation sheet.

Provided with claim?

Accommodation Costs (where costs are more than 1/3 of client's gross income) –rent book, tenancy agreement, copy of mortgage statement or copy bank statement where it is clear what the payment relates to.

Provided with claim?

Childcare (where costs are more that £600 per month or pro rata for those who work less than 35 hours per week) – copy bank statement where it is clear what the payment relates to or copy of agreement/contract with childminder.

Provided with claim?

Maintenance (where amount declared appears unreasonable/cases of doubt) – bank statements, cashed cheques, copy of maintenance order (where applicable).

Provided with claim?

Capital:

Generally the client's statement and signature on the application form will be sufficient evidence but documentary evidence of capital should be obtained in cases of doubt. The capital of Passported clients must also have been assessed for matters opened after 1st April 2013.

Provided with claim? (If appropriate)

Clients with no income and applying for benefits when funding issued:

If eligibility was assessed based upon the fact that the client had made an application for benefits that was pending at the time funding was issued then evidence that this claim was successful should be provided with the file.

Provided with claim?

Clients with no income and reliant upon third party support when funding issued:

If the client had no access to income or capital at the time funding was issued and was reliant upon the financial assistance of third parties such as friends and relatives a letter from the party providing the support should have been obtained identifying the nature and extent of this support.

Provided with claim?

Please remember that if the appropriate documents and evidence of means are not provided with your claim this will cause delay to the processing of your claim and could result in the costs of your claim being assessed to nil.

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>
A & E Consultant	£126.00	£135.00	£126.00	£135.00	£100.80	£108.00
Accident Reconstruction	£90.00	£68.00	£90.00	£68.00	£72.00	£54.40
Accountant	£50-£135	£50-£144	£50-£135	£50-£144	£64.00	£64.00
Accountant (general staff)					£40.40	£40.40
Accountant (manager)					£86.40	£86.40
Accountant (Partner)					£108.00	£115.20
Anaesthetist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Architect	£99.00	£90.00	£99.00	£90.00	£79.20	£72.00
Cardiologist	£144.00	£144.00	£144.00	£144.00	£115.20	£115.20
Cell Telephone site	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Child Psychiatrist	£135.00	£90.00	£135.00	£135.00	£108.00	£108.00
Child Psychologist	£126.00	£90.00	£126.00	£126.00	£100.80	£100.80
Computer Expert	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Consultant Engineer	£90.00	£68.00	£90.00	£68.00	£72.00	£54.40
Dentist	£117.00	£117.00	£117.00	£117.00	£93.60	£93.60
Dermatologist	£108.00	£108.00	£108.00	£108.00	£86.40	£86.40
Disability Consultant	£68.00	£68.00	£68.00	£68.00	£54.40	£54.40
DNA (per person)	£315 per	£315 per	£315 per	£315 per	£252 per	£252 per

testing sample	test	test	test	test	test	test
DNA prep of report (per person)	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Doctor (GP)	£99.00	£90.00	£99.00	£90.00	£79.20	£72.00
Employment Consultant	£68.00	£68.00	£68.00	£68.00	£54.40	£54.40
Enquiry Agent	£32.00	£23.00	£32.00	£23.00	£25.60	£18.40
ENT Surgeon	£126.00	£126.00	£126.00	£126.00	£100.80	£100.80
General Surgeon	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
Geneticist	£108.00	£108.00	£108.00	£108.00	£86.40	£86.40
GP (Records report)	£63 fixed fee	£90 fixed fee	£63 fixed fee	£90 fixed fee	£50.40 fixed fee	£72 fixed fee
Gynaecologist	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
Haematologist	£122.00	£90.00	£122.00	£90.00	£97.60	£72.00
Handwriting Expert	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Interpreter	£32.00	£25.00	£32.00	£25.00	£28.00	£25.00
Lip Reader/Signer	£72.00	£41.00	£72.00	£41.00	£57.60	£32.80
Mediator	£126.00	£126.00	£126.00	£126.00	£100.80	£100.80
Medical Consultant	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
Medical Microbiologist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Meteorologist	£126.00	£180 fixed fee	£126.00	£180 fixed fee	£100.80	£144 fixed fee
Midwife	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Neonatologist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Neonatologist Clin Neg – cerebral palsy					£180.00	£180.00
Neurologist	£153.00	£90.00	£153.00	£90.00	£122.40	£72.00

Neurologist					£200.00	£200.00
Clin Neg – cerebral palsy						
Neuropsychiatrist	£158.00	£90.00	£158.00	£90.00	£126.40	£72.00
Neuro Radiologist	£171.00	£171.00	£171.00	£171.00	£136.80	£136.80
Neuro Radiologist - Clin Neg C'bral palsy					£180.00	£180.00
Neurosurgeon	£171.00	£90.00	£171.00	£90.00	£136.80	£72.00
Nursing Expert	£81.00	£81.00	£81.00	£81.00	£64.80	£64.80
Obstetrician	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Occupational Therapist	£68.00	£68.00	£68.00	£68.00	£54.40	£54.40
Oncologist	£140.00	£140.00	£140.00	£140.00	£112.00	£112.00
Orthopaedic Surgeon	£144.00	£144.00	£144.00	£144.00	£115.20	£115.20
Paediatrician	£135.00	£90.00	£135.00	£90.00	£108.00	£72.00
Pathologist	£153.00	£540 fixed fee	£153.00	£540 fixed fee	£122.40	£432 fixed fee
Pharmacologist	£122.00	£122.00	£122.00	£122.00	£97.60	£97.60
Photographer	£32.00	£23.00	£32.00	£23.00	£25.60	£18.40
Physiotherapist	£81.00	£81.00	£81.00	£81.00	£64.80	£64.80
Plastic Surgeon	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Process Server	£32.00	£23.00	£32.00	£23.00	£25.60	£18.40
Psychiatrist	£135.00	£90.00	£135.00	£135.00	£108.00	£108.00
Psychologist	£117.00	£90.00	£117.00	£117.00	£93.60	£93.60
Radiologist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Rheumatologist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Risk Assessment Expert	£63.00	£63.00	£63.00	£63.00	£50.40	£50.40
Speech Therapist	£99.00	£99.00	£99.00	£99.00	£79.20	£79.20

Surveyor (non disrepair)	£50.00	£50.00	£50.00	£50.00	£40.00	£40.00
Surveyor (housing disrepair)			£85.00	£115.00	£85.00	£115.00
Telecoms Expert	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Toxicologist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Urologist	£135.00	£135.00	£135.00	£135.00	£108.00	£108.00
Vet	£90.00	£90.00	£90.00	£90.00	£72.00	£72.00
Voice Recognition	£117.00	£90.00	£117.00	£90.00	£93.60	£72.00

Appendix 4: News Articles

Category of work	Summary and Hyperlinked document	Date of News Article
Checklists	<ul style="list-style-type: none"> • Revised Checklists Issued • Launch of the checklists • Launch of Immigration and Asylum checklist 	11/04/2013 22/11/2012 15/05/2014
Disbursements – Voucher Requirements	<ul style="list-style-type: none"> • Confirmation of need to submit disbursement vouchers • Reminder to submit disbursement vouchers • Confirmation that we require vouchers where disbursement is over £20 including VAT 	25/05/2011 19/01/2011 02/04/2013
Disbursements - Travel	<ul style="list-style-type: none"> • Require vouchers where claiming travel and also details on why travel necessary 	19/12/2012
Disbursements - Experts	<ul style="list-style-type: none"> • Guidance on when to apply for prior authority, benchmarks and document requirements • Requirement to pay experts promptly 	17/01/2013 15/09/2011
Disbursements – Expert Rates	<ul style="list-style-type: none"> • Publication of rates • Publication of revised rates 	27/10/2011 28/03/2013
Disbursements – Experts in clinical negligence cases	<ul style="list-style-type: none"> • Fees for specified experts in clinical negligence cases 	03/06/2013
Disbursements – Risk Assessments	<ul style="list-style-type: none"> • Guidance on payment for risk assessments 	11/10/2012
Disbursements – Drug Testing	<ul style="list-style-type: none"> • Confirmation that we require court orders where drug testing is being claimed 	12/04/2013
Disbursements – CW3 electronic submission	<ul style="list-style-type: none"> • Launch of new dedicated e-mail address for CW3 and confirmation of new process 	02/07/2014
Rates	<ul style="list-style-type: none"> • Reminder to use correct rates • Confirmation of rates changes following LAR remuneration cuts • Confirmation of rates changes following LAR remuneration cuts 	28/09/2012 29/09/2011 01/02/2012
Travel	<ul style="list-style-type: none"> • Revised Approach to local travel • Confirmation on travel costs 	22/05/2014 31/03/2011

Appendix 5: Guidance Links

Claim Submission and Payment	
Claim Forms and checklists	All controlled work forms and associated checklists
Where to send your work guide	
Payment Dates	
Processing Dates and LAA performance against processing targets	
Rates	
Remuneration Regulations	All rates can be found in the remuneration regulations
Experts Fees	These can be found in the remuneration regulations and the rates calculator
Guidance	
Legal aid Manual Online	
LASPO	Part 1 schedule 1 deals with work which remains in place post 01/04/13
LASPO transitional Regulations	Transitional regulations for the introduction of LASPO
2013 Standard Civil Contract	Contents include controlled work application procedures and general matter start rules
2013 Immigration and Asylum Specification	Contains category specific contractual provisions
2010 Standard Civil Contract	For use in particular in Mental Health Cases
Guide to Determining Financial Eligibility for Controlled Work and Family Mediation	Means assessment guidance
Cost Assessment Guidance	Claiming guidance
Guidance for reporting Controlled work	Contains details on how to report immigration and asylum controlled work cases including matter type codes
Statutory Charge Manual	Guidance on the statutory charge
Experts Guidance	Guidance on expert fees

Points of Principle	
Legislation	Links to relevant legislation
Training Materials and Process Documents (internal)	
Standard Operating Procedures	
Training Materials	
Desk Aids	
MoJ Ex Gratia guidance	

Appendix 6: Desk Aids

Provider Travel: Desk aid (escaped cases)

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 evidence should be retained on file

Local Travel (CAG 3.14)

Claims for travel expenses 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 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 parking

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.

Checking Mileage and Travel Time

Any checks should be made using the [court finder route checker](#) for court attendances or Google maps for any other travel. This should be checked against the highest travel estimate.

Caseworkers should annotate any discretionary assessment on the claim

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.