



Legal Aid  
Agency

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# Civil High Cost Family - Help Us Say Yes Webinar – Your Questions

## Very high-cost cases

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## Exceptional Test

**Q: If you register a case under the events model and then the case changes, can you convert it to exceptional?**

**A:** No, you need to identify at the time of registering whether a case is exceptional or not. You should be sure when registering; so, if you have a 'borderline' case you may want to delay registering until you are sure but be mindful of the current cost limit.

You must notify the LAA that a case will be high cost before the costs exceed £25,000.

**Q: Is there an appeals process? I had a case which I was certain was exceptional but LAA would only agree to events?**

**A:** The Family high-cost team reviews decisions and, if appropriate, will refer the matter to an Independent Adjudicator.

**Q: How do you calculate if your costs are likely to exceed 30%? Can you provide a worked example?**

**A:** We simply need an estimate of what your likely costs would be if you prepared a detailed plan.

- Your estimate should separate profit costs, counsel's fees and disbursements.
- High-cost case planning is based on your professional experience of estimating work.
- We have a detailed draft plan template on GOV.UK which could help you.

**Q: How are we supposed to use an exceptional case template that is not compatible with CCMS text boxes? The exceptional template includes characters which CCMS classes as "invalid characters" which means we cannot download the document, complete it and copy paste it into a case query.**

**A:** In terms of CCMS not identifying which characters are invalid, we will investigate this to see if it's a case of simply adapting the exceptional template to make copying and pasting information possible.

The current template is designed to give you an idea of what information we need to decide if a case is exceptional.

**Q: What is the current timetable for ICA appeals for exceptional hourly rates under high-cost cases?**

**A:** The timeframe should be the same for any other type of appeal: 20 working days. If you haven't heard back within 20 working days, please contact our Customer Service Team who will refer the matter to the relevant team.

## 10-day test

**Q: Does the 10 days/over 10 days distinction for main hearings need to be a listing of 11 days of consecutive fact-finding/final hearing or can it be 11 days of all hearings, including CMH / IRH / Directions?**

**A:** The 10 main hearing days rule is the total of all main hearing days and do not need to be consecutive.

The definition of a main hearing is: The hearing at which the substantive issues of the case are listed to be determined and are considered by the court. It includes the fact-finding hearing, welfare / disposal hearing or composite final hearing but not directions hearings, case management hearings or pre-trial review hearings.

**Q: Please confirm whether written submissions count toward the “main hearing” count?**

**A:** No, written submissions do not count toward the main hearing day count for the “more than 10-day” test.

**Q: I have a scenario question: The first firm registered the matter as a very high-cost case and had a ‘finding of fact’ of, for example, 6 days. The certificate was then transferred, and the second firm has a final hearing of 6 days. Does the second firm (and indeed the first firm) class this case as lasting more than 10 days?**

**A:** We review the total number of main hearings. However, depending on the case circumstances, we may agree another rate. You should agree this with your case manager.

**Please note:** *The events model is intended to remunerate a provider and counsel on the premise that they retain conduct of the case. The event price is intended to reflect a reasonable price for all work. Where there is a change in provider, this could distort costs.*

**Q: What can the first firm claim if the first firm doesn’t anticipate the case will reach high-cost case criteria and the certificate is transferred to another firm who, subsequently, registers it as a very high-cost case?**

**A:** The first firm has a choice: They can claim hourly rates or the relevant fixed fee if applicable (the case may allow them to apply for the Care Proceedings Graduated Fee Scheme’s full or half fixed fee) or if no claim has yet been made, they may choose to claim under the events model.

## Adjourned hearings

**Q: Please clarify the position on hearings adjourned, part-heard, and relisted later?**

**A:** If a hearing is adjourned and the adjourned days take place, the full event is paid. If hearings are adjourned for a considerable period, we will consider under-runs as additional preparation may be required.

## Advocates meeting

**Q: If, at an early hearing, there is a direction that before each hearing there can be an advocates meeting, will the LAA pay for those events even if later orders do not include the provision?**

**A:** Yes, in single counsel cases, as long as there is evidence to show the advocate meetings were ordered in advance.

**Q: Where orders are made requiring advocates meetings, can you clarify the position regarding the COVID contingencies?**

**A:** In events model cases, advocates meetings must be pre ordered. There is a different position regarding FAS under the contingency arrangements. The evidence of judicial communication can be in any acceptable form (e-mail, letter order).

**Q: Could you confirm the number of advocates meetings and conferences allowed in single counsel cases?**

**A:** There is no limit in the number of advocates meetings, providing they have been ordered by the court in advance of them happening. For solicitors operating as litigator, an event fee can be claimed for:

- Any hearing day (be it a five-minute direction hearing or day 14 of a fact-finding hearing) and,
- Advocates meetings ordered by the court in advance (judicial emails will suffice as evidence) excluding substantive client conferences.

**Q: Can solicitors claim more than two Advocates Meetings in two-Counsel cases?**

**A:** The number of advocates meetings will depend on whether there is a split hearing. If there is, four may be claimed so two are allowed before the fact-finding hearing and two before the welfare / disposal hearing. If the hearing is a composite hearing, only two advocates meetings can be claimed.



## Attending conference with counsel

**Q: Under the family events model, when can I (as a provider) claim for attending a conference with counsel?**

**A:** As a provider, you cannot claim an event price for attendance at a conference. The event price is calculated separately for providers and counsel. The purpose of an independent advocate having a conference with the client is so the advocate can form an independent view of the client and assess their evidence and credibility, amongst other matters.

## Case plan

**Q: How much information needs to be included in Section A of the case plan “A brief summary of the case”?**

**A:** Whatever is needed to provide the LAA with a sufficient understanding of what has happened in the case. It doesn't have to be in detail, just a summary.

**Q: There are three templates on the LAA website covering: single counsel, Kings Counsel / 2 Counsel and exceptional cases. Do you accept case plans in any other format? To provide context, I use 'CostsMaster' for my billing and there are numerous templates in their bank.**

**A:** Case plans must be drafted in line with our templates. If they're not, there's a risk of us having to request further information. Some firms have software that recreates our forms so you can use these if they are in line with our forms. On billing the claim, upload via CostsMaster, it is one that fits our system.

## Counsel acceptance forms

### **Q: When are Counsel Acceptance Forms required?**

**A:** Generally, a form is required where a case is high cost and a contract signed.

- We will not unnecessarily delay cases if we don't have the form at the point of receiving the high-cost contract. However, if providers and counsel clerks liaise in a timely way, delays should not be an issue.
- Under FAS, the form is not signed by counsel until they have seen the case plan (the form includes a statement that counsel has "seen the case plan").
- In full case plans, counsel must see the case plan and what is being claimed on their behalf, which is why it was drafted in that way initially.
- Counsel should ask that the final case plan be sent to chambers to check before submission to the LAA.

## Previous firms costs

**Q: When does the box on previous solicitor's costs, on the case plan, need to be completed?**

**A:** You must try to get this information so we can determine the event rate and the cost limit at the earliest opportunity. We require the number of hearings at least.

If it is impossible to obtain this information, we can:

- Set the cost limit for the second firm in addition to the existing cost limit, or
- Amend the cost limit later, once the previous firm's costs are known.

## CCMS

**Q: Who receives a communication in CCMS?**

**A:** The person set up by the firm as the case owner. If you haven't received a response to a communication, remember to check your and any other nominated person's notifications.

**Q: Can the 8MB limit on file size uploads be increased as this can be prohibitive during final plan submission?**

**A:** The 8mb limit for CCMS cannot be increased.

- We are in the process of setting up a workspace on the Secure File Exchange (SFE) platform Galaxkey. SFE allows you to submit large files digitally rather than by post or email. You do not need to download any software to access it as it is an online platform.
- More information is available on GOV.UK: [Secure File Exchange - GOV.UK](https://www.gov.uk/guidance/secure-file-exchange) ([www.gov.uk](https://www.gov.uk))

## Event model

**Q: Can you have two events on the same day?**

**A:** No, you cannot claim for two events on the same day, regardless of the reasons why there may be 2 events taking place.

## Litigator fee

**Q: What is the rationale behind a litigator fee reduction, e.g., more than 10 days will lead to a fee reduction?**

**A:** The two rates (up to and more than 10 days) stem from the way the analysed cases were costed. In cases that proceed over a 10-day 'main hearing', a distinct split in workload is evident, with the instructed advocate undertaking additional work where the solicitor's workload decreases.

## Two-counsel rates

**Q: Could you confirm two-counsel rates?**

**A:** The standard rate for solicitors is £1,107

- The non-attendance at hearings rate is £900.
- The non-attendance rate recognises that providers don't always attend all hearings (counsel sometimes go alone).
- In terms of where a solicitor is acting as second junior counsel, we have a separate rate (£1660.50).
- This is because we recognise that they are doing the work of a junior counsel as well as an acting solicitor. Evidence of events

**Q: Are court attendance notes needed for cases conducted by solicitor advocates?**

**A:** For solicitor advocates, no it's the certification coupled with the court orders that demonstrate attendance at court. In effect, the evidence submitted with a bill, demonstrating work done.

**Q: Regarding final case plans, can we send in unsealed agreed orders (as we're not always getting sealed orders, due to COVID-19, from courts)?**

**A:** Yes, we will accept unsealed orders where it has been impossible to obtain a sealed order from the court.



## Counsel fees

**Q: In a two-Counsel case where the main hearing is less than 10 days, do we claim events for Counsel, or should they continue claiming under the Family Advocacy Scheme (FAS)?**

**A:** In a two-Counsel case, the Counsel fee scheme is the Family Graduated Fee Scheme (FGFS). It is not always immediately obvious if a case will move to the events model for Counsel; so it's open for Counsel, in single Counsel matters, to continue to claim FAS until they know that the events model will be appropriate.

**Q: There are cases where there is disparity between FAS and CCFS assessment. Is there a reason for this? Counsel under FAS (Family Advocacy Scheme) can claim an advocate meeting through CCMS without needing to provide evidence that the meeting was ordered by the court. Under the single counsel events model, there is a requirement for evidence to show all advocates meetings have been ordered in advance.**

**A:** The model was based on the Public Law Outline where two advocates meetings are allowed. After a review, it was agreed that all court-ordered advocates meetings would attract an event fee for the single counsel model. Therefore, under the model, it's required that all advocates' meetings are ordered. This will apply equally to counsel.

## Wardship / child abduction cases

**Q: Wardship / Child Abduction cases 2018 Individual Case Contract clause 7.7(b)(iii), Counsel fees will be paid through the Family Graduated Fee Scheme (FGFS) or hourly rates under paragraph 7.7(b)(v) which goes on to state “If we consider the case to be exceptional Counsel will be paid at hourly rates under a Costed Case Plan:**

- **KC £150/hr**
- **Senior Counsel £120/hr**
- **Junior Counsel £110/hr**

**Can you explain how and when you determined the case to be exceptional?**

**Would it be acceptable to provide hourly rate fees in the HCCP and simply a CLAIM5 for reference?**

**Is there an internal review/appeal process where FGF is applied, and Counsel does not agree?**

**Can you also explain where 150.00/120.00/110.00 comes from versus non-VHCC 180.00/135.00/112.50 which continues to be accepted in non VHCC cases or COA work?**

**A:** A case will be treated as exceptional if the number of main hearing days, as was defined by the Family Graduated Fee Scheme (FGFS), exceeds 10 days.

The FGFS is not an extant scheme. Costs should be calculated at an equivalent rate in line with what they would have been. For the LAA to consider whether they are at an equivalent rate, a draft Claim 5 should be provided. There is a calculator on GOV.UK to assist. There is no internal review or appeal where counsel does not agree. Application of an equivalent rate is provided for under the high-cost contract and specification.

Counsel, when accepting instructions on a high-cost family case, agree (under the Counsel Acceptance Form) to be remunerated at the appropriate rates under the applicable schemes. These are the underlying hourly rates that were used as the basis for the calculation of the events model.

Please see the document Payments to Counsel in Family Cases.

## Expert fees

**Q: If an expert was within the LAA guidelines then attends a professionals meeting and provides a second fee note, will this be paid?**

**A:** Under the events model, experts fees are agreed only on final submission. Providing the costs are reasonable they will be paid.

For detailed plans, you will need to submit an amended plan, for the stage the expert's costs fall within, so they can be considered. All costs are subject to a final review and agreement when the final case plan in event model cases is submitted.

Actual disbursements will be assessed in accordance with the Remuneration Regulations and following the guidance relating to expert fees, set out in Section 10 of the Electronic Handbook.

## Disbursements

**Q: How do we deal with disbursements in relation to the events model and with hourly rates? Do we need to claim prior authorities separately on our own certificate, at very high-cost case level, as we go along?**

**A:** Disbursements in high-cost cases operate the same as with other cases. Apply, where necessary, for prior authorities; and you can apply for ‘payments on account’ anytime (cost limit permitting).

We have published expert fees guidance on our GOV.UK web page.

## Interim case plans

**Q: How often can Interim Case Plans be submitted?**

**A:** As often as the case may change and the costs exceed the default cost limit. There is no actual limit.

**Q: Do you only submit an interim case plan if the costs are going to exceed £60k?**

**A:** Yes, if your costs aren't going to exceed either of the default limitations (£32,500 or £60,000), you don't need to submit an interim cost plan.

Please liaise with counsel's clerk as they may need costs extended even if you feel you don't.

## Prior authority

**Q: If an expert's rate and attendance are specifically ordered by the judge, will the LAA accept this, or would prior authority still be needed?**

**A:** A prior authority is the only cost guarantee for a legal aid certificate. Obtaining the authority would negate having to justify the direction made as the LAA is not bound by a judge's decision.

## Still high cost?

**Q: If a fact-finding hearing lasts 5 days and is then listed for a welfare hearing for 5 days but goes short, and you are around the £25,000 limit, does the matter remain a high-cost case?**

**A:** Once a contract has been signed, the matter can stay as high cost even if the total costs do not exceed £25,000.

You may be given the option to withdraw and have the courts deal with the costs in certain cases.

De-registering the case means we are agreeing to break the contract which determines how we will pay for the case, i.e. either under the case plan or under hourly rates. However, we will exercise discretion when de-registering cases.

## Under and over-runs

**Q: Does a hearing have to be listed 5 working days before in order to claim the full event fee?**

**If the case is listed on an emergency basis and the notice is only provided 2 days prior to the hearing taking place would this attract the full event fee and not an over-run fee?**

**A:** An urgent Case Management Hearing or Issues Resolution Hearing will always attract a full event fee. The issue around 5 days is to do with main hearings, as under-runs and over-runs only apply in the main hearing context. As main hearings are unlikely to be listed at short notice, this should answer the question.

**Q: This question is based on the following scenario:**

**If a ‘finding of fact’ hearing was listed for six days but the court didn’t need all six days. The evidence finished on day four, day five was not needed, the judge gave judgment on day six. Would I be able to recover day 5 as an under-run, even if the case was not registered until after the ‘finding of fact’ hearing?**

**A:** We would apply the Single Counsel events model in this scenario and the answer depends on the registration situation.

- After registration, yes
- Before registration, no as you can only claim the events that took place prior to registration.

Please see Section 8 (Page 11) of the CCFS Information Pack, on the family high cost case page on GOV.UK, for an explanation for and the use of an under-run.

On main hearings, preparation is front-loaded and, therefore, if a main hearing under- or over-runs, the agreed price is adjusted by a notional refresher rate. These refresher rates are set to reflect the costs of attending based on historic proportions: 60% of the barrister’s fee and 40% of solicitor’s profit costs.

Under- and over-run event rates apply only to:

- Main hearing days, and,
- Where the listing is revised by judicial direction five working days or less (Saturdays, Sundays and Bank and Public Holidays are not included) before it takes place.

Under- and over-run event rates will only apply to hearing days after registration as a high-cost case.



## Pre-registration costs

**Q: When are pre-registration costs dealt with separately in the case plan? Is this only for cases that become exceptional?**

**A:** Pre-registration costs arise in cases where:

- The Care Case Funding Scheme (CCFS) doesn't apply due to the nature of the proceedings.
- The CCFS applies because the previous solicitor used and claimed hourly rates.
- The case meets the criteria for being exceptional and so escapes CCFS.

## Excluded costs

**Q: What costs are excluded from the CCFS scheme apart from the costs of an appeal?**

**A:** The CCFS scheme is designed to cover all costs for substantive proceedings but does not cover costs in relation to any appeals.

For appeals, there is a separate schedule of costs, based on hourly rates.

## Payments on account

**Q: Should events' POAs at 100% be: on all events included, whether actual or estimated or only on events agreed or which have taken place?**

**A:** You can apply for a POA once funds are available on the certificate. Section 17 of the Single Counsel Information Pack states that you may apply for a POA:

- for events only after every six events or after 6 months since a previous payment, or
- for disbursements at any time.
- All POAs will be recouped on payment of the final bill. High-cost billing

**Q: Once the final case plan is agreed, why do litigator and counsel final bills need to be submitted at the same time?**

**A:** This allows us to avoid duplication of payment.

To elaborate, counsel may claim Payments on Account (POAs) throughout the life of a case. Counsel must also submit their final bill before the provider on CCMS.

At that point counsel will be paid again, on top of the POAs already received and POAs to counsel will not be recouped until the provider submits the final bill.

If the provider submits their final bill months after counsel has submitted their final bill, counsel could be sitting on twice the amount of money they should. In a high-cost case with KC, this could be potentially be £100,000 more than they should have.

**Q: We have taken a high-cost case from another solicitor. The case finished a few months ago but the first solicitor will not bill their costs so we cannot bill ours.**

**A:** CCMS and the high-cost case event models were built mainly from the perspective of a single firm dealing with a case throughout.

CCMS cannot process a 'final' bill until all other costs are paid.

However, where you are in a position to bill the matter as final, we will do all we can to finalise matters as soon as possible. Please let us know if you have issues.

**Q: When submitting a recent interim bill, an apparently computerised action was activated on CCMS. This seems an unnecessary duplication of work at both our end and yours.**

**A:** Processing a bill and dealing with a case plan are two separate actions on CCMS.

The access rights for LAA staff dealing with each action are different so it may be that you will be asked for the same documents.

Bill payers do have access to the documentation submitted as part of the case planning process and will access those if necessary.

The CCMS document request, after submission of a bill, is an automated response. It asks for a statement of case; so if all documentation to support a claim is already sent, just complete the summary with a short statement confirming so.

## Case planning and billing

**Q: We encountered difficulties with LAA Finance when they assessed the final claim - they raised further queries despite the case plan having been agreed.**

**Can you please provide guidance/tips on how to avoid Finance raising these issues with the final claim, therefore, delaying payment of our costs?**

**A:** LAA's billing team are required to check certain matters in all cases whether subject to a high-cost contract or not.

For disbursements, the only cost guarantee is a prior authority, otherwise, those costs are open to scrutiny at the point of payment from the fund.

We are currently working with the finance team to make improvements to our processes. This includes reviewing if there is scope for us to reduce the potential for these queries arising.

We are also working in partnership with representative bodies on this and, as such, will keep them updated.

When submitting documents with case plans, interim or final, please try and group the documents together and make sure the document name you upload explains what is contained within that document. This will ensure that we don't miss documents.

## Guidance

**Q: Could you confirm where the rules and regulations can be found that underpin your high-cost case guidance?**

**A:** The model is supported by the high-cost contract and specification. Supporting information is in the Information Pack for the specific type of plan you wish to submit (single, two counsel or full hourly rate), referenced in the information sent to you when you apply for high-cost case funding.

## Contact us

**Email:** [highcostfamilyfixer@justice.gov.uk](mailto:highcostfamilyfixer@justice.gov.uk) (provide the certificate reference number) for counsel related issues

- **‘Submit VHCC Case Query’** on the Client & Cost Management System (CCMS)
- For urgent cases, please call our **customer service team**: 0300 200 2020
- Tweet us your questions @LAAHelpTeam

### **Information on Gov.uk:**

<https://www.gov.uk/guidance/civil-high-cost-cases-family>

This page contains the below information:

- The Family Overview pack
- CCFS Information pack
- CCFS 2 Counsel Model Information Pack
- FAST Checklists
- Exceptional Care Cases Template
- All Case Plan templates
- Contract and Specification

### **Remuneration Regulations:**

<https://www.legislation.gov.uk/all?title=the%20civil%20legal%20aid%20%28remuneration%29>

### **Civil Finance Electronic Handbook:**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/909888/Civil\\_Finance\\_Electronic\\_Handbook\\_V3.0.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/909888/Civil_Finance_Electronic_Handbook_V3.0.1.pdf)



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