



Legal Aid
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Civil Finance - Help Us Say Yes Webinar – Your Questions

Family Advocacy Scheme

January 2022



Contents

Counsel allocation	Error! Bookmark not defined.
VAT	3
Interim hearing FAS fees	4
Final hearing FAS fees	6
Advocates meetings	8
Disbursements	9

Counsel allocation

Q: Can counsel work on a case before they have been allocated to the case on CCMS or should they wait specifically for the solicitor to allocate them onto a case before undertaking any work?

A: It is advisable that counsel wait until they have been allocated to a case on CCMS before undertaking any work. They may be satisfied that they will be covered by the scope of the certificate. However, this will not always be possible, for example, when delegated functions have been used; the emergency application may not yet have been processed. In these circumstances, it may not be possible for counsel to be allocated to the case on CCMS before undertaking the work.

Q: Can counsel fees be amended or updated retrospectively?

A: All efforts should be made to ensure the fee is claimed correctly. However, where the incorrect fee has been claimed this may be amended by LAA retrospectively. Counsel would need to liaise with the instructing solicitor to ensure they have sufficient cost allocation to claim any additional amount and should submit a general enquiry via CCMS to inform LAA of the incorrect claim.

If Counsel is omitted from the certificate in error, but has undertaken work, CCMS can be updated post final bill by the instructing Solicitor if we have enough cost limit remaining to assign and allocate Counsel Fees.

VAT

Q: If you have a client based outside of the UK who does not have the right to reside in the UK can VAT be claimed on the LAA bill?

A: From 1st January 2021 VAT only applies where the work was done while the client had residential status in the UK. If the UK is not their usual place of residency, then VAT should not be claimed. If you are unsure whether VAT applies, please contact the instructing solicitor or HMRC before claiming.

Q: If the client has the right to live in the UK, but lives abroad, can we claim VAT?

A: Yes, if the client has the right to remain in the UK but lives abroad then VAT may be claimed. For cases where you are unsure whether VAT applies, please contact HMRC before claiming. We will generally accept confirmation that VAT applies where confirmation from HMRC has been uploaded with your claim.

Section 11 Civil Finance Electronic Handbook:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058499/Civil_Finance_Electronic_Handbook_V3.2.1.pdf

Interim hearing FAS fees

Q: For multiday interim hearing fees where different advocates have attended different days how do you determine which advocate should be paid the FAS fee?

A: Only a single fee may be claimed per activity under FAS. Although heard over multiple days this is considered a single activity under FAS and therefore only one fee may be claimed. LAA will pay the whole hearing fee to the final advocate instructed for this hearing. It will then be up to the advocate how the fee is to be apportioned.

Costs Assessment Guidance 2018; 4.3, 15.18, and 15.19; Appendix 2:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1021096/1_Costs_Assessment_Guidance_2018_-_Version_7-Oct_2021_TC_002_.pdf

Q: How should the FAS fee be calculated for interim hearings where the order is not agreed on the first day and so further time is required to agree the order the following day?

A: If the court has authorised additional time for agreeing the order the next day, then this time may be claimed as part of the hearing time, but it should be evident from the court order or Advocates Attendance Form.

Q: What fee may be claimed for a paper hearing ‘Paper Hearings’?

A: In response to the increased number of hearings heard on paper due to the pandemic these hearings may be claimed under the FAS. It is generally expected that Hearing Unit 1 will apply to these hearings.

Remote family hearings: updated ways of working:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879645/LAA-FAS-updatev2.pdf

Q: What fee may be claimed where a hearing is cancelled?

A: Where counsel is instructed and carries out at least 30 minutes preparation time, but the hearing is cancelled then counsel may claim a payment of hearing unit one for cancelled interim hearings or half the final hearing fee for final hearings. A file note will suffice as evidence of this.

For solicitors, any preparation for the cancelled hearing would be covered by the PFLRS/CPGFS representation fee so a separate fee cannot be claimed for a cancelled hearing.

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Final hearing FAS fees

Q: With regards to injunction proceedings, what fee is applicable where a return hearing finalises the injunction proceedings?

A: Where the court has made an ex-parte order and sets a date for a return hearing this will be considered a final hearing providing it is listed for a final determination and it is expected to be contested/effective. If, however, the opponent has confirmed in advance of the hearing that they will not be contesting the application then this hearing would not be expected to be contested and therefore the interim hearing fee would apply.

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Q: Can more than one final hearing fee per Aspect be claimed where there is more than one proceeding type?

A: No, generally only one final hearing fee may be claimed per Aspect under the FAS regardless of how many different proceeding types under a single Aspect are covered by the certificate. However, the exception to this is where subsequent enforcement proceedings are listed for final determination at a further hearing.

2018 Standard Civil Contract Specification; 7.127 and 7.130:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1021142/2018_Standard_Civil_Contract_Category_Specific_Rules_Family_September_2021_.pdf

Q: Can a final hearing fee be claimed where the hearing is listed as a case management hearing or early final hearing?

A: No, a final hearing is any hearing which the court has listed for the purpose of making a final determination and is expected to be effective or contested. If the matter has been listed for a case management or early final hearing it is not fully expected to have been effective or contested.

The only exceptions to this are finding of fact hearings or where a case concludes at an issues resolution hearing in public law proceedings, both of which will attract the final hearing fee.

2018 Standard Civil Contract Specification; 7.127 and 7.128:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1021142/2018_Standard_Civil_Contract_Category_Specific_Rules_Family_September_2021_.pdf

Q: We have noticed counsel are sometimes paid a final hearing fee in error for interim hearings such as dispute resolution hearings. But this only comes to light when the solicitor final bill is submitted. Is this a common issue?

A: All bills are processed on a risk-based assessment. Counsel are paid under the FAS and so claim their fee before the final bill. Counsel is essentially paid an interim bill. Unfortunately, when counsel submit their claim there is generally less information available with their bill than when the solicitor's final bill is submitted. The instructing solicitor is effectively confirming that counsel fees are in line with what they have instructed counsel to do and match the allocated costs. Secondary checks are therefore made when processing the solicitor final bill to ensure counsel fees are correct considering any further information available from the final bill.

It is recommended that instructing solicitors brief counsel on the type of hearing and that the agreed allocation is based on the potential FAS fees for that hearing type. This will help to ensure the correct fee is claimed by counsel.

Advocates meetings

Q: If an advocates meeting is held on the same day as a hearing can this be claimed as a separate fee?

A: This will depend on the circumstances – the final hearing FAS fee is paid per day and so no other activities can be claimed under the FAS on the same day as a final hearing. For interim hearings an advocates meeting may be claimed on the same day, but only where the meeting occurs outside of the hearing times.

Different rules apply for high-cost cases under single Counsel, or two Counsel Events Fees. (Please consult the CCFS Information pack).

6.4 Civil Finance Electronic Handbook:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058499/Civil_Finance_Electronic_Handbook_V3.2.1.pdf

Q: Sometimes there will be a general order directing an advocates meeting to take place two days before each hearing. Can this be uploaded to support several advocates meeting fees?

A: Yes, but further evidence would need to be uploaded for advocates meetings listed prior to the making of the general order. If the order is meant to be applied retrospectively then this must be clear from the order.

It is advisable that the relevant directions of this type of order are highlighted in the bill narrative to ensure that this is not missed on assessment.

Q: I note court orders listing advocates meetings retrospectively are accepted by LAA under the FAS for general billing. Why can't a retrospective order be accepted in CCFS matters?

A: An advocates meeting is defined as an event under the CCFS event model but only where the meeting has been ordered in advance. Any advocates meeting not within this definition does not attract a fee so a retrospective order cannot be accepted under the CCFS.

6 CCFS Information Pack:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803722/VHCC - Care Case Fee Scheme Information Pack_v2.pdf

Disbursements

Q: When travelling to court I need to take sensitive papers. Are LAA suggesting I take the bus rather than drive on shorter journeys?

A: LAA will not pay for local travel expenses, i.e., the costs of travelling to court from within 10 miles radius, regardless of the mode of transport unless this has been justified on the claim.

10.33 Civil Finance Electronic Handbook:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1058499/Civil_Finance_Electronic_Handbook_V3.2.1.pdf



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