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# Civil Billing: Help Us Say Yes Webinar: Your Questions

## Family Fixed Fee Bills

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## Solicitor family advocacy scheme (FAS)

**Q: I would be grateful if you could clarify the wording of the Final Hearing definition as the wording in the Standard Civil Contract is "A hearing listed with a view to the issues being dealt with under a consent order, or which is otherwise not expected to be effective or contested, is not a Final Hearing". Does a Final Hearing have to be both effective and contested, or just effective / contested (which is what the wording suggests)?**

**A:** If a hearing is not expected to be effective, and not expected to be contested, it is not considered to be a final hearing. 6.4 of the [Electronic Handbook](#) states, 'A final hearing fee is claimable for a hearing specifically listed in advance for the purpose of making a final determination. Such a hearing should also be effective as a final hearing and the substantive issues considered. If the hearing was not expected to be a contested hearing it will be payable as an interim. If the case is listed as a final hearing but for some reason is adjourned or postponed before the substantive issues are considered this will be considered an interim hearing.'

**Q: In public law other proceedings, is a final hearing fee payable at the hearing when the application is dismissed, even if not listed as a final hearing? For example, applications to discharge care orders.**

**A:** Yes, it can be claimed as a final hearing unless specifically listed as a directions hearing. See the previous answer for further details on the definition of a final hearing.

**Q: A final hearing of an application for permission to oppose an adoption. Is that a final hearing for FAS purposes?**

**A:** We could consider this as a final hearing. However, we would need to see a copy of the previous order to confirm how it was listed.

**Q: Would a private law certificate on a child arrangement order matter need to be amended to cover the final hearing if a Finding of Fact hearing is listed, but not a final hearing?**

**A:** An amendment to cover the final hearing is not necessary for a Finding of Fact hearing. 1.2 of the [Electronic Handbook](#) confirms, 'Where work is being claimed at Level 4 but the certificate does not cover this work then the claim should be rejected. The exception being

Finding of Fact hearings in private law which will be paid as Final hearings under a certificate within Family Advocacy Scheme even if FHH (Family Help Higher) limit applicable'. Further Guidance can be found in 6.4 of the [Electronic Handbook](#), 7.128 [Standard Civil Contract Specification 2018](#) and 14.10 Appendix 2 [Costs Assessment Guidance 2018](#).

**Q: FAS fee includes drafting of order - does this include just the time spent by the solicitor tasked with drawing up the order, or the time spent by other parties considering and providing amendments to the draft over the following days? Some orders require a lot of back and forth.**

**A:** Yes, you can claim reasonable time spent on considering and providing amendments following on from a hearing.

**Q: Where the court has listed a hearing in the floating list from 10am until 4pm, we assume we can claim from 10am until the hearing has concluded? As we are ready to proceed with the hearing and are unable to do any other work.**

**A:** Yes, you would need to provide evidence you were put on notice for the floating hearing.

**Q: Is it permissible to claim for the perusal of the court bundle when it arrives as part of the private family law representation scheme (PFLRS)/care proceedings graduated fee scheme (CPGFS) as well as claiming a court bundle bolt-on (if it is ordered, of course) where FAS applies?**

**A:** You can claim time for the initial perusal of the court bundle. The bolt-on fee for FAS covers perusal in preparation for the hearing.

**Q: Where you have a certificate that covers care proceedings but not deprivation of liberty and the court proceedings relate to both in the high court, would it be the case that a claim for FAS at High Court rates would be applicable (rather than County Court rates) as the matter was heard in the High Court due to the Deprivation of liberty aspect? It is accepted that no claim could be made for the Deprivation of Liberty work**

**A:** Yes, if the proceedings are being heard together at the High Court, then the hearing can be claimed at high court rates. The applicable fixed fee under CPGFS depends on the level at which the proceedings concluded. For example, High Court or District Judge/Circuit Judge/Lay Bench. 8.2 of the [Electronic Handbook](#) provides guidance on

Deprivation of Liberty/Inherent Jurisdiction proceedings, including when they are heard alongside care proceedings. You need to ensure the certificate covers you for the work.

**Q: On a fixed fee bill (which does not escape), is there a requirement to submit an attendance note for an advocates meeting, or is only the court order that directed the meeting needed?**

**A:** No, we do not need the advocates meeting attendance note. We need the court order for any advocates meetings claimed, where two have already been claimed and that includes those claimed by counsel. Frequently, we see orders which give a general direction for an advocates meeting to be held prior to each hearing, and that is acceptable.

## Transfer of provider certificates

**Q: What happens when the first solicitors' costs exceed the fixed fee, so claiming at hourly rates, and the second firm's costs have also escaped the fixed fee and these costs mean the case is likely to become Very High Costs in a private children matter where the case hasn't yet concluded. How are the first solicitors' costs dealt with when the case has not yet concluded?**

**A:** If the first and final firm's costs escape the fixed fee, the final firm needs to bill both sets of costs when the matter concludes. However, if the case is registered high cost after transfer of the certificate, then the first firm can either:

- have their costs included in the final firm's negotiations
- contact the high-cost family team to agree on a separate contract solely for their costs. If the first firm's costs do not escape the fixed fee and they have billed their interim claim before the matter is registered high cost, this will stand.

**Q: What is the best way to approach billing if the previous provider escapes, but the second firm does not?**

**A:** If the first firm's costs escape the fixed fee, but the final firm's costs do not, the first firm should submit their bill as an interim claim. This must include written confirmation from the final firm (an email is sufficient) that they will be claiming the fixed fee.

If this information is not provided, we will reject the claim as the final firm's costs may also escape the fixed fee. In that case, the final firm must claim both sets of costs together.

See additional guidance: [Quick guide: Provider transfer](#)

**Q: In that scenario, the second firm submits the interim bill, and the first solicitor submits the final bill, but the second firm submits the outcomes and discharges the funding?**

**A:** The first firm must bill their claim as an interim bill and the final solicitors submit the outcomes and their final bill. This process must be followed as CCMS will not allow it the opposite way.

## Supporting documents and disbursements

**Q: The annoying thing about disbursements is we do a payment on account (POA), and it gets paid. Then we put it in the claim, and it can get rejected if there is something not quite right with it, even if we try to check it as much as possible. And that is now a key performance indicator (KPI). The most galling is when a disbursement has been agreed on a high costs case and then the final bill gets rejected because of a query on an invoice which the high costs case worker has already seen and agreed. Can there not be some joined up thinking on this?**

**A:** There is only one point of assessment. For non-High-Cost billing, this will be the interim bill, or where costs are considered together, the final bill. We continue to work with providers, providing guidance as to how to get your claims paid the first time. In the case of High-Cost cases, the point of assessment is when the contract is agreed upon. However, the 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. Costs incurred without prior authority are open to scrutiny when billed. The high-cost case plan team are currently working with the billing team on process improvements. This includes reviewing if there is scope for us to reduce the potential for queries arising. They are also working in partnership with representative bodies on this and, as such, will keep them updated.

**Q: If mileage under £20 is yet to be added to our ledger, will a note on the attendance note for the hearing/attendance it relates to suffice?**

**A:** Yes, this would be acceptable. If the mileage is not for attendance at a hearing, we would need the destination, including the postcode, and the purpose of travel.

**Q: While you keep mentioning that you appreciate certain things like labelling of invoices being done as it makes your life easier and quicker to get through the bills, they take more time for us. Is that likely to be remunerated under our time claimed for billing?**

**A:** There is no mandatory requirement to label or annotate documents, but it may avoid delays and rejects. For example, underlining or putting a cross against the relevant section of a court order can help us match up information and speed up processing times. You

should always claim the actual time it took to prepare your bills including this additional work.

**Q: If the conducting solicitor is unable to attend a hearing and asks a colleague from a different office to attend rather than instructing an agent, is the travel mileage to the hearing (which is over 10 miles) from the non-provider office recoverable?**

**A:** No, this is an internal arrangement, and we will assess travel based on the providers' office address on the certificate.



## Enhancement when cases escape

**Q: Are the enhancements applicable to hourly rate cases that don't escape the fixed fee or just hourly rates? For example, other public law cases?**

**A:** Enhancement cannot be claimed on the Fixed Fee bill but can be claimed if the bill escapes the fixed fee and the claim is at hourly rates. However, you must provide evidence that you meet the criteria as per section 12 of the [Costs Assessment Guidance](#). For the purposes of calculating the escape threshold, this excludes enhancement, advocacy, and disbursements.

## Additional questions

**Q: In the outcomes section – pre-funding certificate are we putting the net figure or gross figure, so for legal help, £365 or £438?**

**A:** You must put the gross figure as any legal help recovered as part of a costs award would need to be recouped including the VAT element. Similarly, if the statutory charge applies, this is calculated on all the gross costs including legal help.

**Q: Why it is deemed appropriate to means assess a child 16 or 17 years of age who is subject of proceedings in a private law matter, please?**

**A:** We are governed by the regulations and applicants, no matter how old they are, are subject to a means assessment in private family law proceedings. Clients of 16 or 17 years old could have their own income and bank accounts so a full means assessment is required.

**Q: What if we represent a grandparent or someone who the child is living with?**

**A:** If the client is the person who the child is living with, for example, a grandparent, we assess that person. If the child is the client, we assess the child.

**Q: What happens if the child is a minor when the legal aid application is submitted but has a birthday during the court proceedings taking them out of the "child" category? Would the bill still be claimed at hourly rates – in private law?**

**A:** Yes, how to bill is determined by the client's age when the certificate is granted. So regardless of them turning 18 during the proceedings, this would still be separate representation of a child and billed at hourly rates only, including counsel's fees.

**Q: There is no option for "perusal" on the non-fixed fee bills. Can you tell us what option we should use for reading and perusing large documents, police records particularly?**

**A:** Perusal of documents should be billed as 'preparation-other'. Any items billed as such should be detailed in your claim to include what documents you were considering and the number of pages. Where you are claiming a single item of 3 hours or over, we will require your file note. Additional guidance on the perusal of documentation can be found in 2.3 of

the [Electronic Handbook](#) and Section 2.8 – 2.14 and 2.39 – 2.41 [Cost Assessment Guidance 2018](#).

**Q: So, for fixed fee bill narratives, you do not need to know the ins and outs of the case, for example, experts instructed and assessments, except to detail what the court ordered regarding costs of those experts?**

**A:** No, a summary of the case and how it concluded is sufficient. You should include the name of the client, the proceedings, and the certificate reference number. For claims that escape the fixed fee, we would expect a more detailed narrative outlining the main issue. In both cases, the narrative can be used to explain or justify any unusual aspect of the claim.

**Q: I had a care fixed fee bill, in the middle of which there was an urgent application for port alert as there was the worry that the mother might try to take the children abroad. The fixed fee on CCMS did not allow me to charge anything for the actual work done, but I did charge the solicitor's FAS for the High Court hearing at high court rates. The certificate was not amended for this application though. Could I have charged for the work too? If so, how?**

**A:** It would depend on if the Port Alert application was consolidated/heard together with Care proceedings. If the application for a Port Alert was listed and heard separately, a separate funding certificate would be required. No work (including FAS) would be claimable under the Care certificate.

If the Port Alert was a related proceeding as defined in 7.46 and 7.47 of the [2018 Standard Civil Contract](#) then all work would fall under the care matter. However, the existing care certificate should be amended to cover this work.

Where some hearings are listed/heard separately, it will depend on the specific circumstances. As a Port Alert Order falls under Child Abduction, it is excluded from FAS and CPGFS so it may be necessary to submit a Fixed Fee bill and an hourly rates bill. The principles set out in 8.2 of the [Electronic Handbook](#) in relation to Deprivation of Liberty and Inherent Jurisdiction cases can be applied in this scenario.

**Q: In care proceedings, a third party is invited to intervene but at the first hearing is dismissed from the case. So that work will be billed at hourly rates? And how does Counsel for the proposed intervenor claim?**

**A:** If a party is refused party status (which includes an intervenor) then all work including Counsel advocacy will be claimable at hourly rates. Separate bills can be submitted by

both Solicitors and Counsel, but they should ensure they are submitted together so there is one point of assessment.

**Q: If representing a parent and have a certificate covering private family law and for example discharge of care order and application for a special guardianship order, all proceedings are consolidated, and the proceedings are intertwined so you cannot separate them out, what rates do you apply?**

**A:** The rates applicable will depend on the specifics of each case and the proceedings before the court. 8.4 of the [Electronic Handbook](#) gives an overview of the applicable rates for different Family Proceedings.

Where different rates apply in Other Public Law proceedings, for example, Placement and Discharge of a Care Order proceedings on the same certificate, the work should be billed at the appropriate rate and where the work done relates to both sets of proceedings it should be apportioned equally across each bill/schedule. Both can be billed in one claim (if claiming summary level with a breakdown), but ideally, you would submit two separate claims, one interim and one final.



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