



Legal Aid
Agency

Working with others to achieve excellence in the delivery of legal aid

High Cost Family: Help Us Say Yes Webinar: Your Questions

Exceptional cases

June 2023



Contents

Exceptional cases	2
Transfer of provider	3
Costs	4
Additional	5

Exceptional cases

Q: I see that a low number of hearings is one of the reasons for requesting exceptional fees. I did this and it was refused. The profit costs were well over the 30% required, but I had to do an events case plan.

A: Even though you may meet one of the criteria, and certainly a low number of hearings is one, we must still be sure what is driving the cost and the full reason why the 30% threshold is met. It does not guarantee exceptionality, but it is one of the circumstances used when we consider the specific case in question.

Q: Has there been a change to how the exceptional criteria are considered (as it seems more reasonable and achievable recently)?

A: We believe the current application of the scheme is how it was always envisaged, and we have not altered our approach.

Q: What do you do if you realise now that you have not applied for the case to be exceptional when you registered it ages ago?

A: We are trying to get the message out regarding a decision at registration. Once a case has moved on from registration, whilst there may be certain cases where it may be prudent to revisit a decision, the reasons and time passed will be considered. An oversight would not be considered a good reason to revisit a decision.

Q: Is there much difference between the exceptional cases for care proceedings, and private children matters?

A: If a case is granted exceptional status, it is treated the same from a process point of view as any hourly rates case plan.

Q: At which point will you need a signed contract from the provider, and a signed Counsel acceptance form (CAF)?

A: A signed contract and CAF are required up front if events are hourly rates when the offer is made and accepted.

Transfer of provider

Q: For transfer of solicitor cases, would you bill first solicitor rates at hourly rates if the second solicitor registered the case as high-cost and exceptional?

A: How the first firm bills their costs is up to them. We will agree to pay at fixed fee, hourly rates, or events.

Q: If the first firm has already submitted their bill and the certificate is transferred, should the second solicitors still ask the first solicitors if they want to change how they are paid?

A: If the first firm has already billed prior to the matter being registered high cost, we are very unlikely to revisit those fees. We will use the sum paid to the previous firm to complete the case plan.

Q: I registered a high cost case based on a 10 day future final hearing, but the certificate got transferred before the final hearing, so I deregistered it. The new firm has now registered it as high costs, how do I prepare my bill?

A: As this is a specific case enquiry, we suggest you contact highcostfamilyfixer@justice.gov.uk for a specific answer.

Q: If there is a change in solicitors who did not register the case as an exceptional case, but did register it as high costs, can the second solicitors then ask for the case to be exceptional from the point the second solicitors take on the case?

A: Each solicitor's submission is dealt with on its own merit. A second firm will not be bound by a decision made by a previous firm. A request for exceptionality is still possible.

Costs

Q: If the matter settles before a high-cost case plan is agreed, can we submit the final bill if it goes over £25,000?

A: If you have informed us the matter is likely to exceed £25,000 and the matter ends, we still follow the high-cost process to continue both from an exceptional and case plan or contract perspective, before any bill can be submitted.

Q: How are Counsel's fees calculated? Is this at the solicitor's prescribed rate or is there a different rate?

A: Single Counsel will be FAS unless the case meets the >10-day test where Counsel can claim events.

Q: What happens when a provider has registered a case as high cost, but the matter settles before the costs reach £25,000?

A: Should the matter not reach £25,000 we can allow you to bill the costs as normal but that would be with our agreement.

Q: Why can you not extend the cost limitation under the event model once the first case plan has been agreed?

A: You can apply for a cost increase as soon as a plan is agreed. An interim plan may be required should you need costs up front. If it is an hourly rate plan you are invited to submit an amendment as soon as a stage is agreed and once a contract is received.

Additional

Q: I know this is only dealing with one Counsel case plans; however, I am doing an hourly rate private law case plan where Kings Counsel and Junior Counsel are authorised. Is there anything different I need to do?

A: No, as this would be either an hourly rate or the 2 counsel model which does not have an exceptional test.

Q: Can you say how many cases have been agreed to be exceptional since the scheme started?

A: We do not have those figures. It was lower than we originally expected them to be, but that could be because providers may be using the event model even though they may have been exceptional, but this is only anecdotal feedback.



© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

