



Legal Aid
Agency

Help us say yes Webinar: Non-Family Billing: Getting your Hourly Rate Bills ‘Right First Time’

Civil billing

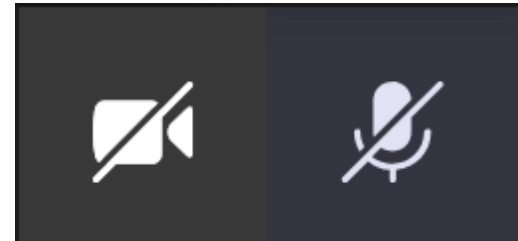
29 June 2023

Technical tips for this webinar

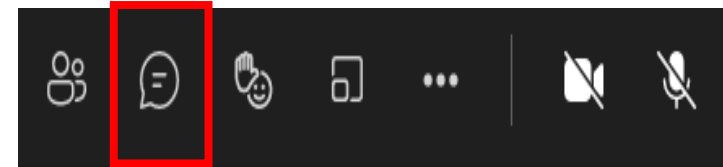
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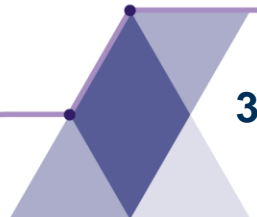


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Non-Family Billing: Hourly rate bills

Purpose of the webinar:

- The purpose of this webinar is to help you get your civil non-family bills paid first time by giving you helpful hints & tips to assist you in avoiding common billing reject and assessments reasons



By the end of the webinar, you will have an understanding of:

- How to avoid rejects and provisional assessments
- Where you can access additional support and training

Introduction



Introduction: An Overview of billing non-family cases

The following table gives a list of all non-family cases: ([Appendix 2: Hourly Rates \(Civil\) Page 178: Civil Finance Electronic Handbook](#))

Table 10(a) relevant Remuneration Regulations / Payment Annex (with Schedule Authorisation)	
(Included in webinar)	(Not included in webinar)
Recover possession	Trusts of Land and Appointment of Trustees Act (TOLATA)
Wrongful eviction	Inheritance Act 1975
Homelessness	Court of Protection (medical issues)
Anti-Social Behaviour Order (ASBO)	Court of protection (non-medical issues)
Housing disrepair	Court of protection (deprivation of liberty)
Housing counterclaim	Displace nearest relative (mental health)
Harassment injunction (non-family)	Upper tribunal (mental health)
Judicial review (JR)	Unlawful detention (mental health)
Injunctions under section 1: Anti-social Behaviour Crime & Policing Act (ASBCPA)	Habeas corpus (mental health)

- Work in relation to proceedings under the ASBCPA is paid as hourly rates under table 10a of the remuneration regulations. Where the work relates to a breach this is claimed under criminal work and via a representation order.

Introduction to non-family billing

- Unlike family cases, there are no fixed fee schemes:
 - All work for both solicitors, and Counsel, should be billed at hourly rates
- The applicable hourly rates for solicitors can be found:
 - Civil Legal Aid(Remuneration)Regulations 2013, Schedule 1, Part 3: table 10(a)
- The applicable hourly rates for counsel including rates for the Senior Courts, such as the Supreme court, can be found in the Civil Legal Aid(Remuneration)(Amendment) Regulations 2013, Schedule 2, Table 1 and 2
- Solicitor and counsel claims need to be submitted together

Top Tip:

Whilst generally we will not require your full file of papers on each case, you must ensure you have evidence of all work on your file. Even where a claim is paid without the file, the file may still be required post payment for auditing purposes.

Introduction to non-family billing: Continued

- Where the total assessable costs, for example, profit costs, disbursements and counsel fees, exceed £2,500 and the matter concludes in the County Court or above, your claim will meet the court assessment threshold. However, you may opt for LAA to assess your bill instead of the court*. These can be submitted on a line-by-line basis or on a summary line basis
- If total assessable costs are under £2,500, your claim should be submitted as an hourly rates claim
- Voluntary Assess claims can be submitted with the profit costs at summary level or line by line with a schedule of work uploaded
- Transfer of claims formerly assessed at court to the Legal Aid Agency: [Transfer of claims assessed at court to the Legal Aid Agency - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/transfer-of-claims-assessed-at-court-to-the-legal-aid-agency)

* The exception to this is when there are disputed inter partes costs. In these instances, the costs must be assessed by the court: 14.1 of the 2018 Costs Assessment Guidance: [Cost Assessment Guidance 2018 Version April 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/guidance/cost-assessment-guidance-2018-version-april-2021)

Top Tip:

- Where you are claiming line by line, you only need to state the bill line, without the need to give the date and time spent for each item.
- When submitting a summary level bill, you will need to give the dates and time spent

Billing with counsel



Billing with counsel

- There are no fixed fees for counsel claims in non-family cases:
 - They will always be remunerated at hourly rates.
- Counsel fees will form part of the single point of assessment and should therefore be submitted at the same time as the instructing solicitors, as they are assessable costs.
- Counsel fees are also included in the calculation to determine whether or not the total assessable costs, i.e. Counsel and solicitors profit costs and disbursements meet the court assessment threshold of £2,500
- In non-family matters only, counsel may opt for the instructing solicitor to bill on their behalf.
 - If they do, written confirmation from counsel should be uploaded with your claim and counsels' cost allocation should be zero.
- Any payments on account to counsel will be recouped from them:
 - They should not be deducted from the costs we have paid in your bill.

Billing with counsel: Continued

If counsel are billing their costs separately, as always, they should be allocated the net costs of their claim.

- You will need to arrange submission of your claims at the same time.
- Whenever counsel have been allocated costs, CCMS generates a notification to counsel asking them to submit their claim. The solicitor claim will be held without it entering our work queues for processing.
- Once counsel has submitted their claim, the notification is cancelled and this will release both claims into our work queues for processing together. However, if counsel does not respond it will time out after 14 days and the solicitor claim will enter the work queue.
- This will result in that claim being rejected as the claims must be assessed together.

Billing with counsel:

You can check to see if counsel have submitted their claim on your side of CCMS:

- **3.2 Provider Billing With Counsel:** [CCMS Billing With Counsel \(justice.gov.uk\)](https://www.justice.gov.uk/ccms-billing-with-counsel)
- Counsel must provide justification for any enhancement when they submit their claim. They can provide this:
 - In response to the default CCMS document request or
 - Upload form CF1A
 - Upload their fee note with the justification on

Top Tip: Before arranging to submit your claims together:

- Check counsel's fee notes to make sure the work is covered by the scope of the certificate, and they are claiming the prescribed rates.
- Check that they are providing us with justification for any enhancement they are claiming.
 - This helps to avoid rejecting counsel claims which would mean your claim would have to be rejected also.

Enhancement



Discretionary enhancement

- It is for the fee earner to claim enhancement where it is considered justified and to indicate the level of enhancement sought
- Where enhancement is sought, the items requiring the exercise of discretion and the granting of enhancement must be identified
- You must draw attention to the factors upon which you rely to justify either the enhancement or the level sought
- When preparing the bill for assessment:
 - The narrative must clearly state the fee-earner for whom the enhancement is claimed as well as the basis for the enhancement.
 - Counsel should complete the enhancement section of the CF1A form

The "two stage" test

The LAA has a "two stage" test for enhancement. It is advisable that any claim for enhancement is made with this two stage test in mind.

Stage 1

Stage 1 of the test is to determine **if enhancement is reasonable to claim in principle**. This is based on one of three criteria:

- (a) the work was done with exceptional competence, skill or expertise;
- (b) the work was done with exceptional speed; or
- (c) the case involved exceptional circumstances or complexity

Stage 2

Stage 2 is to determine ***the amount of enhancement to be allowed and to what work it should apply:***

- The degree of responsibility accepted by the fee earner
- The care, speed and economy with which the case was prepared
- The novelty, weight and complexity of the case

Top Tip: Try to address the criteria set out above within your grounds for enhancement:

- Section 3, [Civil Finance Electronic Handbook \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) and
- Part 12, [Costs Assessment Guidance 2018 - Version 6 October 2022-.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Satisfying the two-stage test

- We often see fee earners emphasise their experience to support a claim for enhancement, especially regarding the criteria of exceptional competence, skill or expertise.
 - This is neither necessary, nor sufficient, as we need to know how the fee earner's work in this specific case meets the enhancement criteria
- As per Section 12.11 of the 2018 Cost Assessment Guidance, there is no basis for arguing that proceedings within specific categories of law, or types of proceedings, will inherently satisfy the above criteria, such that an enhancement should be payable in every such case.
 - Each claim must be considered on its own facts.
- Grounds for enhancement should be sufficiently detailed so that a fair assessment can be made.
- For example, it is not sufficient merely to state that a case involved exceptional competence, skill or expertise, instead we recommend that you demonstrate **how** a case involved these factors.
 - This can be in the form of a short narrative but providing, for example, counsel's written advice, or the Judicial Review grounds, can assist in this.

Top Tip: Be case specific. Each claim must be considered on its own merits

Transfer of provider



Transfer of Provider

- For any case with hourly rates, either non-family or family proceedings paid at hourly rates, the LAA will treat the claims as one single claim with one single point of assessment.
 - Claims will not be assessed independently.
- The final acting solicitors will need to submit outcomes and one final bill for both sets of costs.
 - It should be clear in the schedule of costs including any disbursements whose costs are whose.

Top Tip:

- When a provider transfer takes place, the cost limit does not automatically transfer to the new provider.
- The new provider will have to allocate the costs to themselves.
- The new provider will not receive payment of any payment on accounts or bills until the cost limit is allocated to them

Transfer of Provider continued

- Where the assessable costs are over £2,500, the firms need to agree whether the claim should be assessed by the court or by the LAA.
 - They cannot be assessed in part by the court and in part by the LAA. There should be only one single assessment of all the costs incurred.
- Unlike our old paper billing system, payments on account will only be taken from the legal aid account they were paid to.
 - These should not be deducted from the previous firm's share of costs.

Further guidance: [CCMS Billing After a Provider Transfer \(justice.gov.uk\)](https://www.justice.gov.uk/ccms-billing-after-a-provider-transfer)

Top Tip: The first providers may not find a case when search on CCMS, even though it is assigned to them. This is likely to be because they have no cost allocation. CCMS will not recognise that the case is assigned where the cost allocation is zero.

- If you have an enquiry, submit a general / case enquiry with the case reference and we can provide you with the information you require.

Judicial Review billing



Civil Legal Aid (Remuneration) (Amendment) Regulations 2015 – Regulation 5A

The most common issues that lead to a rejection, or an assessment, of a Judicial Review bill are those which relate to Regulation 5A

Under Regulation 5A, work on an application for permission is payable (in accordance with the usual rules) where:

- The court **gives permission** to bring judicial review proceedings
- The **defendant withdraws the decision** to which the application for judicial review relates and the withdrawal results in the court:
 - i. refusing permission to bring judicial review proceedings, or
 - ii. neither refusing nor giving permission
- **The court orders an oral hearing** to consider:
 - (i) whether to give permission to bring judicial review proceedings;
 - (ii) whether to give permission to bring a relevant appeal; or
 - (iii) a relevant appeal
- **The court orders a rolled-up hearing** (even where permission is refused or the case concludes prior to a decision on permission)

Civil Legal Aid (Remuneration) (Amendment) Regulations 2015 – Regulation 5A continued

- Where proceedings are issued but permission is **neither given nor refused**, the solicitor will need to apply to the Legal Aid Agency (LAA) for discretionary payment approval prior to billing:
 - Where none of the criteria for payment arise, the LAA cannot pay the costs of work relating making the application for permission.

Regulation 5A does not:

- Affect the payment of disbursements but **does** apply to counsel
- Apply to the earlier stages of work on a case, to investigate the prospects and strength of a claim (including advice from Counsel on the merits of the claim) and to engage in pre-action correspondence
- Apply to any work that relates to an application for interim relief

Top Tip:

- It is important your bill narrative is clear on the issue of permission.
 - The assessor needs to know if proceedings were issued and the outcome of any decision on permission.
- Include copies of relevant orders on permission with your claim

Bill narrative: Explain the outcome

- It is helpful to include an addendum in your bill narrative to address any Reg 5A considerations. For example:
 - If the defendant withdraws the decision to which the application for judicial review relates, and the withdrawal results in the court refusing permission or making no decision, it will assist us if you provide the court order[s] and make this clear in your narrative
- An oral hearing must have been **ordered by the court** rather than having been listed as a result of an application on behalf of the client for payment to be recoverable under Reg 5A.
 - A clear reference to this in the narrative along with a copy of the court order is helpful

Top Tip: Include relevant court orders with your bill

Permission neither granted nor refused: Discretionary payment

- Where permission is neither given nor refused and the criteria for payment are not met, for example, where the application for permission concludes prior to a decision being made, providers need to apply to the Legal Aid Agency for a discretionary payment.
- This request for discretional payment must be made **before** you submit your claim on CCMS.
 - Failure to do so will mean that your claim is rejected
- It is advised you make an application for discretionary payment via a case enquiry on CCMS:
 - Select “JR Discretionary Payment Request” from the request type drop down list.

Evidence

- The bill narrative is important in Judicial Review cases.
- The assessor will need to know the details of the decision under review
- It is important dates are provided for significant points of the case.

- Whilst not mandatory, it is often useful to provide:
 - All letters before action
 - Copies of any responses received from the defendant
 - Copies of counsel's advice [if applicable] and
 - Copies of any orders, particularly those which relate to permission.

- Counsel may also wish to provide copies of any written advice, the JR grounds or similar evidence of the work undertaken

Disbursements



Disbursements

Whilst there are far fewer disbursement claims in non-family proceedings, the requirements are the same as for family proceedings:

- All disbursements of £20 or over (inclusive of VAT) *must* be evidenced.
- If a disbursement is under £20, we do not require evidence, however, an explanation of what the disbursement relates to is required so that we determine if the cost is reasonable and in scope .
 - For example, if you have a parking fee of £7.00 that doesn't match attendance at a hearing, we need to know what the fee was and why it was incurred.
- All disbursement vouchers should contain the client's name and the date of work

Expert's invoices should contain the following:

- The expert's name and their specialism
- The hourly rate being claimed and a breakdown of each item of work and the hours taken for each
- The address of the expert, where they are travelling to and from and how many journeys
- Where public transport is used, receipts / copy tickets should be provided, ideally uploaded with the invoice in the same document.
- Overnight accommodation should also be evidenced with an invoice / receipt.

Section 10 Electronic Handbook: [Civil Finance Electronic Handbook \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Additional guidance / contact us



Useful links:

- [Civil Finance Electronic Handbook \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- [Civil claims rates calculator - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- [Costs Assessment Guidance 2018 - Version 6 October 2022- .pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- [Standard civil contract 2018 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
- [Standard Terms 2013 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- [LAA Learning Website](#)

Civil claim fix

Whenever you disagree with an LAA decision to return your claim, you can challenge our decision through LAA's civil claim fix process.

This is when you believe:

- The information requested is not required
- The information requested has already been uploaded

Challenges should lay out the reasons for disagreeing and be sent to: laacivilclaimfix@Justice.gov.uk

- To avoid having a claim returned for more information, you can contact this service for advice on any situation you are unsure of
- The civil claim fix service has a 24-hour turnaround target
- Reports are provided to the contract management teams and feedback is given to individual caseworkers.

Our training website



CCMS Quick Guides

- [CCMS provider: Closing cases and submitting bills](#)

CCMS Online Training

- Sign up on 'Eventbrite'

Online Support Webchat

- Use Webchat for help with IT system issues

Webinar Recordings

- Our 'Help Us Say Yes' webinars focus on areas where there have been issues or high enquiry levels
- Popular sessions are posted on the training website: [Ministry of Justice](#)

Our communications channels

Legal Aid Bulletin

- A fortnightly e-alert with links to relevant pages
- Join our thousands of subscribers



Social Media

- Follow us on Twitter
- Get help from our customer service twitter account
- Read our blog



LAA Portal

- We post the status of our online systems on the portal's home page





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