



Legal Aid
Agency

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

Civil Non-family Billing: Help Us Say Yes Webinar: Your Questions

Hourly Rate Bills

June 2023



Contents

Billing with Counsel	2
Enhancements	3
Transfer of provider	4
Judicial Review (JR) billing	5
Disbursements	7
Overview questions	8

Billing with Counsel

Q: If Counsel's claim is rejected, meaning the solicitor's bill is rejected, does this go against the solicitor's key performance indicator (KPI)?

A: Where it is necessary for LAA to reject counsel's claim, it will also be necessary to reject the solicitor bill. There is only a single point of assessment, so although the claim is made up by two bills (these being the solicitor's bill and counsel's bill), they are treated as a single submission when making a decision on assessment to either pay or reject.

Please note counsel do not have a contract with LAA and therefore are not impacted by reject KPIs. However, the rejection of the solicitor bill will count against the solicitor's KPIs. It remains the responsibility of the solicitor to ensure all costs claimed under the certificate are correct, to include all counsel fees. Providers should continue as best practice to check counsel's fee note to ensure accuracy.

Enhancements

Q: Are there any other accreditations, apart from the Family Panels, that receive an automatic enhancement?

A: No, not for non-family matters.

Transfer of provider

Q: Where there has been a transfer of provider on a certificate, does a single bill have to be submitted? If not, how does this work on CCMS?

A: There are two options:

1. The final acting firm can submit one single bill for the costs of both firms.

It should be clear from the documents uploaded which costs relate to which firm.

2. There can be two separate claims, an interim claim for the first firm and a final claim for the final firm. The claims will need to be submitted at the same time.

The following steps should be followed:

- The final acting firm should allocate the net costs of the first firm to them.
- Either firm can submit a request for interim bill permission via a billing, case, or general enquiry, confirming 2 separate bills will be submitted together.
- We will add permission for an interim bill submission to CCMS (on hourly rate proceedings, CCMS does not allow interim claims automatically).
- When you receive confirmation permission has been added, the first firm can submit their interim claim and the final firm should submit outcomes and their final bill.
- They must be submitted at the same time along with any claims from Counsel.

Please note, if we need to reject any of the claims, then all claims need to be rejected and resubmitted together.

Judicial Review (JR) billing

Q: If permission is refused, are the court fees recoverable?

A: Yes. Regulation 5A does not affect disbursements.

Q: What happens where in a JR for a Mandatory Order to compel a decision, the decision is then provided before the permission stage? Would Reg 5A apply as parallel with a case where the defendant withdraws a decision under challenge, meaning, the remedy is achieved?

A: Reg 5A does not necessarily allow payment in situations where a remedy is achieved per se. Reg 5a 1[c] allows for payment in the specific circumstance as follows:

“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;”

If, in the above example, the court neither granted nor refused permission because the defendant withdrew the decision to which the application for judicial review relates, then the costs of making the application would be recoverable. Otherwise, you would likely need to apply for discretionary payment, on the basis that permission was neither granted nor refused and the payment criteria under Reg 5a have not been met.

Q: On a recent appeal, the LAA advised "There is no right of appeal to the independent costs assessment (ICA) against an adverse decision where the Civil Legal Aid (remuneration) (Amendment) Regulations 2015 apply. This is because the ICA has no power to reinstate costs which the LAA has refused to pay on the basis that they are caught by the application of Regulation 5a". What is the recourse if the initial billing caseworker has (seemingly) incorrectly applied regulation 5a to investigative representation work?

A: If the caseworker has incorrectly applied Regulation 5A during an assessment, these costs can, in principle, be appealed and reviewed by the ICA. There are circumstances where this may not be appropriate, for example:

- where the cost limitation has already been met or exceeded

- where the work appealed is deemed out of scope or adjudged to be within the costs of the application for permission stage of work
- where the LAA is of the view that Regulation 5A has been correctly applied, it would remain the case that is no right of appeal to the ICA

Disbursements

Q: With regards to paragraph 2.49 of the Legal Aid 2018 standard civil Contract Specification, what counts as a recognised interpretation or translation agency?

A: Generally, we do not investigate whether the interpreter is from a recognised agency. Part of a provider's general responsibility is to source a competent expert from a reputable source. In this case, a legitimate agency that supplies sufficiently qualified interpreters. If you have concerns about whether a service provider is a recognised agency, you may raise this with your Contract Manager. For billing, if we receive a headed invoice, we trust that they are both competent and have a commercial standing.

There is provision to instruct a non-qualified interpreter in exceptional circumstances under 2.50 and 2.51 of the Contract Specification. However, you would need to set out the exceptional circumstances in a file note and explain on assessment.

Overview questions

Q: You mentioned that generally the file of papers is not required. How is that determined? I deal with lots of non-immigration JR claims, and there are requests for papers on less than 50% of the cases and it is difficult to predict when it will be required. We want to avoid the time of scanning everything in when it is not required.

A: The contract allows the LAA to request file evidence on any case. CCMS will generally indicate the documents required. However, caseworkers will determine on a case-by-case basis whether further evidence is required to validate the claim. This could be the full file or only part of the file. We therefore cannot provide a definitive answer when the file will be required.

Please note, however, LAA may only pay costs that are supported by appropriate evidence on the file. LAA routinely carry out audit and assurance activities post assessment. It is therefore important that evidence is held on the file at the point of assessment and retained on file. Evidence must be retained until six years after the contract ends.

Q: It is stated that there are no fixed costs for Counsel fees, but there are fixed costs for fast-track trials in the civil procedure rules (CPR).

A: Generally, there are no fixed costs for Counsel in most non-family cases. However, fast track trial provisions apply in the limited circumstances where the prescribed rates do not cover the level of Counsel instructed or court. See further guidance in 13.11 to 13.14 of the [Cost Assessment Guidance 2018 Version April 2021 \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/cost-assessment-guidance-2018-version-april-2021.pdf)

Q: The top tips box on Page 8 regarding not needing the date or time: Is this in relation to the 'other' justification documents?

A: Yes, it relates to all items billed as 'other', mainly preparation - other. If claiming several items as draft pleadings, we would ask these items of work be detailed as well but again, we only need the item number.



© 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.

