Legal Aid Agency

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

Your Questions Help Us Say Yes Webinar:

Civil Billing: Top 10 reject reasons and how to avoid

December 2022

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Missing Family Advocacy Scheme (FAS) hearing evidence

Q: If the FAS paragraph is missed entirely from a court order but, within the body of order it refers to disbursement and costs necessary against a client's legal aid certificate and the attendance note is uploaded, can we claim the minimum FAS fee, i.e. Hearing Unit 1? The start of the order would specify the advocate's name to confirm representation at hearing.
A: Generally, if the order does not include sufficient detail to enable the LAA to confirm the FAS fee is correct, a copy of your attendance note with this information may be provided along with the court order. However, if neither of these include the required information and you are unable to evidence the start / end times, lunch breaks or other adjournments then Hearing Unit 1 may be claimed. A copy of the order and explanation of why you are only claiming Hearing Unit 1 should be uploaded with your claim.

Q: Will you accept the FAS recitals if they are omitted from an order but then dealt with in a subsequent order because the court portal had closed the case before the order could be amended. For example, if you have attended an Emergency Protection Order (EPO) hearing which is completed in one hearing, but the FAS recitals are then addressed in the initial order within the Care Proceedings the following week?
A: It is unlikely that we would accept this as evidence on assessment of your claim. In the first instance we would expect the court order to be amended under the slip rule. However, in cases where that is not possible, we could look to use alternative evidence, such as a file note, on assessment on a case-by-case basis.

Missing court orders for additional FAS fees

Q: Do you accept advocates meetings which have taken place as part of FAS recital on the court order?
A: Under FAS, if it's clear that the advocates meeting has been authorised by the court, a recital in the court order confirming that an advocates meeting was required in advance of that hearing should be acceptable.

However, please note, this would not be accepted for case plans under the Care Case Fee Scheme (CCFS). For this scheme, advocates meetings must be ordered in advance.

Q: Many orders now say "an advocates meeting before each hearing" is this sufficient?
A: Yes, this will be fine in most instances. If you are relying on one order for all advocates meetings, please confirm this in the bill narrative and give the date of the order. It is also helpful to highlight the relevant paragraph.

Incorrectly claimed FAS hearing fees

Q: If there is no lunch break endorsed on the order, do we still deduct an hour if it goes through the lunch period?
A: This will depend on whether a lunch break was taken. If so, then the time taken for lunch shouldn't be included when calculating the FAS fee. If no lunch break was taken, this should be confirmed in the order, attendance note or bill narrative, so that it is clear the advocates worked through lunch. The bill may be returned if the hearing transcends the lunch period (12pm to 2pm), but details have not been provided of the lunch break or confirmation that a lunch break was not taken.

Q: Where is the specific guidance for interim hearings not being payable as final hearings?
A: 2018 Standard Civil Contract Family Specifications confirms;
7.127 A Final Hearing is any hearing which the court has listed for the purpose of making a final determination, either of the whole case or of all issues relating to an Aspect of the case (Domestic Abuse, Children or Finance). Subject to Paragraph 7.130, there can only be one Final Hearing per Aspect and a hearing listed only to determine particular facts or issues is not a Final Hearing. 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. Any hearing which is not a Final Hearing is an Interim Hearing.

Costs Assessment Guidance; Appendix 2 confirms the following:
14.11 In care proceedings, the main hearing will be the hearing at which the court determines whether or not a section 31 order is made. If a final hearing is listed for a split hearing with certain issues being heard and/or determined in advance of other issues (for example, findings of fact and/or threshold criteria), this must be claimed as a final hearing rather than an interim hearing plus a final hearing. In ancillary relief proceedings, it is likely to be the hearing at which the court determines the form of relief entitlement and in family injunctions, the on notice hearing which will determine the form and continuation of the without notice injunction order made. The definition includes all preparation or incidental work relating to the hearing including preparation, travel to court and waiting at court as well as the advocacy within the hearing itself.

15.9 A directions hearing that concludes the case does not make the hearing a final hearing.

Q: On rare occasions we get an order which records start and end times for pre-hearing discussions, and then there is a gap before the start of the hearing. When I've claimed for the actual time spent, the claim has been rejected and I've been asked to claim FAS as though there has been no gap between pre-hearing discussions and the hearing. However, what do I do when that gap between pre-hearing discussions and the hearing is a few hours - say the pre-hearing discussions were at 9am and the hearing didn't take place until 3pm?
A: Generally, where the parties are ordered to attend pre-hearing discussions these will form part of the hearing time calculations, with the hearing being considered to start from this point. The hearing will then be considered to run until it's conclusion, excluding any lunch breaks or adjournments, including overnight adjournments, as per 14.6 Costs Assessment Guidance; Appendix 2.

However, if there is a gap between the pre-hearing discussions ending and the hearing starting, this would usually be considered an adjournment so would not form part of the hearing time. If the order advises that pre-hearing discussions took place 9-10am and the hearing was 11-11:30am, the total hearing time would be 1.5 hours (9-11:30am with 1 hour adjournment). If you have had claims rejected for calculating the fee in this way, please contact LAACivilClaimFix@Justice.gov.uk with the certificate reference numbers and we will investigate this further.

Q: Can you have two final hearing fees where, for example, there are two children in care proceedings; a final order is made for one child, but cannot conclude for the other so a final hearing is listed for the other child?
A: Generally, there can only be one final hearing under the FAS. However, in these circumstances where there is more than one child subject to care proceedings and a final hearing is listed, if final determination is only made in respect of one child and a further final hearing is listed for the other child then it may be reasonable to treat these as a split final hearing as per 14.11 Costs Assessment Guidance; Appendix 2.

Q: What happens if you conclude one child at the Issues Resolution Hearing and another child at the Final Hearing, can you claim two final hearing fees?
A: An Issues Resolution Hearing (IRH) may only be claimed as a final hearing where proceedings conclude at the IRH. If a final order is made in respect of one child but continues in respect of another child, the proceedings have not concluded at the IRH so this must be claimed as an interim hearing.

Q: What if a hearing is listed as an IRH / EFH but does become the final hearing? Can a final hearing FAS fee be claimed?
A: Where a hearing is listed as an Issues Resolution Hearing/Early Final Hearing and concludes the case it will be paid as a Final Hearing in accordance with 14.9 Costs

Assessment Guidance; Appendix 2. If the matter does not conclude at this hearing, it must be claimed as an interim hearing.

At provider request

Q: Is a provider request rejection Key Performance Indicator (KPI) recorded?
A: Yes, the Legal Aid Agency records all rejects so that Contract Managers can see a true picture of a firm's reject record. This allows them to hold more effective discussions in relation to performance and support and ultimately, helps to speed up bill payments. This approach has successfully helped us to reduce the rate of bills being returned from 44% to 14%. This is a significant improvement, allowing more cash to be paid out to providers at the first time of asking.

Counsel fees do not match allocated costs

Q: Why does the CCMS portal not show any recoupments made from Counsel during a Case?
A: Unfortunately, CCMS does not have the ability to adjust counsel payments following a recoupment. We are aware of the issues this can cause and apologise for the inconvenience caused. This is a change we are looking to make to CCMS but cannot currently give a timescale for.

Missing information from the disbursement vouchers

Q: Apportioning disbursements between the parties makes extra work rather than just one party claiming the whole disbursement. Bearing in mind, often, all the parties are legally aided what is the sense in apportionment?
A: The existence of legal aid cannot affect the exercise of the discretion of the court in regard to apportionment (section 30 Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO')). While it may cause some additional work, it is necessary that apportionment be determined as if all clients were privately funded. There will often be some parties who are not in receipt of legal aid, and they would be expected to bear a share of these costs as appropriate.

Even where all parties are legally aided, if the disbursement was not apportioned this may have an impact on the client if that client has a financial interest in the costs of their legal aid, for example: their case is revoked, they are due a refund, or the Statutory Charge applies.

Q: When disbursement costs are shared equally but the expert only issues one invoice, is it possible to annotate the invoice confirming amount e.g., 1/2 claimed and refer to order for apportionment, along with uploading order?
A: Yes, this would be fine. So long as it is clear why you have claimed the amount you have, an annotation on the disbursement voucher should be sufficient. This is another example where it would be helpful to explain the issue in the bill narrative too.

Q: When disbursements are equally apportioned why would the LAA reduce the child's fee on drug testing which has been paid to parents?
A: Each party's claim is separately assessed based on the information provided with the claim. It may be that the parents' claims included additional information which allowed the claim to be paid. If you believe a part of your claim has been incorrectly assessed when another party in proceedings has had the cost paid, please submit an appeal in accordance with 6.71-6.81 of the 2018 Standard Civil Contract and we will be able to consider the issues on an individual basis. If we have erred on assessment, we always provide feedback to the caseworker who made the decision.

Q: Valuation fees for finance matters, usually one party is legal aided, the other private, Estate Agents charge a fixed fee which cause the LAA party problems when claiming, it is very hard to get them to do a breakdown. How do we resolve this?
A: Although there is no codified rate for estate agent fees, a breakdown of work can help us assess your costs accurately first time. Generally, this should include rate per hour and time taken, to ensure the amount being claimed is reasonable. It is advisable to ensure that all parties are aware of this when agreeing the order, and that this is included in the written instructions to the estate agent to ensure that the breakdown of work is provided on completion of the work. Alternatively, prior authority may be requested where there is no codified rate for an expert as per 3.1 Guidance on the Remuneration of Expert Witnesses in Family Cases. Where this remains difficult, you should consider sending alternative evidence, such as a copy of any report, which can help quantify the work on assessment.

Q: When a payment on account (POA) is paid for a disbursement why can it then be rejected when submitting a final bill? Could this not be checked upon submission of POA's?
A: Although LAA may make payments on account and require evidence to be uploaded in support of these, they are not assessed costs. POAs are not a final payment and will be recouped at the final assessment stage as per 6.30 of the 2018 Standard Civil Contract Family Specifications. Since there is only a single point of assessment, we cannot assess disbursements when claimed as a POA. This means issues may be identified on assessment that had not been raised at the POA stage.

Q: Disbursement invoices are sometimes dated after the certificate is finished - what can we do then?
A: Generally, it should be clear from the invoice when work was carried out. However, where the invoice is dated after the certificate has been discharged and it is not clear from the breakdown of work included in the invoice when the work was undertaken, to help avoid any unnecessary delays to payment it is worth including an explanation in your narrative. It may also help to demonstrate when the work was undertaken if you upload copies of the orders directing the work and confirming once the report had been filed with the court.

Q: What about a fixed fee for say a tracing agent; they often allow for up to three visits for a fixed fee?
A: This is a great suggestion that we will take on board and feedback to the Ministry of Justice (MoJ). The MoJ set out all payment rates, including those payable to experts, in the Remuneration Regulations. LAA then enact the Regulations, so it is not directly in our power to make this change; though we will make sure MoJ are notified.

Q: Is consideration and approval of expert's invoices in exceptional cases recoverable at one unit per invoice?
A: It may be reasonable to claim some time for considering an expert's invoice to ensure that this is accurate (e.g., reflects what had been ordered, codified rates have been applied, etc), but it is expected that this time would be minimal. Generally, as a guideline 2 minutes per page is considered reasonable (please see 2.12 Costs Assessment Guidance), so no more than six minutes is likely to apply for consideration of an invoice. However, this will be subject to assessment when the full claim is considered.

Q: We have our process server invoices substantially reduced frequently, on the grounds that "google maps said it should only take 20 mins to get there". This is not acceptable when considering city traffic. It takes too much time to appeal so we end up out of pocket.
A: Route planner websites are used by caseworkers to consider the reasonableness of any travel claimed because they will not have local knowledge for all areas of England and Wales. An assessment can only be made on the information available. If there are journeys where these route planners are not reflective of the actual time taken, please provide an explanation for this with your claim. This can be annotated on the invoice or included in the bill narrative. This will reduce the likelihood of your claim being assessed.

Q: If an expert invoice is above the codified rate but we reduce our claim to the codified rate and the amount differs, will you accept the claim?
A: If you are limiting your claim to the expert's codified rate, so the fee claimed differs from the invoice, please confirm this is what you have done either by annotating the invoice or providing an explanation in the bill narrative. If it is clear how you have calculated the fee claimed, this should be acceptable.

Please note, any work claimed would still be subject to the usual provisions for proportionality and reasonableness.

Missing disbursement vouchers

Q: If one document is missed, is it possible to request a document request rather than ask for the entire bill to be rejected?
A: The bill should not be submitted before all supporting documents are available to upload. However, if you notice a document has not been uploaded with your bill and the bill has not yet been processed you may try to submit a billing enquiry to request a further document request be sent. But we cannot promise that the billing enquiry will be actioned before the bill. The onus is on providers to ensure documents are uploaded with their claim.

Q: Is human error not considered?
A: We believe most rejects are caused by 'human error' and are simply oversights. However, they still need to be recorded and included as part of performance monitoring to make sure we reduce the number of claims that we are returning to providers. Any rejected or returned claim is not ideal as it not only causes delays in payments for you as the provider, but it causes us to double handle the claim as well. Our approach has been hugely successful in reducing the amount of claims we are returning from 44% to 14% and our goal is always to pay providers at the first time of asking for as many claims as we can.

Q: Do you require hotel and travel receipts from experts?
A: Generally, we will not require hotel and travel receipts from experts. However, these costs must be recorded in the expert's invoice. It should also be clear from the invoice what mode of transport has been used, the rate per mile and number of miles if the expert has travelled by car, and the address of locations travelled to and from.

Q: I was told recently that I had to provide an AA autoroute planner or similar to prove the mileage in addition to the ledger. The ledger was not considered enough evidence. This is not one of the things listed on your slides as evidence required. Is this no longer required?
A: A copy of the AA Route planner or similar document is not a requirement. However, it must be clear where the fee earner has travelled to and from. It is expected that the fee earner will have travelled from the office registered on CCMS, so if the fee earner has travelled from a different location, please confirm where they have travelled from and why they have not travelled from the office. If it is not clear, we may request a further explanation.

If you believe a claim has been incorrectly rejected, please email LAACivilClaimFix@Justice.gov.uk and we will be able to investigate the matter further. We can then provide a further explanation if the claim has been correctly returned or, if the

claim was incorrectly rejected, remove the reject from your firm’s performance data and arrange for priority resubmission.

Prematurely submitted solicitor bill

Q: When can the first firm submit their bill, when their involvement ends or at the conclusion of the case?
A: 6.33 of the 2018 Standard Civil Contract sets out the provisions for assessment to commence in full. However, in summary, the claim can be submitted only once the matter has concluded or the certificate has been withdrawn. If there has been a provider transfer, there is no right for the first firm to bill until one of these conditions have been met.

The only exception is where the first firm's costs are being claimed as a fixed fee. If a fixed fee is being claimed under either the Private Family Law Representation Scheme (PFLRS) or Care Proceedings Graduated Fee Scheme (CPGFS), a claim can be submitted before the matter has concluded or the certificate has been withdrawn.

Please see the advanced guide on Billing on Transfer of Provider available on the Legal Aid Learning website for more information.

Q: It would be useful to know the time limit for both solicitor and counsel claims to be uploaded. If the chambers delay by even one day, the solicitors' claim is often rejected. How much do you allow, please?
A: If one claim is submitted, it will enter the queue for processing, all claims must be fully submitted (including the upload of supporting documents) at the point that the first claim is allocated to a caseworker as they will need to pick all of them up together. If all claims are not fully submitted, we will need to reject them so they can all be resubmitted together.

There is no specified time allowance for counsel to submit their bills to be considered alongside the solicitor claim. But, in practice, it is dependent on our processing dates. This is a variable figure, so we would always recommend that the solicitor and chambers agree a date when they will submit their claims and upload documents. This is the best way to avoid this issue.

Q: Counsel sent their final bill yesterday and I sent our final bill today. Will this get rejected?
A: If supporting documents have also been uploaded for each bill, we should be able to consider both claims together. Most Civil bills are processed within four to six working days so a gap of a day or two should not cause a problem. However, best practice would still be to submit them on the same day.

Q: When we submit a bill and counsel have told us they have submitted theirs on the same day, why, sometimes, do you reject our bill and say Counsel's is not submitted but it is as it is under assessment?
A: This scenario occurs usually because counsel have submitted the claim but not respondent to the document request. A claim is not fully submitted until supporting documents have been uploaded. Therefore, there may be a claim on the system, but we are not able to consider it without supporting evidence.

If you believe a claim has been incorrectly rejected, please email LAACivilClaimFix@Justice.gov.uk and we will be able to investigate the matter further. We can then provide a further explanation if the claim has been correctly returned or, if the claim was incorrectly rejected, remove the reject from your firm's performance data and arrange for priority resubmission.

Q: Why would we be KPI rejected if Counsel's claims are rejected, surely this shouldn't be recorded as a KPI against the Solicitor?
A: Under the contract, the solicitor is ultimately responsible for all fees claimed on a certificate whether the work was done by themselves, another agent acting on their behalf (such as counsel) or a professional expert.

Since April 2021, the LAA no longer distinguish between 'KPI' and 'non-KPI' rejects. Contract managers now monitor all returned bills to hold more effective discussions around performance and support.

Monitoring rejects caused by counsel and solicitor claims not being submitted together allows the contract manager to identify if this is a trend. They can then hold further discussions with the firm to see if any further support is required to assist with this issue.

Q: Are counsel and a set of chambers subject to KPIs as providers are?
A: Counsel and Chambers do not hold a contract with the LAA in the same way that a firm of solicitors does, so they are not subject to the same formal KPIs.

Q: Do you hold conversations with chambers as counsel have LA accounts too?
A: While counsel / chambers are not subject to KPIs and do not have contract managers, if we identify issues with specific chambers, we will contact them to raise these and offer support. We have also worked with the Institute of Barristers Clerks (IBC) to share any tips, raise awareness of common issues, and listen to feedback.

Q: We quite often find that counsel's FAS fees have been paid incorrectly. Is it our responsibility to have these corrected before we submit our final bill?
A: Under the contract, the solicitor is ultimately responsible for all fees claimed on a certificate. If you identify that counsel has been paid an incorrect fee, this should be

corrected prior to submission of your claim. You may have to liaise with counsel to arrange for this to be amended.

Q: Maybe we should have the fee notes then, and submit counsel's claims and not them like it used to happen on paper claims?
A: There is an historic agreement with counsel that they retain the ability to receive direct payment from the LAA. CCMS can only make payment to the account under which a bill has been submitted, therefore, if they seek direct payment, counsel need to submit their own claim.

In non-family cases, you do have the option of including counsel's claim as part of your final bill. The fee would be paid directly to you and you would then have to pass on payment to counsel. As such, we would require confirmation from counsel that they consent to this. Please see the Billing with Counsel advanced guide available on the Legal Aid Learning Website for more information on this.

Additional questions

Q: Are you able to run other sessions based on other civil areas other than family? Housing and discrimination would be useful to us please.
A: That's great feedback, thank you. We will certainly consider it. These reasons cover all civil claims, some of them are certainly family-focused, but many of them are applicable to all civil claims.

Q: If a bill is rejected and you appeal it and get an apology because it was rejected incorrectly, why does it have to stay on our records? We are all human and make mistakes we should be given one document request and if we are wrong then, fair enough reject!
A: If a bill reject is confirmed to be incorrect by Civil Claim Fix, this will be removed from the firm's record. However, this will sometimes be deducted in the next month's data. If you have any questions about this process, please speak to your contract manager.

Regarding document requests, since April 2018 we have reduced the number of reasons for sending a secondary document request. The reason for this was to increase transparency with the aim of reducing the number of bills returned. At its peak, the return rate was just over 50%. Following these changes, the return rate has reduced to under 15%.

16.1 of the Civil Finance Electronic Handbook confirms what issues LAA will try to resolve via a secondary document request.

Q: Does the £2,500 limit before a court assessment is required apply to the net claim figure, or does it include VAT as well?
A: Previously court assessment would have been required where the assessable costs were £2,500 (excluding VAT) and the matter concluded before the District Judge / County Court or above. However, you may instead opt to submit these bills to LAA for voluntary assessment. Guidance on this can be found in the Court Assessed Bills Interactive Module available on the Legal Aid Learning Website: CCMS Provider: submitting bills: Court Assessed Bills Interactive Module (justice.gov.uk)

Q: You said that bills are now being rejected rather than making document requests; this is contrary to the information in the electronic handbook. Has this now changed?
A: There are still a limited number of scenarios where a further document request would be sent to request information. 16.1 of the Civil Finance Electronic Handbook, sets these out. This has not changed recently and reflects the current position.

Q: What information do you want when a request is made for correspondence, but you say don't send the full file? This is also the case for third party documents - which specific documents are required as you say don't send the full file?
A: Any request for documents should confirm exactly what is required. If we have specifically asked that you do not send the full file, the caseworker should clearly indicate what needs to be provided. If the request is unclear, please contact LAACivilClaimFix@Justice.gov.uk and we will be able to investigate the matter.

Q: Do case workers always read the narrative? We frequently address things in the narrative only to have it rejected for lack of the addressed information.
A: The case narrative is an important part of the bill submission because it allows providers to give additional information which may be useful when considering the claim. It should, therefore, always be considered by the caseworker. If a claim is rejected but the requested information was provided in the narrative, please contact LAACivilClaimFix@Justice.gov.uk and we will be able to investigate the matter.

Q: What is used as a benchmark for a "lay advocate" who does not have a guideline rate, would the intermediary rate of £57.60 be a suitable benchmark?
A: 5.34 of the Guidance on the Remuneration of Expert Witnesses in Family Cases confirms when it would be appropriate to instruct an intermediary/lay advocate.

As there are no codified rates for this type of expert, the LAA would need to consider the circumstances of the case and the specialism of the expert. The rate of £57.60p/h is the rate for a lip reader / signer / deaf intermediary. This could potentially be used as a guideline depending on the reasons an intermediary was required. We would strongly recommend you seek prior authority before instructing any intermediary.

Q: Expert rates have not been increased for more than 10-15 years and it is more and more difficult to find experts within the codified rates. Are expert rates likely to be reviewed?
A: The MoJ are currently in consultation on this issue, but it is still in its early stages.