



Legal Aid  
Agency

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

# Civil Finance and Escape Case Teams - Help Us Say Yes Webinar – Your Questions

## Mental Health

October 2023



## Your questions answered:

**Q: If a client instructs us over the phone, can the matter start from that date, even if they do not sign the controlled legal representation form until a later date? Or should it start from the date we meet with client, and they sign the form?**

**A:** The standard starting position would be that the matter start begins on the date the application was made, which is confirmed by the date of the signature on the controlled work (CW) 1 and 2 form, and costs can be incurred against the matter start from this date onwards.

However, the Standard Civil Contract 2018 confirms that pre-signature work can be claimed against a matter start in the following circumstances:

### ***“Advice via Remote Communication***

**3.18** *You may give advice to a Client over the telephone, by email or via other means of remote communication before that Client has signed the Application Form where:*

*(a) the Client requests and it is not necessary for the interests of the Client or his or her case to attend you in person;*

*or (b) the Client has been referred by the civil legal advice telephone operator service;*

*and (c) the Client meets the criteria in the Merits Regulations and Financial Regulations for the provision of Legal Help, and you may make a Claim for this work provided that the Client subsequently signs the Application Form and provides appropriate evidence in relation to their financial means and identity.*

**3.19** *The Client does not have to attend your Office to sign the Application Form after having been given advice in the manner set out in Paragraph 3.18. You may send the Application Form to your Client, after you have given the advice, for signature and return, subject to Paragraph 3.15.*

**3.20** *No payment will be made in respect of any Matter where your Client has not signed and returned an Application Form and any work you undertake before your Client signs the Application Form is at your risk.”*

**Q: Why is it that respondents generally can only address matters up to the next listed hearing, even when it is evident that a final contested hearing is needed or already on the calendar? This repetitive process of requesting amendments every few weeks or months leads to additional expenses and delays.**

**A:** There is no standard policy for granting scope limitations and we evaluate each application individually. We assess the overall merits of the case as reported in the application or subsequent amendment requests. We can only grant a reasonable and

proportionate scope extension based on how the ongoing merits criteria are considered to be met, recognising that those merits may change over the lifetime of the case. If a final hearing limitation is requested and justified, it is likely to be granted. However, this may not be evident at the outset of a matter. Just being joined as a party in the proceedings would not necessarily justify a grant of legal aid. We must demonstrate how the overall merits criteria remain satisfied in individual matters.

If you believe we have applied an inappropriate limitation, please contact us via CCMS or email: [MHU-EC@justice.gov.uk](mailto:MHU-EC@justice.gov.uk)

**Q: Do you require a case summary to be submitted with the escape fee file justifying why the case is being billed as an escape fee case rather than a fixed fee case? If so, how detailed does this need to be?**

**A:** We do not require a case summary to be submitted with the escape fee file and can make an assessment without this information. However, it is useful information to have as it assists the team in assessing the claims. It enables caseworkers to understand the issues on the matter and the items they can expect to see.

If you do provide a summary, bullet points summarising the key issues will be sufficient.

**Q: Is there still a minimum of 50% face-to-face sign ups in mental health work or has this now been increased? How is this monitored? Clarifying due to the earlier comment of ‘urgency as a justification for telephone sign ups’**

**A:** Yes, 50% of matter starts should be opened as in person appointments. The Standard Civil Contract 2018 confirms this at paragraph 3.17:

*“3.17 Unless we provide specific written authority in advance, the number of Matters where your Client does not attend you in person either because you accept an application under Paragraph 3.15 or provide telephone or email advice under Paragraph 3.18, must not exceed 50% of your total Matters opened in any Schedule period. For the avoidance of doubt, where you accept a postal or faxed application under Paragraphs 3.15 or provide telephone or email advice under Paragraphs 3.18 in order to comply with your duties under the Equality Act 2010, this will not count towards the 50% limit set out in this Paragraph 3.17”.*

**Q: In escape fee cases, when submitting proof, there is often a limit on the size of the data we can submit. Is there another method we can use? Can you provide details of this please?**

**A:** The LAA’s current IT rules set a maximum of 10MB for email attachments. If it is necessary to submit information exceeding this amount you can split attachments across several emails. If using this approach, we recommend that the subject header of the

emails is the same for each individual email with a number against each one (such as ‘1 of 3’).

We also have a cloud based system for secure file exchange, which allows providers to submit large documents and escape case claims. Further details of setting up an account and submitting documents can be found at: [Secure File Exchange - GOV.UK \(www.gov.uk\)](https://www.gov.uk/secure-file-exchange).



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