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Agency

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# Civil Finance - Help Us Say Yes Webinar – Your Questions

**File evidence: Getting your claims  
evidenced and paid**

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## File evidence: General

**Q: Can you clarify the position regarding attendance notes needed please? Is it those over 1 hour or 3 hours?**

**A:** You need to show you spent more than 3 hours in attendance. However, the main purpose of this session is to stress how important it is to maintain your file evidence. In the year 2022 to 2023, we had a significant issue with the lack of file evidence during assurance testing. It is vital your file is complete, detailing all the work you did, regardless of how long it took. Keep in mind we may request your file at any time.

For escape cases, evidence is required for work over 1 hour.

## File evidence: Routine correspondence and telephone calls

**Q: Time recording email chains sounds difficult and unrealistic. Email exchanges often occur over several hours or even days, with gaps in between. For instance, you send an email and then go on to do other work until you receive a reply, which can happen multiple times. When it comes to thank you emails, it is important to know when someone has received an email or attachment because it helps move the case forward.**

**A:** We recognise that electronic correspondence has become more common than sending formal letters. Firstly, the costs assessment guidance does acknowledge that where an email is sent instead of a letter then it can be allowed as a letter on normal principles. These principles include retaining a copy, duplicated or courtesy responses are not recoverable, and only in family response emails are recoverable.

However, we have noticed long email chains that are less formal and more like a phone conversation where the issues can change quickly. These kinds of communications do not fit neatly into the routine correspondence category, so we recommend tracking them based on the time spent.

**Q: When email conversations are claimed as timed attendances, is that from the time of the first email up to the time of the last email? If not, how do you want them claimed?**

**A:** If you are claiming emails on a timed basis, then it is at your discretion to identify the period within which the matter is at issue, for example, the first email creating the chain and the natural conclusion to that thread.

**Q: In relation to the answer to the previous question, it does not help. It is not a face-to-face conversation and there are almost always gaps in between. Please advise.**

**A:** Certainly, we understand that email conversations are different from a face-to-face conversation, however they are not as formal as postal interaction. Email offers a level of spontaneity and interaction that is unique. In these situations, using a time based approach is a workable solution. You likely need to track how you spend your time, so there should be a way to measure your involvement in these email exchanges.

**Q: If you are timing as attendance, does that include time for reading the emails?**

**A:** Time for reading the emails you receive would be counted as reasonable time expended.

**Q: Further to the above, emails are sent to multiple recipients but only count as one. Are you encouraging sending individual emails? You only get £1.85 per email in.**

**A:** If you send the exact same letter or email to multiple people, you will only be paid once because that is considered duplication. The mentioned £1.85 is the set rate for receiving correspondence in Public Law matters. If the incoming correspondence is categorised as such, then that rate is what applies.

**Q: Would a 12 email chain be 12 units?**

**A:** The time claimed would be determined by what is reasonable, subject to content and complexity. It might equate to more, or less, units or time.

**Q: Several issues are often raised in an email. What is a stop exactly and when is a point finished? It all seems vague and subjective, and open to dispute. This seems unrealistic.**

**A:** It will be the fee earner who makes the subjective decision and, as with all assessments, it will be determined by reasonableness. It is not apparent what alternative is proposed that will be less subjective or open to challenge.

**Q: In relation to long emails, would an attendance note be required to justify time claimed?**

**A:** Copies of the email chain should be held on file as evidence. If these are available, further evidence is not required.

## Escape case

**Q: For cases where it is under £100 over the escape fee, do we need to send the full file?**

A: Yes.

**Q: Does the £100 include the time for drafting the EC1 form and justification?**

A: Yes, the £100 includes the time required to draft the EC1 and justification, as this factors into whether the threshold is met or not.

## Post payment audit: Core testing

**Q: Our office has recently gone paperless, and we do not have physical files anymore. If a file was selected by the LAA for post payment audit, would we be required to print the full file? Including all emails and letters?**

**A: Our assurance team will accept electronic and paper files on a post payment audit. Electronic files can be sent via email or uploaded onto Galaxkey.**

## Family advocacy scheme (FAS)

**Q: If a lunch break was not taken and it is not listed, would this be acceptable?**

**A:** If a hearing straddles the customary lunch time break, then we will ask whether there was an adjournment if this has not been addressed. Clarifying this point will avoid ambiguity.

**Q: Do we need to provide court attendance notes along with the court order?**

**A:** Generally, the court order will be sufficient as evidence for FAS where it includes the necessary information to support the fee being claimed. Where the order does not include the necessary information, such as start and end times, the attendance note may also be required to help support the fee.

**Q: Do advocates meetings have to be ordered in advance and not retrospectively?**

**A:** Yes, the advocates meeting must have been directed by the court in accordance with the Public Law Outline. The fee may not be claimed for meetings of advocates which take place on any other basis.

**Q: Would a return hearing claim for non-molestation order (NMO) over 2.5 hours be final?**

**A:** The length of hearing does not determine whether it was final or not. In the case of return hearings, these may be paid as final where they are expected to be contested and a final determination is made.

**Q: In NMO proceedings, would both hearings be able to be claimed as interim hearings? Or is the second hearing always final?**

**A:** In non-molestation proceedings, the first hearing is usually an ex-parte hearing (without notice). This hearing is not expected to be contested and is not listed for final decision of the matter, so it cannot be paid as a final hearing.

If a return hearing is expected to be contested and the case concludes at this hearing, it can be paid as a final hearing.

However, if the return hearing is not effective as a final hearing and the matter proceeds to a contested final hearing, the return hearing would only attract the interim hearing fee, whilst the final hearing would be paid as a final hearing.



## Counsel fees

**Q: How do we handle situations where counsel has been paid too much? CCMS does not show the recoupments from counsel, and we cannot adjust the allocation. The chambers say the fee has been recouped or the recoupment has been requested. Do you have any suggestions on how we confirm this? We had a claim rejected recently for that reason.**

**A:** Unfortunately, when fees have been recouped, they will not be reflected in the cost limitations or amounts paid on CCMS. All these recoupments take place outside of the system. When you are informed that counsel was paid an incorrect amount, you should liaise with chambers to confirm the overpaid amount has been recouped before resubmitting your bill.

**Q: Why is the solicitor penalised for the incorrect claim by Counsel by way of rejected bill?**

**A:** According to Section 7.100 of the 2018 Standard Civil Contract, if it is discovered during a review of your costs that the payment to the counsel was not in line with the scheme's rules, you must inform counsel about the planned recoupments and explain why it is necessary.

The solicitor's final bill cannot be considered until all counsel FAS have been settled. Paying the solicitor bill will effectively close the certificate. In these situations, the solicitor's bill will be rejected to allow you the chance to notify counsel.

It is important to note the LAA does not differentiate between key performance indicators (KPI) and non-KPI rejects. Therefore, it is important to double-check counsel's claim correctly under FAS before submitting your final bill.

**Q: Why does the LAA pay a smaller amount for solicitors attending court and a much higher amount for counsel, even though they both did the same amount of work?**

**A:** The rates for advocacy under FAS are identical for both solicitors and counsel. In civil proceedings, the rates for counsel have been made equal to the prescribed rates for solicitors.

The only situation where there is a disparity in pay is when counsel is instructed, and the solicitor accompanies counsel to court. In this case there is a lower rate for the solicitor because their role is not the same. When they are in attendance, the solicitor is playing a supporting role to counsel, who is the main advocate.

## Bill rejections

**Q: Can the LAA consider all matters at once instead of the current rejections process? For example, a bill may be rejected as the advocates fee was too high; it is corrected but the same bill is rejected again as the Counsel fee was high.**

**A:** It is not the LAA policy to reject billing submission without good cause and we have made considerable efforts to clearly sign post our requirements. Pre-CCMS, we developed paper checklists, and we entered a dialogue with the Law Society to address this issue. Although checking the billing submission in its entirety was considered, the Law Society were not in favour of this action. It was their view that their members had a responsibility to ensure their submissions were accurate and the LAA should not act as the quality control. Billing rejects are now at their lowest ever levels, meaning we pay the majority of claims on first submission. Also, if the validity of a reject is disputed this will be addressed by Civil Claim Fix.

## Disbursements

**Q: Often attendance notes are needed for the disbursements related to the hearing. Essentially you are providing two separate pieces of evidence for the same hearing, albeit, pertaining to the same event. Please advise.**

**A:** Generally, a court order will be required to support the FAS fee. For disbursements of £20 or more, inclusive of VAT, a disbursement voucher, such as your attendance note or office ledger for mileage, or ticket for public transport, will be required to validate the amount of the travel expense.

## Panel membership enhancement

**Q: Sometimes a panel membership lapses, and the renewal takes time to come in. During the lapsed time, are we still considered panel members?**

**A:** If the membership has lapsed, this would represent a break in cover until the membership has been renewed.

Please contact the Law Society or Resolution for further guidance on their membership statuses.

**Q: If the panel membership renewal simply does not come in, are we covered?**

**A:** If there is a delay in receiving the panel membership renewal, you may claim the enhancement where you can provide evidence that you were a member when you did the work. This can be an email or other confirmation from the Law Society or Resolution. Please retain a copy on file.



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