

Subject:RE: Civil Taxed Bills

Dear Colleagues

I must apologise for the lateness of this reply, this was due to my leave.

The LAA issued its final response to the Cost Assessment Guidance consultation on 22 June 2020 and discussed that response at a subsequent meeting. However, we acknowledge that a number of concerns outside the scope of the consultation were raised. This response is intended to address the substantive issues raised.

The lack of policy consultation

There is a suggestion that the LAA was not open and transparent about the intention of consultation or the scope of consultation. The LAA has made no secret that it felt civil taxed bills should be done in house. It is accepted that the LAA moved at pace to implement the operational transfer.

However, the LAA had to move quickly to address the very real concerns of providers, representative bodies and our colleagues in HMCTS given the impact of the pandemic on providers cash flow. The monies involved in civil taxed bills is not insignificant. The motivation for this swift change was to release funds as quickly as possible to providers to ease their cashflow and assist colleagues in HMCTS who were unable to process the work due to their inability to work remotely.

The LAA had conducted a previous consultation on this issue in 2009/2010 and following that we had already made amendments to the Civil Contracts confirming the LAA as the default assessment authority for all legal aid only bills. Therefore, there was no need for either a policy consultation or a contract consultation. As we didn't implement the operational transfer in 2009 we had to amend the operational guidance, the Cost Assessment Guidance (CAG), to reflect the fact that despite the civil contracts, it would be HMCTS who would be undertaking bills over £2500 and less than £25 K. Hence when we moved forward with the transfer this all we needed this time was to consult on the operational guidance not the policy or the contracts. Therefore, the scope of the consultation was limited to the operational arrangements which were outlined in the CAG . If there was some miscommunication on the LAAs behalf about the scope or type of consultation then I do apologise.

The LAA has intended for some time to implement the operational transfer of what we have termed court assessed claims. There are significant reasons why this has always been the intention of the LAA – it allows us to pay providers quickly but it also reflects the fact that the LAA is held responsible for any assessment errors of the court. The National Audit Office who oversee the LAAs accounts recommended that this work is done by the LAA and the LAA have been gearing up to implement this transfer for some time.

It is not practical for the change to be temporary as operational changes do require a significant amount of additional resource and digital changes. We consider that there are significant benefits to making this a permanent change, including the fact that the LAA can process the work electronically which will ensure that it is less likely to be impacted by any future pandemics or waves. There are also administrative savings generated because of the transfer – most notably the court fee provided

by the LAA to HMCTS which is approximately £3.7M annually. There are also resource savings for HMCTS.

Capacity and capability of LAA staff

You have raised concerns about the capacity and capability of LAA staff to assess high value claims. However, for some time the LAA has been working to upskill caseworkers to equip them to be able to take on more and potentially different work. The LAA already assesses bills of high value and we are confident that the team is equipped to process this work to a high standard. We have offered you access to our training materials previously; and we are happy to provide them and work together with providers and representative bodies on any issues that arise because of the transfer. We are committed to the continual training of our staff to ensure they get the assessments right first time, and we welcome working collaboratively with you on this issue. I do think it is also worth stating that monetary value is not always indicative of complexity and caseworkers will have had considerable experience assessing complex claims, including claims for enhanced costs, in bills for under £2500.

LAA resource

The LAA already has invested significant resource to process court assessed claims, responding to recommendations from the NAO. We have a flexible workforce who have the skills to do this work. There is a potential for a short-term surge in claims post transfer but we have modelled the impact of this and are confident that we will still process claims within our published targets. We have also demonstrated the resilience of our staff, most recently during the recent CCMS outage. They are prepared if necessary to work overtime to ensure that the work is done and your members claims are paid. We also have plans to recruit more staff, should the need arise, to ensure that our targets continue to be met. Whilst speed in the payment of your members bills is paramount, we will not sacrifice quality or accuracy.

How will the LAA process these claims

We are committed to being flexible so that it is easy for providers to get claims to us in the short term. In the medium term, we are already working with ACL and others regarding the most appropriate way for these claims to be submitted to the LAA. These claims come into our queues via CCMS in the same way that all claims do and will be processed in the same way. Providers should notice no difference in the assessment process, other than speed of payments. However, we are committed to continuous improvement and welcome any feedback regarding this so that we can make necessary process adaptations as the need arises.

Cost assessment

The cost assessment of these claims will be conducted on the same basis as currently done. All assessments of Contract Work are carried on the standard basis irrespective of the assessing authority. HMCTS and the LAA apply the same contractual and regulatory provisions when assessing work and will have reference to the same guidance (The Cost Assessment Guidance). The transfer is not going to change this approach. This is not a change to the way bills are assessed; just who is responsible for conducting that assessment. All assessments are conducted on an objective basis, applying the relevant contractual provisions, legislation and guidance. The LAA is committed to objective decision making and transparency of process. There is no directive or policy issued to caseworkers to encourage them to reduce costs on assessment. In any event all assessments will give rise to appeal to a suitably qualified independent cost assessors.

LAA relationship

The Civil Billing team have always worked constructively with representative bodies and we already publish a whole host of operational data to help us and providers get things right. We are committed to continuing to do this and working closely with representative bodies to ensure that this transfer is a success.

Names of caseworkers

The billing system identifies who has conducted the assessment. However, caseworker names are not sent out and we don't know what purpose there would be in doing that. The LAA can and do track caseworkers down for complaints, quality control and training purposes. Appeal decisions do include the name of the Independent Cost Assessor (ICA) and will continue to do so.

Appeals process

The appeals process at the LAA is via Independent Cost Assessors– they are independent of the LAA and are all members of the legal profession who have experience in conducting legal aid work. We currently have enough to manage any appeal activity but we are exploring how we can increase the pool of ICAs by opening the opportunity to costs lawyers.

We will keep you up to date with this process via CCCG. All appeals are conducted in accordance with the Funding and Cost Appeal Review Panel Arrangements, that process is open and transparent. Appeal data is the best indication of how the assessments works in practice and whether the LAA is getting these assessments wrong. We have already confirmed that we will provide that data on an ongoing basis to CCCG in our shadow performance pack .

Time spent appealing an assessment to an ICA is not recoverable as Contract Work, pursuant to the terms of the civil contracts there is no basis for remunerating time spent appealing a cost assessment decision. There are no plans to alter this going forward. We disagree that in all cases the value of the claim equates to complexity and appealing decisions in cases where the total value of the claim is over £2500 will require considerably more work than appealing a decision on a lower value bill. For CCMS appeals it is only matters in dispute that need to be appealed. The appeal process is an easier administrative process than the one used by HMCTS. A significant benefit of the LAA's appeals process is that it allows for payment of undisputed matters immediately whilst any appeal is ongoing. We see as a practical benefit to your members.

I hope that this response and our commitment to you and your members to make this transfer a success will reassure you. There will be further opportunity to discuss matters as we move forward with the transfer and we are committed to reviewing the process at regular intervals to maximise efficiency and ensure that it is delivering the benefits we have outlined above. We welcome any appropriate feedback on the process and are committed to working constructively with you to ensure this change is implemented smoothly and works for both providers and the LAA.

Regards

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