



# **Legal Aid Group Seminar**

**Monday 11 March 2019**

**Questions and Answers**

## Question 1)

### Transferred public funding certificates – billing of first provider's costs

There is limited guidance on this subject (the handbook still refers to CLAIM 1/1A forms). If it is a fixed fee can claim as interim bill before case concludes, however if costs escape the fixed fee the provider has to wait until the end of the case to bill. If the total assessable costs fall below £2,500 and/or the costs of the first provider are all before Magistrates can an interim bill not be prepared and assessed before the case concludes? Why are Counsel allocated to the case not informed of the transfer? What do you do if the second provider refuses to allocate you the right amount of costs? Can more guidance be produced for billing in transfer situations?

### LAA Response:

The same principles to provider transfer apply to paper as they do to CCMS. We have however published a CCMS advanced guide on the training website which cover various scenarios on provider transfers; any feedback would be welcome and we can amend if requested. Link below:

[http://ccmstraining.justice.gov.uk/\\_data/assets/pdf\\_file/0015/8160/Provider-Transfer-Billing1.1.pdf](http://ccmstraining.justice.gov.uk/_data/assets/pdf_file/0015/8160/Provider-Transfer-Billing1.1.pdf)

In relation to the specific points raised; firstly it is the final court where the case concludes that determines the taxation process. If the first providers work concludes in the magistrates court but the case continues to the county court then all work must be assessed together at the point and court the case concludes. No interim bills will be allowed where costs are exceptional for the first firm and must be assessed alongside the final firms costs.

Counsel allocated to the case are not notified as this should be an action undertaken by the firm that instructed them. As part of the ongoing communications between Counsel and the solicitors I would expect regular updates as to any scope changes or indeed changes in the current instructing solicitor. Any new costs allocations can then be requested from the new provider when they are allocating costs to the previous firm. If the provider refuses to allocate the correct amount of costs that is a dispute between the firms and not for the LAA to intervene. I would expect you raise this with the firm and escalate via your contract manager or the law society

## Question 2)

**Family certificates start with a scope of family help higher and you are not covered for a final contested hearing. If the matter is listed for a final hearing but is not contested is a final hearing fee payable or is it limited to an interim fee or not recoverable at all. The guidance is not exactly clear.**

### **LAA Response:**

7.129 Family Spec: 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.

It would all depend on the listing. If it was clearly listed and expected to be contested and you only had a FHH limitation then the work is out of scope and not payable regardless if it ended up being non-contested

If the hearing was listed as a non-contested final hearing (i.e. to agree a final order) then it would be payable as an interim hearing

In order for a final hearing fee to be paid it would need to be listed a final contested hearing, effective as a final hearing and you to have sufficient scope to attend it.

### **Question 3)**

#### **High cost 2 counsel case plans:**

I have a case whereby the first set of solicitors registered a family case as high cost but did not do a case plan. The matter transferred to second set of solicitors (us) and we requested authority for two counsel (matter listed for 15 days with 6 experts). This was granted. The LAA confirmed that the first set of solicitors needed to do their own case plan and we would submit our own. Fine no problem. Only issue is there is nowhere on the two counsel case plan to show previous solicitors costs. They will have to be shown somewhere so that the limit is correct. Also why do 2 counsel case plans have to be submitted within 4 weeks when the normal ones can wait until the case is concluded (although we try and do interim plans if the case is likely to last some time to enable a cost increase to be obtained and counsel paid).

### **LAA Response:**

2 counsel plans still currently have the 4-week requirement but perhaps not for long. Initially as the cases are driven by scope issues rather than purely financial, there are more issues to consider regarding correct funding scope being in place rather than just having the funds available.

However we're looking at harmonising and it may be on launch of the updated information packs we will have introduced FAST style interim submissions for 2 counsel, potentially final submission only.

Regarding needing to know the costs already incurred by a previous firm, it doesn't need to be submitted, we will add the 2 figures together when advising second firm about the value of the amendment.

But the timing here seems specific and I'm wondering who advised the first firm they need a separate contract?

We deal with these on a case by case basis as it depends on where the matter lies in terms of how far did firm 1 get down the route of High Cost cases before the transfer, continuity of counsel after the transfer and the differences between the two schemes.

#### Question 4)

In a High Costs matter I checked on CCMS that all of Counsels' fees had been billed and paid as allocated and in accordance with the case plan so I submitted the final claim for costs. Why do the Legal Aid Agency then ask for confirmation that all of Counsels' fees have been paid when it is in the system? Also why do they ask for a narrative when they have a very full narrative in the case plan?

#### LAA Response:

This is a standard CCMS generated request and isn't always applicable. If the high cost flag is activated then the document request changes to a specific high cost request. I would advise that when submitting high cost bills we don't require any confirmation Counsel Fees are paid nor a narrative for high cost where a case plan already has been agreed.

#### Question 5)

The LAA are not paying now for medical records because the client is entitled under GDPR. Is there any LAA guidance or update regarding this? I have had a few knocked off which were incurred last June and have appealed that they should allow us payment up until they notified us they're not paying them anymore.

#### LAA Response:

The electronic handbook has been updated to reflect the new guidance on it. In effect since this isn't LAA guidance we have to implement immediately. The fees for any request for personal information from a client are no longer chargeable from fees incurred after May 2018. Links below:

Please see the attached guidance

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/790918/Civil\\_Finance\\_Electronic\\_Handbook\\_-\\_v2\\_.7.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790918/Civil_Finance_Electronic_Handbook_-_v2_.7.pdf) and Para 10.1

which reads:

*With the introduction of the General Data Protection Regulation and the Data Protection Act 2018 on 25th May 2018 the position in relation to charging for copies of records under a subject access request has changed. From that date anyone can make a request to a company or organisation asking for access to the personal information it holds on them and, this right can be exercised at any point for free.*

*On that basis we would not expect to see any claims for these costs from that date onwards. This will particularly impact charges for medical records and police disclosure fees but it is not limited to those.*

*Where the organisation considers that the request is “manifestly unreasonable or excessive” there is provision for a charge to be made. In these circumstances we would expect to see details from the organisation confirming why they consider the request to be “manifestly unreasonable or excessive”.*

Some information from the Information Commissioners website on SAR's  
<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/>