



FAMILY LEGAL AID BILLING

CHARLOTTE FLANDERS – COSTS LAWYER | VERITAS PROFESSIONAL LEGAL SERVICES

Agenda

- ▶ Billing Issues – impact, causes and solutions
- ▶ Family Advocacy Scheme – remote hearings, form / content of Orders, bolt-on's and advocates' meetings
- ▶ Fully Costed High-Cost Case Plans and CCFS Billing - Points of Note
- ▶ Disbursements - codified rates, apportionments and splits

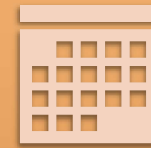
Billing Issues - Impact



Rejects



Shortfalls



Delays

Billing Issues – Causes

Rejects

- ❖ Claiming incorrect amounts
- ❖ Failing to put claim in with Providers' claim (hourly rate claims)
- ❖ Claiming for work not covered by certificate
- ❖ Claiming incorrect FAS

Shortfalls

- ❖ Financial limitation breached
- ❖ Costs out of scope e.g. wrong proceedings
- ❖ Issues with disbursements – wrong splits, no prior authority, rates exceeding codified rates

Delays – Case Plans and Billing

- ❖ Failing to provide fee notes
- ❖ Incorrect claims necessitating recoupments
- ❖ Firms failing to allocate costs to counsel
- ❖ Failing to put claims in to the LAA promptly
- ❖ Failing to provide estimates

Billing Issues - Solutions

Rejects

- ❖ Always require sight of the certificate before acting
- ❖ Communicate potential issues – with Provider or Costs Lawyer
- ❖ Check Orders
- ❖ Ask if unsure
- ❖ Challenge any reject believed to be incorrect – laacivilclaimfix@legalaid.gsi.gov.uk

Shortfalls

- ❖ Check scope / limitation against instructions
- ❖ Provide estimates, especially for Hourly Rate claims
- ❖ Flag High Costs if fees are high
- ❖ Provide fee notes regularly
- ❖ Have codified rates to hand
- ❖ Try to negotiate any likely shortfall

Delays

- ❖ Communicate!
- ❖ Provide fee notes in a timely fashion
- ❖ Provide estimates as soon as possible
- ❖ If High Costs – endorse briefs for advocates' meetings / conferences at time and send to provider
- ❖ Advise of precise allocation required

Recoupments

- ▶ Usually requested as a result of overclaim i.e. wrong bolt on, incorrect hearing unit, incorrect hearing type
- ▶ Providers have a duty to report overclaims to the LAA under the terms of the contract – would liaise with Chambers first
- ▶ Cause delays in being able to put claim in for providers
- ▶ If limitation is breached or a CCFS, after recoupment, the limitation has to be artificially raised to enable the correct claim to go through due to way CCMS operates
- ▶ From Costs Lawyer perspective, most common where FAS applies

Family Advocacy Scheme – Remote Work – Hearings

- ▶ Hearings – Length – 7.131 Family Specification
 - ▶ Runs from when the call is made (unless emergency hearing where no time listed)
 - ▶ Does not include advocates' meetings on the same date
 - ▶ Does not include adjournment time
 - ▶ Be careful with pre-hearing discussions – what was the Judge's intention?
- ▶ Hearings - Form and content of Orders
 - ▶ Type of hearing
 - ▶ Level of Judge
 - ▶ Case type
 - ▶ Size of the Advocates' Bundle
 - ▶ Set out the total time clearly
 - ▶ Set out any entitlement to bolt on's and which party is entitled to the same (make sure they apply)
 - ▶ Include time for future pre-hearing discussions if required

Family Advocacy Scheme – Remote Work – Bolt On's

▶ Advocates' bundle payments:

▶ Available for:

- ▶ Contested hearings
- ▶ Case management hearings
- ▶ Issues resolution hearings
- ▶ Final hearings

▶ Not available for Domestic Abuse Proceedings

▶ Check which bolts on apply:

- ▶ Exceptional travel won't be available for remote hearings
- ▶ Allegations of harm – only whilst the allegations are live. In private law proceedings – only available if a local authority is making or adopting allegations against the client
- ▶ Difficulty giving instructions – has to be a recognized condition which is verified by a medical report from either a psychologist or psychiatrist (only public law proceedings)
- ▶ Cross examination of an expert witness – entitled to this event if the expert is stood down, provided the expert is stood down less than 72 hours prior to the relevant hearing

Family Advocacy Scheme – Remote Work – Advocates Meetings

▶ Advocates Meetings – 7.135 and 7.136 of the Family Specification

- ▶ Needs to be directed by the Court pursuant to the Public Law Outline
- ▶ Retrospectively approved Advocates' meetings – note the wording of the Remote Hearings Guidance and interplay with CCFS
- ▶ Bolt on's : only exceptional travel available (not relevant for remote)
- ▶ Half fixed advocacy fees – 7.136 of the Specification
- ▶ Have sight of Order authorizing it – note re initial Orders
- ▶ Advocates' meetings on the same day as hearings – different rules for interim and final hearings

High-Cost Cases - Types and Differences

Fully Costed Family Case Plans

- ▶ Default for non-Care matters
- ▶ Optional for QC / 2 Counsel care matters
- ▶ Option to apply in exceptional single Counsel care cases
- ▶ Limitation in effect at registration “bites”
- ▶ Prospective Case plan built up in stages
- ▶ Tight time frames to prepare and update plans
- ▶ Stages can be billed upon their completion once contract agreed

CCFS – Events Based Plans

- ▶ Default for single Counsel Care matters
- ▶ Optional for two Counsel Care matters
- ▶ Option to apply for LAA discretion in cases following a similar pathway to a care matter
- ▶ Retrospective
- ▶ Interim plans not required unless over threshold (£32,500 – single counsel | £60,000 – QC / 2 Counsel)

High-Cost Case Plans - Advocacy

Fully Costed Cases

- ❖ Matters normally subject to hourly rates – choice as to how to proceed i.e. hourly rates or as below
- ❖ Single Counsel - equal to or less than 10 main hearing days – Counsel's fees are based on FAS unless exceptional circumstances
- ❖ Two Counsel - equal to or less than 10 main hearing days – Counsel's fees are based on FGF Scheme unless exceptional circumstances
- ❖ Eleven or more main hearing days – Counsel can elect for payment under CCFS

Single Counsel CCFS

- ❖ Equal to or less than 10 main hearing days – Counsel's fees are based on FAS
- ❖ Eleven or more main hearing days – Counsel's fees are based on Events
- ❖ No limit on advocates' meetings provided they are ordered by the Court (no retrospective meetings unless paid under FAS)
- ❖ Limited conferences
- ❖ Written submissions available
- ❖ Reading days – an event if Counsel put on stand-by

QC / 2 Counsel CCFS

- ❖ Equal to or less than 10 main hearing days – Counsel's fees are based on FGF Scheme
- ❖ Eleven or more main hearing days – Counsel's fees are based on Events
- ❖ Limited advocates' meetings (no retrospective meetings)
- ❖ Limited conferences
- ❖ Written submissions only an event for hearings in excess of 10 days
- ❖ Reading days – only an event if Counsel put on stand-by
- ❖ 2 Junior Counsel can apportion total fees

High-Cost Case Plans – Billing Tips

- ▶ Communicate – does it look like a case that needs to be registered?
- ▶ Provide estimates, especially before any lengthy hearing
- ▶ Where claim based on what would have been payable under FGF scheme – use a Claim 5 or provide the information which would have been in a Claim 5
- ▶ Request a copy of the case plan before it is submitted to the LAA
- ▶ Get any Order following a finding of fact or final hearing to specifically detail the days the hearing was listed for, the days the Court sat, underruns and overruns
- ▶ CCFS – overruns – set out when they were listed (could they qualify for a full event?)
- ▶ CCFS – endorse briefs for advocates' meetings and conferences as the case proceeds
- ▶ Regularly provide fees notes to the provider

High-Cost Case Plans – Billing Tips Continued...

- ▶ If 2 Counsel plan – put the advocates' meetings attended in excess of the limit within fee notes but with no fee. That way, if one of the meetings billed for doesn't meet the requirements, the fee can move to another which might
- ▶ Counsel instructed and paid prior to the case registering – do they qualify to convert their FAS to events? If so, get a new fee note to provider as soon as possible
- ▶ Remote Counsel? Put justification within fee note for travel and accommodation – don't just rely on the provider's explanation in the case plan
- ▶ Don't forget – if CCFS - only one event per day!

Disbursements

- ▶ Beware codified rates – is prior authority required?
- ▶ Allow time for prior authority to be obtained within the Order
- ▶ If expert rates exceed the codified rates, has an agreement been reached regarding any potential shortfall in the event that prior authority is not obtained?
- ▶ Uneven splits – prior authority is recommended? Has the Court carried out an assessment of the other parties' financial resources?
- ▶ Make sure the split is clear – does it include joined parties?
- ▶ Get the split right – multiple children represented by one Solicitor = one share

Useful Guidance / Contacts

- ▶ Family Advocacy Scheme
 - ▶ Costs Assessment Guidance
 - ▶ Remote Family Hearings: updated ways of working
- ▶ Disbursements / Prior Authorities
 - ▶ Guidance on the Remuneration of Expert Witnesses in Family Cases
 - ▶ Appendix 3 of the Civil Finance Electronic Handbook – Experts' codified rates
- ▶ Single Counsel CCFS / 2 Counsel CCFS / Fully Costed Plans
 - ▶ High Cost Family Webpage with information packs and working examples available for each type of high cost case – <https://www.gov.uk/guidance/civil-high-cost-cases-family>
 - ▶ FGF calculator – available on the LAA's High Cost Family Webpage (under section on Counsel's fees)
 - ▶ High-Cost Family Fixer – highcostfamilyfixer@justice.gov.uk
- ▶ General Issues
 - ▶ Webchat (most helpful!)
 - ▶ Friendly neighbourhood Costs Lawyer
- ▶ Rejections
 - ▶ Civil Claim Fix - laacivilclaimfix@legalaid.gsi.gov.uk
- ▶ Processing times – <https://www.gov.uk/guidance/civil-processing-dates>