

June 07 Legal Aid Reforms

Family and Family Mediation Fee Schemes for October 2007

Summary

This is a summary of the Final Family and Family Mediation Fee Schemes and Changes to the Funding Code.

The summary is designed to provide an overview of the schemes and you should not therefore assume that all you need to know is included in this summary. A full copy of the schemes can be accessed from the LSC's website or by copying the following link into your internet browser:

http://www.legalservices.gov.uk/docs/civil_consultations/Consultation_response_with_covers.pdf

Executive Summary

The paper sets out the LSC's intention to introduce, from 1 October 2007:

- Fixed fees for initial advice in all public law family cases and representation in care and supervision proceedings (excluding advocacy) (Levels 1 to 3);
- Fixed fees for initial advice and Family Help (Lower)(Levels 1 and 2) in private law family cases;
- Revised fee arrangements in mediation cases;
- Changes consistent on the Funding Code consultation – including removing residential assessments from the scope of legal aid and a new test for separate representation in care and supervision proceedings.

The LSC is still deciding what it will do with regard to Level 3 in private family. For the meantime, therefore, private law family Level 3 fees will not be implemented on 1 October.

The LSC will also consult later in the year on fees for private law Level 4 (final hearing work), and on bringing public law advocacy within fixed fees.

Care Proceedings Graduated Fee Scheme

With effect from 1 April 2007, suppliers will be expected to provide both controlled and licensed work. There are not currently any minimum number of matter starts.

The scope of the scheme remains as set out in the consultation paper as follows:

Level 1	All Public Law Family Cases are included
Level 2	Care and Supervision Proceedings (s31 Children Act 1989) and related proceedings only where the client is a parent or a person with parental responsibility
Level 3	Care and Supervision proceedings (s31 Children Act 1989) and related proceedings only.

The fees include all preparation and attendance. Advocacy is excluded at Level 3 and paid on hourly rates.

Fees are payable for each stage that a cases reaches i.e. if a case proceeds through Levels 1, 2 and 3, then 3 separate fees will be paid. If a case starts at Level 3, only one fee will be payable. The LSC propose that if a client drops out of the case during the Level 3 stage, e.g. after the first hearing, only the Level 3 fee will be payable (the proposal to only pay half was changed).

For work undertaken beyond Level 1, the fees apply to Care and Supervision Proceedings but all other Public Law Family Work will continue to be remunerated under the existing arrangements of hourly rates.

VHCCs are excluded from the scheme as do Appeals against final orders (appeals against interim orders are included).

Disbursements remain excluded from the scheme and are payable in addition to fees.

At Levels 1 and 2, the Standard Monthly Payment will cover disbursements as well as case costs. At Level 3, disbursements are billed as part of the case.

Fee Structure

The proposed fees are:

Level 1 – Advice

National (excluding VAT)

£144

Level 1 covers all public law work. The fee is calculated using the average claims made by providers during 2005/06.

Level 2 – Negotiation

National (excluding VAT)

£347

Level 2 is advice and support for parents or those with parental responsibility focused on liaison and negotiations with the Local Authority to resolve disputes. It applies where the Local Authority has issued notice of their intention to issue proceedings. It does not include advice and support to older children and other family members. Prior to the implementation of this new level of service, as an interim measure until the new Care Proceedings fee scheme is introduced in October 2007, non-means tested General Family Help has been made available specifically to cover this negotiation with the Local Authority.

There is no London waiting at Level 2 for Public Law cases (although the London rate can be used to calculate whether a case is exceptional, see below).

Level 3 – Full Representation (Excluding VAT)

Party	Court	No. of Clients	Midlands	North	South	Wales
Child	Other	1	£2,405	£1,972	£2,761	£2,695
Child	Other	2+	£3,608	£2,958	£4,142	£4,043
Child	High	1	£3,199	£2,623	£3,672	£3,584
Child	High	2+	£4,799	£3,935	£5,508	£5,376
Joined Party	Other		£1,276	£986	£1,482	£1,606
Joined Party	Other		£1,697	£1,311	£1,971	£2,136
Parent	Other	1	£3,156	£2,621	£3,589	£3,250
Parent	Other	2	£3,945	£3,276	£4,486	£4,063
Parent	High	1	£4,197	£3,486	£4,773	£4,323
Parent	High	2	£5,246	£4,358	£5,966	£5,404

Level 3 covers all work from the issue of proceedings to the final hearing and any work that follows on from the final hearing.

The fee for 2 or more children can be claimed where the solicitor has represented more than one child in a case at at least one hearing.

Any case dealt with in the High Court will attract the higher High Court fee which has been calculated on the basis of a 33% uplift over other courts.

NB The fees above differ from those published in the consultation paper. The hourly rate upon which the calculation of the Level 2 fee has been based now takes into account the exclusion of VAT and is based on a composite of London and non-London rates.

Exceptional cases – Levels 1 and 2

Where the Level 1 costs (or the combined costs of Level 1 and 2, if Level 2 costs are claimed) calculated on hourly rates exceed **three** times the fee, the matter will be considered exceptional and paid on Legal Help hourly rates.

For this calculation, providers should use current Legal Help rates, and these will be London rates for London providers:

Activity	Outside London	London (<i>applicable to fee earners whose office is within London Regional Office area</i>)
Preparation	£57.25	£61.20
Travel and Waiting	£29.45	£30.30
Routine letters written and telephone calls	£4.10	£4.40

Exceptional cases – Level 3

The exceptional case limit at Level 3 is **twice** the standard fee.

In calculating whether the case is exceptional, no uplifts will be taken into account. If the case is exceptional and paid on hourly rates, uplifts (including the 15% panel uplift) up to a maximum of 100% will be payable on the work undertaken on that case to which it would be appropriate to apply an uplift.

Emergency Protection Orders (EPOs)

There is no change to the funding of EPOs. Where an EPO has been made and the Local Authority issues emergency care proceedings, the work will be done under Legal Representation and is excluded from the scope of the scheme at Level 2.

If the Local Authority issues a notice of intention to issue proceedings subsequent to the child being made safe, pre-proceedings advice at Level 2 will be available.

Advocacy

Advocacy will be paid on the applicable hourly rates.

The definition of advocacy, for the purposes of the fee scheme, has been amended for clarification. It will cover appearances as advocate before the Court, associated travel to Court, waiting time and attendance at any conferences provided by the advocate at court. It also includes attendance at the advocates meeting as set out in the Protocol. Preparation for hearings will continue to be covered by the standard fee. For the avoidance of doubt, advocacy does not include attendance at Court with Counsel or with another advocate. Only one person may claim for advocacy services at one hearing unless provided for under the Graduated Fees Order.

Payments on Account (POAs)

POAs may be claimed at Level 3, 3 months after a certificate has been issued. Providers can make no more than two POA applications within any 12 month period.

The amount claimable as a POA will be up to 75% of what the cost to date would have been under hourly rates but the total POA cannot exceed 75% of the fixed fee unless the case becomes exceptional. Where the case becomes exceptional, the exceptional case limit minus payments on account already made can be claimed.

Where solicitors undertake their own advocacy they should inform the LSC when applying for a POA and they will be able to receive up to 100% of the fixed fee as a POA prior to the case being billed.

POAs for disbursements may still be claimed as they are now.

Family Help – Private

The LSC is taking more time to make a final decision on proposed private family Level 3 fees and they will not therefore be implemented on 1 October 2007. Private Law family Levels 1 and 2 will be implemented as planned.

The scope of the scheme is therefore:

Level 1	All work is included
Level 2	All work is included (except those areas limited to Level 1: including emergency proceedings, domestic violence, child abduction and stand alone divorces).

All work outside the scheme will continue to be paid on hourly rates at it is now.

Trust of Land and Appointment of Trustees Act (TOLATA) cases will be covered by Level 1 and the Level 2 finance fee.

Disbursements will remain excluded from the scheme.

Fee Structure

Level 1 – Initial Advice and assistance

National (excluding VAT)
£94

Divorce – Petitioner

National (excluding VAT)
£159

Level 1 covers the initial meeting with the client and any work immediately flowing from the meeting such as a letter of advice following the meeting, making a telephone call on behalf of the client, or writing to the other party on behalf of the client in order to move the case forward. It also covers general advice about the dispute and methods of dispute resolution.

Level 1 alone will cover change of name and wills (cannot proceed to level 2).

Divorce

In cases which involve divorces with no other issues:

- where assisting the respondent – Level 1 fee is paid;
- where assisting a petitioner – Petitioner fee is paid.

In these circumstances, divorce means proceedings and includes judicial separation.

Exceptional cases

Exceptional cases (only 3 instances, more often that the case should proceed to level 2):

- (1) **Domestic violence** - where case involved domestic violence issues at level 1 and there are no children/financial issues to move it to level 2, there is an exceptional case limit of **three** times the fee.

NB – costs of applying for emergency certificates should be claimed on the certificate rather than at Level 1 where the funding is granted on the

same day as the client is seen or as a new matter start if the funding is granted on a later date.

- (2) **Child abduction** – child abduction cases are excluded from the scheme other than at level 1 (as in domestic violence cases above) where initial advice is given.
- (3) **Divorce** – for divorces which are particularly complex (e.g. involving a foreign element or where the respondent is abroad), there is an exceptional case limit of **three** times the relevant fee – where acting for the petitioner, the petitioner fee – where acting for the respondent, the level 1 fee.

Level 2 - Children

	Fee(Exc. VAT)	Settlement Fee (Exc. Vat)
Non-London	£221	£132
London	£256	£153

The Level 2 fee is payable where there is a family dispute relating to children that requires work beyond the initial interview and follow up. It covers all work up to but not including the issue of proceedings in children cases. Where it is necessary to issue proceedings to attend directions hearing/conciliation appointment, this will be done under a certificate. It will include the issue of proceedings for the purposes of obtaining a consent order in finance cases (where it also includes completion of work necessary to obtain the order).

Counsel costs are included in the fees, although the LSC states that it would be expect counsel to be instructed at this level.

An additional settlement fee is payable at level 2 if a case is settled at level 2. A case is settled where the parties reach an agreement on issues such that they do not require further legal representation (this must be an active choice on the part of both clients to agree a course of action).

Level 2 – Finance

	Fee (Exc. VAT)	Settlement Fee (Exc. Vat)
Non-London	£231	£139

London	£268	£161
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The level 2 finance fee includes all work up to but not including the issue of proceedings except where proceedings are issued for the purposes of obtaining a consent order (in which case it covers completion of work necessary to obtain the order).

An additional settlement fee is payable at level 2 if a case is settled at this level.

Children and finance

Where a case involved significant family disputes relating to children and finance issues then both the children and finance fees may be claimed. Definitions of matter starts in this area will be clarified in the revised specification due to be published in July.

Significant family disputes are those that on their own require detailed and specific further advice to address issues unresolved between the parties and likely to lead to proceedings if unresolved.

Where only one of the issues (i.e. children or finance) is settled, the settlement fee is only payable on that issue.

Exceptional cases

The exceptional case threshold will be calculated on the basis of **three** times both the level 1 and level 2 fees (without taking into account the settlement payment and using Legal Help rates). When the case is exceptional, it will be paid at Legal Help rates (see page 4 above).

Where case involved both children and finance issues, it will only be exceptional when the costs reach three times the total standard fees payable for children and finance.

Statutory charge

Cases completing at Level 1 are exempt from the charge. When a case completes at Level 2 the charge will not apply unless the case is exceptional, in which case the charge will apply where there is relevant recovery.

The charge for cases completing at level 2 will be in favour of the provider (who will be responsible for collecting any money owed from the client and claiming only net costs from the LSC). Where a case completes under a certificate, the charge will apply in the favour of the LSC.

Contributions

Contributions do not apply at levels 1 and 2 and will be applicable once a certificate is issued.

Other issues

Where there is an award of other's costs the solicitor will be able to retain any sums in excess of the legal aid costs payable (standard fees or hourly rates for exceptional cases).

Family Mediation

A new family mediation remuneration scheme will be implemented in October 2007.

NfP mediation providers will now be paid under the same scheme as the for profit providers.

Willingness Tests

The Funding Code requires that the service attempt to contact the second party through a letter and 2 attempts over the telephone. This work need not be undertaken by a mediator but suitably trained administration staff.

Willingness test	Fee (excl VAT)
	£25

Assessment meetings

The LSC will pay for an enhanced assessment meeting, in order for mediators to provide a more holistic service. It will also realign the fee for Assessment Meetings Together to ensure clients are seen together where appropriate to do so.

Activity	Now (excl VAT)
Assessment alone	£87

Assessment separate	£87
Assessment together	£130

Mediation Fees

Category of Work	Single Session (excl VAT)	Multi Session (excl VAT)	Agreed Proposal (excl VAT)
AIM sole	£168	£756	£252
AIM Co	£230	£1,064	£252
PF sole	£168	£588	£189
PF Co	£230	£834	£189
Child Sole	£168	£462	£126
Child Co	£230	£647	£126

Direct Consultation with Children

The LSC has not currently created a separate fee for direct consultation with children. It has increased the fee for Child Only multi session cases to reflect additional work that may be carried out in consulting directly with children.

New Cases

Where parties return within 3 months of a single session, or the last session, then the mediator should reopen the case if it relates to the same matter. If more than 3 months have elapsed the mediator should treat the return visit as an entirely new application.

Where a client returns within 3 months but on a different issue, this could still be considered the same case but an AIM payment should be claimed rather than a finance payment.

Where a case concludes after a single session and a memorandum of understanding is produced and then within the 3 month period the client returns, there is no additional payment for agreed proposals reached the second time although a multi session may be claimed instead of a single session.

Referrals to Mediation

The fee schemes have been amended so that Level 3 now covers everything from the issue of proceedings. The requirement to consider mediation now applies at the point where parties seek to move from Level 2 to Level 3.

There are changes to the operation of the domestic abuse exemption from the requirement to consider mediation (i.e. where client has reasonable fear of domestic abuse and therefore, fear of participating in mediation). Instead of the onus being on the solicitor to decide it should be the mediator to decide although there will be flexibility as to how the mediator will assess this.

The mediation exemption in relation to Family Advice and Information Services Pilot has been abolished as the pilot has now come to an end.

The current mediation exemption for respondents will now apply to cases where the respondent faces a court date that is within 6 weeks.

Help with Mediation will cease to exist as a separate level of service in the final fee schemes as it has been incorporated into the new level of service called Family Help. Therefore, the specific exemption for Help with Mediation from the statutory charge will not apply. The work will now be included in Level 2 and therefore, if the cases settles at mediation at this level and clients do not receive legal advice in relation to their mediation agreement this will be exempt from the statutory charge (unless the case is exceptional).

Changes to the Funding Code

There were two consultations on the Funding Code. The first was included in the family fees consultation, the second was on the proposed introduction of a merits test in certain public law cases and removal of residential assessments from the scope of legal aid funding.

New levels of service

General Family Help, Help with Mediation and Help at Court in family cases are all being replaced with Family Help.

There are two forms of Family Help: Family Help (Lower) and Family Help (Higher). In response to concern, Family Help (Lower) in children cases covers all work up to but not including the issue of proceedings.

Merits Criteria

The merits criteria for Family Help (Lower) will be as follows:

- Family Help may only be provided where the client requires ongoing help in relation to a substantive family dispute.
- The private client tests – Family Help will be refused unless the benefits to be obtained from assistance and representation for the client justify the likely costs, such that a reasonable private-paying client would be prepared to proceed in all the circumstances.
- Family Help will be refused if it is more appropriate for the client to be assisted by another Level of Service, i.e. Legal Help or Legal Representation.

Moving to Family Help (Higher) covers proceedings beyond the initial directions/conciliation appointment in children cases and covers issue and all further steps in financial and other proceedings. It is important to ensure that steps from issue of proceedings onwards are only justified where it is not possible to resolve the dispute without proceedings.

Family Help (Higher) will be subject to all the criteria above as well as the following:

- Attempts at settlement - Family Help (Higher) may be refused unless reasonable attempts have been made to resolve the dispute without recourse to proceedings, through negotiation or otherwise.
- Referral to Family Mediation – The Code currently provides for cases to be referred to a family mediator for assessment from the start of General Family Help (see code criteria 11.3.1, 11.3.2, 11.11.2, 11.11.3, 11.12.2 and 11.12.3). These criteria will apply only from the start of Family Help.

Residential Assessments

The costs of residential assessments, including pre-assessments or viability assessments (residential or not) undertaken to consider whether a residential assessment is appropriate, will be removed from the scope of legal aid funding from October 2007.

Appropriate use of the funding test

The LSC will not introduce merits criteria for Special Children Act proceedings at this time. However, from 1st October 2007 the LSC will introduce:

- a test as to whether a child is in need of separate representation from other children who are subject of the proceedings from October 2007;
- a merits test for parent and people with parental responsibility who, in the absence of any conflict of interest, can be protected by being jointly represented with another party.

