

Legal Services Commission

Immigration & Asylum

Frequently Asked Questions – October 2007 version 1

Index

Section	Pages
A. Provisions for cases paid under the Graduated Fee Scheme	3 - 6
B. Provisions for cases paid at Hourly rates	7
C. Provisions for cases opened prior to 1 October 2007	8 - 10
D. Provisions for cases under Exclusive Contracting arrangements	11
E. General Provisions	12 - 23
F. Review and Reconsideration & onward appeals	24 - 26
G. Claiming	27 - 36
H. Bail	37 - 40
I. Useful web links	41 - 43

A. Provisions for cases paid under the Graduated Fee Scheme

<p>A1</p> <p>If counsel is instructed to represent the client at the substantive appeal and to assist in the preparation of the appeal including attending a conference with the client prior to the hearing date, how will this be remunerated under the Graduated Fee Scheme?</p>	<table><tr><td>Advocacy services</td><td>Paragraph 11.20</td></tr><tr><td>Stage 2 Graduated Fee</td><td>Paragraph 11.12 (2)</td></tr><tr><td></td><td>Paragraph 11.18 (2)</td></tr></table> <p>In addition to the appropriate Stage 2 Graduated Fee, which covers the preparation of the appeal, additional payments are also claimable in relation to advocacy services at the AIT. The level of payment due to counsel for their work, which may include items such as attending a conference and representing at a hearing, will be made from the total payment to you under the Scheme (as per Rule 11.20)</p>	Advocacy services	Paragraph 11.20	Stage 2 Graduated Fee	Paragraph 11.12 (2)		Paragraph 11.18 (2)
Advocacy services	Paragraph 11.20						
Stage 2 Graduated Fee	Paragraph 11.12 (2)						
	Paragraph 11.18 (2)						
<p>A2</p> <p>Upon receipt of an expert's report and having re-applied the CLR merits test prior to the substantive hearing it is decided that the test is no longer met and CLR should be withdrawn. Under the Graduated Fee Scheme what am I entitled to claim from the LSC under CLR?</p>	<table><tr><td>Stage 2a: Asylum</td><td>Paragraph 11.11</td></tr></table> <p>As CLR has been granted but the case has concluded prior to the substantive hearing you may claim the following:</p> <ul style="list-style-type: none">i) The Graduated Fee of £240 for Stage 2aii) Any applicable additional payments for representation at an oral/telephone CMRH and/or adjourned hearing.iii) Any disbursements reasonably incurred up to the applicable limit	Stage 2a: Asylum	Paragraph 11.11				
Stage 2a: Asylum	Paragraph 11.11						

<p>A3</p> <p>A Stage 2a claim is made as CLR has been withdrawn prior to the substantive hearing; the client however is successful upon review to the IFA. I then accept the client's instructions on the appeal under CLR, following the substantive hearing on this matter would I be able to claim the Stage 2b fee having already claimed the Stage 2a fee?</p>	<p style="text-align: center;">Stage 2: Controlled Legal Representation Paragraph 11.10</p> <p>Paragraph 11.10 of the Immigration specification is clear that you may not claim payments for both Stage 2a and Stage 2b in the same matter. In this scenario you should contact your Account Manager who can remove your earlier Stage 2a claim from SMS. You will then be able to claim the stage 2b fee.</p>
<p>A4</p> <p>Are the costs of a travel fare covered by the £290 additional payment for attendance at the Home Office interview?</p>	<p style="text-align: center;">Additional payments Table 4 (b) of the Payment Annex</p> <p>No. The £290 additional fee covers the travel and waiting time and attendance at a Home Office interview; any travel fare will be covered by the Stage 1 Legal Help Disbursement limit of £400.</p>
<p>A5</p> <p>If the Home Office withdraw the decision the day before the hearing, where counsel has been instructed and the matter prepared for hearing, would the stage 2a or stage 2b fee be claimable?</p>	<p style="text-align: center;">Stage 2: Controlled Legal Representation Paragraph 11.10</p> <p>Stage 2a will be claimable in this scenario.</p> <p>Stage 2b can only be claimed if you/counsel have attended the substantive hearing</p>

<p>A8</p> <p>Does the £600 CLR Stage 2 Graduated Fee Disbursement Limit include Counsel Fees?</p>	<p style="text-align: center;">Advocacy Services Paragraph 11.20</p> <p>No. Counsel's costs can be paid from the applicable Graduated Fee and/or Additional payment(s), not from within the £600 CLR Disbursement limit.</p> <p>However it is for the supplier to decide which aspects of work counsel may be instructed in relation to and to negotiate a fee for that work. Suppliers are reminded that unless a case is flagged as “exceptional” and ultimately assessed as such, you will only be paid the Graduated fee(s) and applicable additional payments.</p>
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B. Provisions for cases paid at Hourly rates

<p>B1</p> <p>What is the LSC definition of an “unaccompanied” asylum-seeking child?</p>	<p>An unaccompanied asylum-seeking child (UASC) is a person who at the time of making the asylum application is or appears to be under eighteen and who has no adult relative or guardian in the United Kingdom.</p>
<p>B2</p> <p>If the Home Office disputes an UASC’s age, would this matter continue to be claimable at hourly rates?</p>	<p>Yes. If you continue to act the case will be funded at hourly rates</p>
<p>B3</p> <p>If a minor who is living with an adult family member in the UK, seeks instructions on making an asylum application in their own right, will this work be funded under the Graduated Fee Scheme?</p>	<p>Yes. As the client does not fall within the definition of an Unaccompanied Asylum Seeking Child (UASC), the matter will not be paid at hourly rates and will fall within the Graduated Fee Scheme.</p> <p>Should the Home Office wish to interview the client, you may claim the £290 additional payment for attending the interview with the client.</p>

C. Provisions for cases opened prior to 1 October 2007

<p>C1</p> <p>If a client instructs me prior to 1 October, is signed up to Legal Help but doesn't make their claim for asylum until on/after 1 October – will this case fall within the GFS?</p>	<p>Transitional Arrangements - Part A Section 4 of the Unified Contract Civil Specification</p> <p>No. The provisions of the previous specification under the Unified Contract or General Civil Contract will govern this case. The case will continue to be claimed at Hourly Rates under the appropriate Cost Limits.</p> <p>This qualifies paragraph 11.2(a) of the Immigration specification for the small number of cases that may be opened prior to 1 October but where the application is lodged on/after.</p>
<p>C2</p> <p>If I continue an asylum matter opened prior to 1 Oct 07 (as per 11.2(a) of the Immigration specification), would I continue with the initial (non-devolved power) Legal Help limit of £286.75 or would the limit automatically increase to £800 from 1 October?</p>	<p>Controlled Work paid at hourly rates Paragraph 11.2(a)</p> <p>The Legal Help cost limits for all cases will automatically increase to £800 for asylum and £500 for non-asylum. The disbursement limit will also increase to £400.</p>

<p>C6</p> <p>If I have applied for CLR prior to 1 October and this has been refused by the LSC, now that I have Devolved Powers can the client still apply for a review of the LSC’s decision to the IFA or can I grant CLR myself if I believe the merits to be met?</p>	<p>We would expect that the client would still utilise their right of review to the IFA. In making the decision whether to do so the supplier should consider the guidance detailed in question E10.</p>
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<p>C7</p> <p>As a NFP provider, for those cases opened by me prior to 1 October, what are the applicable limits on/after that date?</p>	<p>For those cases that you opened prior to 1 October, your limits as of that date will be automatically increased to:</p> <table data-bbox="875 766 2080 1005"> <tr> <td>Legal Help</td> <td>Asylum</td> <td>16 hours casework limit</td> </tr> <tr> <td></td> <td>Non-asylum</td> <td>10 hours casework limit</td> </tr> <tr> <td>CLR</td> <td>Asylum & non-asylum</td> <td>12 hours casework limit</td> </tr> <tr> <td>Individual Disbursement limit</td> <td></td> <td>£400</td> </tr> </table> <p>Any time incurred prior to 1 October will count towards these limits.</p>	Legal Help	Asylum	16 hours casework limit		Non-asylum	10 hours casework limit	CLR	Asylum & non-asylum	12 hours casework limit	Individual Disbursement limit		£400
Legal Help	Asylum	16 hours casework limit											
	Non-asylum	10 hours casework limit											
CLR	Asylum & non-asylum	12 hours casework limit											
Individual Disbursement limit		£400											

D. Provisions for cases under Exclusive Contracting arrangements

<p>D1</p> <p>For those cases undertaken under an exclusive contract in relation to the Early Advice Pilot at Solihull, will both the Legal Help and CLR aspects of a matter be claimable under Hourly rates?</p>	<p>Yes. Hourly rates will apply throughout the matter.</p>
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E. General Provisions

<p>E1</p> <p>Does assistance with matters relating to NASS continue to be funded as a non-asylum Immigration matter?</p>	<p>No. From 1 October, work in relation to NASS assistance would ordinarily be undertaken as a Welfare Benefit matter, it couldn't be conducted under an Immigration matter start.</p>
<p>E2</p> <p>If a client requires advice in relation to NASS matters, whilst this cannot be undertaken under an Immigration matter start, if I do not hold a contract in another relevant category such as Welfare Benefits or housing, may I undertake work under Tolerance?</p>	<p>Yes. You should have been allocated a number of tolerance matter starts; they can be opened for this purpose. The relevant fixed fees are detailed in the Payment Annex to the Civil Specification.</p>
<p>E3</p> <p>If a client seeks to instruct me on/after 1 October 2007 in relation to an asylum application that was lodged prior to that date, would this matter be paid at hourly rates or under the Graduated Fee Scheme?</p>	<p>Controlled Work paid at Hourly Rates paragraph 11.2</p> <p>Providing the Previous Controlled Work provisions are satisfied, in this scenario the matter would be funded at hourly rates as the application to the Home Office had been made prior to 1 October 2007.</p>

<p>E4</p> <p>If a client seeks to instruct me on/after 1 October 2007 in relation to a non-asylum matter, in which an application had been made to the Home Office/ECO prior to that date, would this matter be paid at hourly rates or under the Graduated Fee Scheme?</p>	<p>Regardless of whether an application had been made by the client prior to 1 October 2007, if a non-asylum matter is opened by you on/after that date it will be payable under the Graduated Fee Scheme (please refer to paragraph 11.2(c) of the Immigration Specification).</p>
<p>E5</p> <p>If a client seeks to instruct me in relation to an application for an extension of leave following an application for asylum made prior to 1 October 2007, will this application be funded at hourly rates?</p>	<p>As per paragraph 11.1 (b) of the Immigration Specification, an application for further leave or an active review will be considered as an “asylum” matter where:</p> <p>The application relies on the 1951 Convention Relating to the Status of Refugees and/or Article 3 of The European Convention for the protection of Human Rights and Fundamental Freedoms 1950.</p> <p>If this is the case then the matter will fall within paragraph 11.2(b) of the Immigration Specification and will be payable at hourly rates.</p>

<p>E6</p> <p>If a client seeks to instruct me following a successful review application to the Independent Funding Adjudicator, am I required to complete and sign a CW2 Imm for and grant CLR?</p>	<p>Review by the Independent Funding Adjudicator Paragraph 11.151(7)</p> <p>No, you would not be required to sign a new CLR form as the letter from the LSC confirming the success of the client's appeal to the IFA will act as the grant of CLR, with the previous supplier having already confirmed the client's financial eligibility on the CW4 form.</p>
<p>E7</p> <p>Can a supplier be funded for establishing (as per Rule 11.69) whether there is good reason to transfer a matter from another supplier?</p>	<p>Previous Controlled Work Rule B9.1 Funding Code Rules 2.22 to 2.30 Civil Specification Paragraph 11.69 Immigration Specification</p> <p>Not usually. It is part of assessing the merits / sufficient benefits of a case and determining whether a second supplier can grant funding. This will have been undertaken prior to a Legal Help or CLR form having being signed. Only time spent on a case after completing the appropriate forms (having opened a new NMS) can be claimed.</p>
<p>E8</p> <p>If a client is advised by a second supplier to exercise their right of review to the IFA following a refusal of CLR by a previous supplier, can the time for advising the client of this be claimed, if so under what funding scheme?</p>	<p>Previous Controlled Work Rule B9.1 Funding Code Rules 2.22 to 2.30 Civil Specification Paragraph 11.69 Immigration Specification</p> <p>No. We would expect this issue to be highlighted immediately upon considering the Previous Controlled Work rules, the client should be referred back to the first</p>

	supplier who should advise the client, but in any event the second supplier cannot claim time for advising the client on the IFA process.
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<p>E9</p> <p>If the 5-day time limit has expired can the client still apply for a review to the IFA?</p>	<p style="text-align: right;">Review by the Independent Funding Adjudicator Paragraph 11.147</p> <p>Yes. If there are exceptional circumstances that prevented an application being made within the time limit, an out of time review application can be considered by NIAT.</p>
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<p>E10</p> <p>A client attends upon me having been refused CLR by their previous supplier. They wish to appeal against the Home Office decision and have asked me to take on their case. What work can I claim for and under what level of funding?</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">Previous Controlled Work</td> <td style="width: 33%;">Rule B9.1</td> <td style="width: 33%;">Funding Code</td> </tr> <tr> <td></td> <td>Rules 2.22 to 2.30</td> <td>Civil Specification</td> </tr> <tr> <td></td> <td>Paragraph 11.69</td> <td>Immigration Specification</td> </tr> </table> <p>You will need to apply the Previous Controlled Work rule. As part of this you would need to establish whether the client had received a completed CW4 and if they had made an application to the IFA against the first suppliers decision to refuse CLR. Normally, where it is practical to do so, the client should appeal the first supplier's decision to the IFA. However if urgent work is required e.g. there is a need to lodge an appeal and an application for a review to the IFA is therefore not practicable, then CLR may be granted as unclear/ borderline.</p> <p>In Graduated Fee cases, a stage 2 a or b fee can be claimed depending where the matter concludes e.g. if the merits are reassessed following receipt of the full file of papers and CLR is withdrawn, then the Stage 2a fee can be claimed.</p>	Previous Controlled Work	Rule B9.1	Funding Code		Rules 2.22 to 2.30	Civil Specification		Paragraph 11.69	Immigration Specification
Previous Controlled Work	Rule B9.1	Funding Code								
	Rules 2.22 to 2.30	Civil Specification								
	Paragraph 11.69	Immigration Specification								

<p>E11</p> <p>If a client wishes to transfer to a second supplier due to dissatisfaction with the previous legal advice, should they also wish to make a complaint to the relevant regulatory body must I also contact the LSC to notify them of the complaint?</p>	<p>Yes. Please refer to Rule 2.26 of the Civil Specification for further guidance.</p>									
<p>E12</p> <p>If a client wishes to transfer instructions to a new supplier due to the first supplier's Immigration contract being terminated or withdrawn, will this automatically meet the requirements of the previous Controlled work rules?</p>	<table border="0"> <tr> <td>Previous Controlled Work</td> <td>Rule B9.1</td> <td>Funding Code</td> </tr> <tr> <td></td> <td>Rules 2.22 to 2.30</td> <td>Civil Specification</td> </tr> <tr> <td></td> <td>Paragraph 11.69</td> <td>Immigration Specification</td> </tr> </table> <p>Yes. The above rules will automatically be met.</p>	Previous Controlled Work	Rule B9.1	Funding Code		Rules 2.22 to 2.30	Civil Specification		Paragraph 11.69	Immigration Specification
Previous Controlled Work	Rule B9.1	Funding Code								
	Rules 2.22 to 2.30	Civil Specification								
	Paragraph 11.69	Immigration Specification								
<p>E13</p> <p>Do exceptions relating to funding for attendance at a Home Office interview continue to apply?</p>	<table border="0"> <tr> <td>Attendance at interviews</td> <td>Paragraph 11.102/103</td> </tr> </table> <p>Yes. You will not be required to obtain prior authority from NIAT to attend an interview in which one of the listed exceptions applies, however the justification for the attendance should be recorded on file. The reasonable costs for attending the interview will also be in addition to the relevant cost limits.</p>	Attendance at interviews	Paragraph 11.102/103							
Attendance at interviews	Paragraph 11.102/103									

	<p>The CW3B should be used solely for applications to extend the relevant cost limits in those cases outlined in paragraph 11.2 (b), (d), (f), (g), (h), (i) and (j).</p> <p>The CW3C should be used solely for applications to extend the relevant Disbursement limits in relation to matters attracting a Graduated Fee (see Rule 11.23/11.24)</p> <p>Controlled Legal Representation in relation to applications under section 103A of NIA 2002 for review continues to be funded at hourly rates, however the CLR Upper Cost limit does not apply. Please refer to paragraphs 11.2 (e) and 11.54 to 11.65 for further guidance on such matters.</p> <p>11.2 (k) confirms that matters calculated as “exceptional” within the Graduated Fee Scheme, will be paid at hourly rates, however this will be determined post reporting and assessment of such a claim and therefore an Upper Cost Limit does not apply.</p>
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<p>E17</p> <p>If I require a LH extension on a post Oct non-GFS case (e.g. Fresh claim where an original application for asylum was made prior to 1 October 2007) but I also require an extension to my CLR limit in relation to a bail application, can I apply for both at once on the CW3B form?</p>	<p style="text-align: center;">Applying to extend Financial limits Paragraph 11.68</p> <p>Yes. If you wish to apply for an extension to one or more of the Legal Help, Legal Help Disbursement or CLR Upper Cost Limits at the same time, you may do so on the same form – the CW3 B Imm. You should ensure that the costs incurred and requested under each of the limits are clearly distinguished and that sufficient information is available on the form to ensure that an informed decision may be made in relation to each request.</p> <p>If you believe it would be more appropriate to make such applications on separate Forms (e.g. One for the Legal Help aspect, the other for the CLR Bail work) you may do so.</p>
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<p>E18</p> <p>If a client is in detention, is my travel and waiting time to see the client included within either the applicable Graduated Fee or the appropriate Hourly Rate Upper Cost Limit?</p>	<p style="text-align: center;">Detained Cases</p> <p style="text-align: right;">Paragraph 11.106 (a)</p> <p>Whether the matter is claimable under the GFS or under hourly rates you may claim your reasonable costs for travel to the place of detention up to a maximum of 3 hours for a return journey; and your actual waiting time at the place of detention.</p> <p>For Graduated fee cases this can be claimed in addition to the Graduated Fee.</p> <p>For Hourly rates cases these costs can be claimed in addition to the applicable cost limit.</p> <p>Your actual travel disbursements e.g. train ticket, are also claimable. For Graduated Fee cases these can be claimed within your Stage 1 or Stage 2 Disbursement limits. For hourly rates cases, these can be claimed within either the Legal Help Disbursement limit of the CLR Upper Cost Limit, which ever may be applicable.</p>
<p>E19</p> <p>If a former UASC seeks to instruct me in relation to an “active review” for a matter in which the original application was made on/after 1 October 2007, would the matter be funded at hourly rates?</p>	<p>No. If a client instructs you in relation to an extension of leave, if they are still under 18 when you sign them up to Legal Help then the matter will be paid at hourly rates. If they are 18 or over when they instruct you then the matter will proceed under the Graduated Fee Scheme.</p>

<p>E20</p> <p>If I advise a client prior to attendance at the ASU, will I be required to obtain formal confirmation that they cease to instruct me in order that I may claim up the £100 for initial advice as per Rule 11.36 (c)(i)?</p>	<p>Legal Help Cost Limit Paragraph 11.36 (c)(i)</p> <p>No. If after a reasonable period (and no longer than 3 months) the client does not return to give further instructions then for the purposes of claiming any payment for the initial advice you take that as a cessation of instruction.</p>
<p>E21</p> <p>Can counsel's opinion be sought regarding the merits of a potential JR?</p>	<p>Not usually. Counsel's advice can be claimed under Legal Help in very limited circumstances, however, it would be expected that in the vast majority of matters the adviser with conduct of the case would be in a position to determine the merits of proceeding to Judicial Review.</p>
<p>E22</p> <p>Is 'legal advice' in relation to form filling (e.g. regarding the completion of an application for citizenship) funded under GFS?</p>	<p>Controlled Work paid at hourly rates Paragraph 11.2(g)</p> <p>As per paragraphs 11.2(g) and 11.99 of the Immigration Specification, legal advice in relation to form filling is funded under Hourly rates.</p>

<p>E23</p> <p>If a client's appeal before the AIT is successful but there are issues with a delay in receiving status papers or in correcting the details on the papers, would these costs be covered by the Stage 2b GF or the CLR Upper Cost Limit?</p>	<p>No, neither. The Stage 2b Graduated Fee covers all work up to advising the client on their rights and entitlements, however should there be any problems concerning a delay in receiving status papers, advising on an application for travel documents or in those matters in which there are errors on any such papers, a new matter start should be opened to cover any advice in relation to such matters. Any work in relation to legal advice in relation to form filling, applying for a certificate and/or complying with pre-action protocol will be funded under Hourly Rates as per Rule 11.2.</p>
<p>E24</p> <p>Prior to 1 October our organization did not have Devolved Powers, however from 1 October we have been granted Devolved Powers for CLR, do these also extend to certificated work?</p>	<p>No. For those suppliers granted Devolved Powers from 1 October 2007, these will only apply to CLR; you would still be required to make an application for an emergency certificate to NIAT using the App6 procedure. If you have been granted Devolved Powers prior to this date, then these powers would also extend to certificated matters.</p>
<p>E25</p> <p>If funding is granted by the IFA following an application for review of a refusal/withdrawal of CLR, will the outcome of the substantive appeal count towards the 40% substantive benefit Key Performance Indicator (KPI)?</p>	<p>Yes. These cases should be noted by yourselves and highlighted in any discussion concerning your KPI with your Account Manager.</p>

<p>E26</p> <p>If CLR is granted for the substantive appeal but later is refused in relation to a bail application whilst the substantive matter is still continuing, will the client still retain a right of review to the IFA of the decision to not extend the grant of CLR?</p>	<p>Review by the Independent Funding Adjudicator Paragraph 11.147</p> <p>Yes. The client retains the right of review to the IFA for a refusal or withdrawal of CLR in relation to Bail throughout the life of a case, even where funding has been granted for the substantive appeal.</p>
<p>E27</p> <p>If everyone has devolved powers to grant CLR what is the purpose of pages 5-6 ("for applications to the LSC only") in the 4 October 2007 Version of the CW2 Imm?</p>	<p>This has been retained, as although everybody will have devolved powers from 1st October 2007 there may at some stage in the future be a need for us to withdraw these from certain providers, where the power is being used inappropriately.</p>
<p>E28</p> <p>If the Home Office withdraws a decision in order to review the matter and issue a further decision, should the matter be kept open to advise on any subsequent decision from the Home Office?</p>	<p>No. A new endpoint code IG has been created for such a scenario, this allows for the matter to be reported as completed at this stage, with a further matter start to be opened to cover any work in relation to any subsequent Home Office decision.</p> <p>The new matter start will attract payment of either a new graduated fee or payment through hourly rates depending on the circumstances of the matter. Where applicable the upper costs limits will apply to the new matter start.</p>

<p>E29</p> <p>If I have been referred a NAM client through a LSC rota¹ and the client does not show up, can I claim any interpreter costs associated with the scheduled appointment, if so how would these be claimed on the CMRF?</p>	<p>Yes. You should use the following codes when reporting on the costs on the CMRF</p> <p>Matter type I code: IAXL Matter type II code: IGOL</p> <p>Stage Reached code: IE Outcome code: IX</p>
<p>E30</p> <p>I have attended upon a new client who has not himself received a 'legacy questionnaire' from the Home Office. Can I photocopy a blank legacy questionnaire and submit this to the Home Office on behalf of my new client?</p>	<p>The LSC will not fund (or grant extensions for) such work, which in all likelihood will not move the client's case forward. The Home Office and Case Resolution Directorate have given clear guidance as to how they are dealing with the legacy backlog. They have set out the priority and order of cases. The courts also have given guidance on this, see R (Housein & Others) v SSHD, S (Afghanistan). If your client requires advice in relation to their outstanding (legacy) case and/ or has received a legacy questionnaire or comes within the ambit of the court guidance then you may provide legal advice in relation to this.</p>

¹ Currently these operate in Leeds, Liverpool, Cardiff and Solihull

F. Review and Reconsideration & onward appeals

<p>F1</p> <p>In what circumstances can I claim up to £100 for assessing the merits of an application for review under s 103A of the NIA 2002?</p>	<p>If you have undertaken work for the client under Stage 2b of the Graduated Fee Scheme, Stage 2b covers the assessment of the merits of an application for review therefore the £100 limit <u>will not</u> be applicable.</p> <p>If the appeal before the AIT has been funded at hourly rates, then following a determination up to £100 can be claimed for the assessment of merits, this is in addition to the CLR limit of £1600/£1200.</p> <p>If a client wishes to transfer a matter to you following a negative decision by the AIT, if satisfied that the Previous Controlled Work provisions are met, then up to £100 can be claimed under Legal Help for assessing the merits of an application for review. If the merits assessment is positive, and the means assessment met, then CLR should be granted to cover the costs of an application for review subject to a s 103D costs order.</p> <p>However, we would certainly not expect further advice to be provided where <u>more than one</u> provider has previously assessed the merits of the case.</p>
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<p>F2</p> <p>How will an application to the AIT for permission to appeal to the Court of Appeal be funded following an appeal before a panel of 3 Judges?</p>	<table border="0"><tr><td data-bbox="1048 231 1256 300">Licensed work Claiming</td><td data-bbox="1559 231 1917 300">Paragraph 11.90 & 11.91 Paragraph 11.71</td></tr></table> <p>If the appeal before the panel was funded under Hourly Rates, then an extension of the £1600/£1200 CLR Upper Cost Limit should be sought to cover any further work in applying for permission to the AIT.</p> <p>If the appeal before the panel was funded under the Graduated Fee Scheme, Stage 2b does not cover the costs of applying for permission to appeal from the AIT as this work is funded at Hourly rates (see paragraph 11.2(d)). You would need to open up a new NMS, under Legal Help, to deal with the merits of making such an application. This would be paid under hourly rates and the £800/£500 limit (depending on the nature of the original application) would apply. Where the merits are met, CLR should be granted to actually make the application itself. Again, the upper costs limit of £1,600/£1,200 will apply.</p> <p>If a client seeks to instruct you following an appeal before a panel of 3 Judges, then subject to the provision of the Previous Controlled Work rules being met, you may undertake the assessment of the merits of any onward appeal under Legal Help. CLR may be granted if the relevant merits and means assessments are met to undertake work in relation to the application for permission. Again, the £1600/£1200 CLR Upper Cost limits will apply to this work.</p> <p>The application to the Court of Appeal itself and any appeal in the Court of Appeal will continue to be funded under the current provisions for Public Funding Certificates under Part C of the Funding Code.</p>	Licensed work Claiming	Paragraph 11.90 & 11.91 Paragraph 11.71
Licensed work Claiming	Paragraph 11.90 & 11.91 Paragraph 11.71		

<p>F3</p> <p>How will an application to the AIT for permission to appeal to the Court of Appeal be funded following an unsuccessful reconsideration hearing?</p>	<table border="0"><tr><td data-bbox="1048 233 1267 300">Licensed work Claiming</td><td data-bbox="1559 233 1917 300">Paragraph 11.90 & 11.91 Paragraph 11.71</td></tr></table> <p>If you have undertaken work for the client under CLR in relation to the reconsideration hearing, then the assessment of merits for an application for permission to the AIT and any subsequent application will also be funded without an Upper Cost Limit, at 'reasonable costs'. A s103D costs order will not be required to entitle you to claim the costs of any work in relation to the application under s103E, therefore the uplifted hourly rates will also not be applicable.</p> <p>The costs of any application should be reported as part of the claim for the review and reconsideration proceedings.</p> <p>If a client seeks to instruct you following an unsuccessful reconsideration hearing, then subject to the provision of the Previous Controlled Work rules being met, you may undertake the assessment of the merits of any onward appeal under Legal Help. CLR may be granted if the relevant merits and means assessments are met to undertake work in relation to the application for permission. Any work in relation to the application for permission will be funded without an Upper Cost Limit, at 'reasonable costs'</p>	Licensed work Claiming	Paragraph 11.90 & 11.91 Paragraph 11.71
Licensed work Claiming	Paragraph 11.90 & 11.91 Paragraph 11.71		

G. Claiming

<p>G1</p> <p>If an appeal proceeds to the Court of Appeal, can I keep the Controlled Work matter open to deal with any work that may be required parallel to a public funding certificate?</p>	<p style="text-align: center;">Concurrent Applications Paragraph 11.124</p> <p>No. It is unclear what “work parallel to a public funding certificate” is. If, after an initial application is made, other grounds are subsequently identified for bringing an application, this will constitute a fresh new Matter Start. The type of Matter Start (i.e. Asylum or Non-Asylum/Immigration Other) will depend on the type and nature of the specific application.</p> <p>For clarification, work undertaken in relation to advising the client on any reporting restrictions should be conducted under the certificate.</p> <p>Any work in relation to advising/applying for temporary admission or bail should be conducted under a new matter start.</p>
<p>G2</p> <p>Supplier Management System (SMS) contains references to the Unique File Number (UFN), what is this reference and who allocates it?</p> <p>Define SMS & UFN</p>	<p>The UFN will uniquely identify a case from a supplier office and will be used to identify any claims made in a matter under the GFS. The UFN is made up of the following:</p> <ul style="list-style-type: none">i) Case-start date – The start date of the legal aid caseii) Case ID – a 3 digit sequential number used by suppliers <p>The UFN will be derived by SMS from the information entered by the supplier in the “Case-start date” and “Case ID” fields on the CMRF in the format - ddmmyy/000.</p> <p>E.g. Case-start date – 011007 Case ID – 004, therefore UFN = 011007/004</p>

<p>G3</p> <p>SMS contains references to the Unique Client Number (UCN), what is this reference and who allocates it?</p>	<p>It will uniquely identify each client. The UCN is made up of the following:</p> <ul style="list-style-type: none">i) Client's date of birthii) Client's initialiii) First 4 letters of client's surname <p>The UCN will be derived by SMS from the information entered by the supplier in the relevant fields in the format – ddmm/yyyy/A/AAAA.</p> <p>E.g. 05051962/M/SMIT for client Mark Smith with a date of birth 05/05/1962.</p>
<p>G4</p> <p>SMS contains references to the HO UCN, what is this reference and who allocates it?</p>	<p>This is a unique number allocate by the Home Office to each individual when they make an immigration application. The number consists of a letter followed by a series of numbers (usually 7). The Home Office reference number will be allocated on the decision letter at the latest.</p> <p>E.g. H1234567</p>
<p>G5</p> <p>If a client's surname is less than 4 digits in length, will SMS accept this when generating the UCN?</p>	<p>Yes.</p>

<p>G6</p> <p>Will I be required to assign a Case ID retrospectively to matters opened prior to 1 October but that are billed on/after that date?</p>	<p>A case ID must be assigned for all matters claimed from November onwards. However as you will not have allocated a Case ID when opening the matter prior to October, you should use the following 3-digit code on all matters opened by you prior to 1 October, which are to be billed after this date:</p> <p>Case ID - 999</p>
<p>G7</p> <p>Is VAT included when SMS calculates whether a claim is exceptional?</p>	<p>No. The exceptional threshold is calculated net of VAT. All figures reported on the CMRF will be net of VAT. There is however a VAT field on the CMRF which providers will use to indicate whether VAT is payable, you should refer to the guidance previous provided in Focus 48 & 49 concerning VAT.</p>
<p>G8</p> <p>When submitting an exceptional case for assessment, can we submit our running record of costs in place of completing page 2 of the EC Claim 1?</p>	<p>Yes. Providing that the information contained within your Running record of costs contains the same level of detail as required on the EC Claim 1 form then you may attach your record in place of completing page 2.</p>

<p>G9</p> <p>In a Graduated Fee case, if I attend more than one Home Office interview, how should I report this on the CMRF given that the matter codes IALA and IMLA will only generate one additional payment of £290 per claim?</p>	<p>You claim the costs for any additional interviews on a separate line of the CMRF using the following Matter type I code IAXL</p> <p>You should enter multiples of the £290 additional payment value in the profit costs field for each additional interview that you attend.</p> <p>E.g. 3 interviews are attended, the additional payments for the 2nd and 3rd should be claimed together on one separate line to a combined value of £580 (2 times £290)</p> <p>The actual costs/time for attending these secondary interviews should be recorded with the main claim.</p> <p>On the second line, only the multiples of £290 should be entered, all other time/cost fields should be blank as this information will have been recorded on the main claim.</p>
<p>G10</p> <p>If I attend more than one Oral CMRH, how should I report this on the CMRF given that only O can be entered in the relevant field and this will only trigger 1 additional payment of £175?</p>	<p>You claim the costs for any additional Oral CMRHs on a separate line of the CMRF using the following Matter type I code IAXC.</p> <p>You should enter multiples of the £175 additional payment value in the profit costs field for each additional hearing that you attend.</p> <p>E.g. If 3 Oral CMRHs are attended, the additional payments for the 2nd and 3rd should be claimed together on one separate line of the CMRF to a combined value of £350 (2 times £175)</p> <p>The actual costs/time for attending these secondary CMRHs should be recorded with the main claim.</p>

	<p>On the second line, only the multiples of £175 should be entered, all other time/cost fields should be blank as this information will have been recorded on the main claim.</p>
<p>G11</p> <p>Can I claim an oral CMRH additional payment if I attend a Pre-Hearing Review under the GFS?</p>	<p>For each pre-hearing review that requires your attendance and that you attend, you will be entitled to claim an additional payment of £175. You should enter 'O' in the relevant field of the CMRF as you would if you had attended an Oral CMRH.</p> <p>Should you attend the AIT for more than 1 Pre-hearing review, you can claim the further additional payments as per the process set out in question G10 above.</p>
<p>G12</p> <p>How do the LSC define “legacy” cases for the purpose of reporting on the CMRF?</p>	<p>These are all cases in which claims/ applications were made to the Home Office prior to 1 April 2007. Whether the matter has been determined is not an issue.</p>

<p>G13</p> <p>Both matter type part II codes IRAR and IRHO state that these codes can be used in relation to a claim for a remitted reconsideration appeal by the Court of Appeal. Given these costs would not be subject to a s 103D costs order and therefore IRHO would appear applicable, in what circumstances would IRAR be used to report such costs?</p>	<p>IRAR should be used in relation to a reconsideration appeal following a remittal by the Court of Appeal where the original reconsideration appeal was subject to a s 103 D cost order. In those cases in which a s 103D cost order was not required for the original reconsideration appeal, Matter type part II IRHO should be used when reporting the costs of the remitted reconsideration hearing.</p>
<p>G14</p> <p>On/after 1 October if a client is detained in a prison/short term holding centre, which Matter Type II code should be entered on the CMRF, form to allow suppliers to enter the travel/waiting time in the relevant fields?</p>	<p>The Matter Type II code IIRC should be used with '10' entered in the 'Detention Centre ID' field of the CMRF (this indicates the place of detention as 'other').</p>
<p>G15</p> <p>For those cases in which the client is an over stayer, which Matter Type part II should be used when reporting the costs on the CMRF?</p>	<p>The Matter Type II code IGOL should be used.</p>

<p>G16</p> <p>Where two matter type II codes apply, which take precedent?</p>	<p>The most appropriate Matter Type II code should be used when reporting matters (i.e. the code that most accurately reflects the most significant legal issue dealt with.</p>
<p>G17</p> <p>What do we mean by advice time on the CMRF?</p>	<p>The advice time field would include time in relation to: attendance, preparation, advocacy, time spent in conference, routine letters and phone calls. The actual time spent should be reported on each occasion. If however, your running record of costs records a standard 6 minutes next to all routine letters and calls, then this is the figure that should be used.</p>
<p>G18</p> <p>In the counsel fee field on the CMRF, should counsel's actual costs be recorded?</p>	<p>Yes. You should confirm to counsel the costs that you will pay them from the amounts paid to you under the Graduated Fee and any additional payments. Counsel should also then confirm to you the value of the work they have undertaken if claimed at the appropriate CLR hourly rates.</p>
<p>G19</p> <p>What fields are picked up by SMS when calculating the Profit Costs of a case to determine whether a claim is exceptional?</p>	<p>In all Graduated Fee cases, SMS will pick up the values entered in the 'Net Profit Costs' and 'Net Counsel Fee' fields to ascertain the "value" of the work claimed.</p>

	<p>For those cases in which the client is detained, SMS will also include the costs claimed in the 'Detention Travel costs Excl. VAT' field.</p>
<p>G20</p> <p>The Unique Client Number may not be unique if there are more than 1 client with the same name and date of birth, will this prevent the code being of any use.</p>	<p>LSC software changes Q&A update issue 1</p> <p>No. We are aware that alone neither the UFN nor UCN would be unique, however combined they offer a very definite way of identifying a case and a client. In the absence of any pre-existing unique identifier of a client, this approach allows us to identify where a client has multiple issues, and will drive future commissioning of services.</p>
<p>G21</p> <p>If the client is homeless, what should I enter in the Post Code field on the CMRF?</p>	<p>LSC software changes Q&A update issue 2</p> <p>The opt-out for a client who is homeless must be 'NFA'</p>

<p>G22</p> <p>What codes can I enter in the Disability field on the CMRF?</p>	<p>SMS Guidance version 1 October 2007-10-04</p> <p>If a client considers himself or herself to have a disability please mark the disability monitoring column with the most appropriate code (these can be found in the above document). If the client has multiple disabilities please report the code that reflects the predominant disability. If the client does not consider himself or herself disabled then mark the column with the code NCD. Where a client does not wish to provide this information please mark the column with the code UKN.</p>
<p>G23</p> <p>Should the same Case ID be used if I am working on two separate matters for the same client?</p>	<p>Not necessarily. This is a decision for the supplier, as you will allocate the case ID. As it is a combination of the Case ID and the Matter Start date, which will derive a Unique File Number (UFN), the UFN should generally be different for each matter opened for the same client if the matter start dates are different.</p> <p>You should ensure however that the same UFN is not derived for any two matters, therefore the same client will require different Case IDs if more than one matter is opened on the same date.</p>

<p>G24</p> <p>When reporting an asylum matter opened on/after 1 October but where there has been a previous asylum application lodged prior to 1 April 2007, will I have to indicate this new matter as a legacy case when reporting on the CMRF?</p>	<p>Yes.</p>
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H. Bail

<p>H1</p> <p>Am I required to report my costs in relation to any bail work separately from the costs in relation to a substantive appeal if the same Upper Financial Limit covers them both?</p>	<p>This would depend on whether the matter commenced before 1 October 2007 and the bail work has been concurrent with an appeal under the same CLR form. If it has, then suppliers would not have to separate the costs as it is appreciated that their systems would not have been set up to record the bail preparation time separately from the appeal preparation time prior to 1 October.</p> <p>If CLR is granted on/after 1 October then any costs in relation to bail should be separated from any costs in relation to the substantive matter.</p>
<p>H2</p> <p>Where bail work is undertaken as part of the substantive matter, which commences on/after 1 October, are separate Legal Help and CLR forms to be signed?</p>	<p>No. Where bail work is undertaken on behalf of a client for whom you are already acting, a separate Legal Help or CLR form is not required. Other than for stand-alone bail matters (i.e. bail work on behalf of a client who is not already receiving advice in respect of a substantive matter), a fresh Matter Start should not be opened to cover bail work.</p>

<p>H3</p> <p>If I am taking instructions from a client in relation to an asylum claim that has yet to be decided, yet at the same time they are detained and a bail hearing is due to take place in the coming days, if the bail hearing is successful do I keep the CLR open in case the asylum claim is refused and there are merits to pursue an appeal?</p>	<p>Yes. CLR can be extended if required to cover any substantive appeal however the costs in relation to the successful bail hearing should be claimed using the relevant codes.</p>
<p>H4</p> <p>If a client has exhausted all appeal rights but CLR remains open to pursue a bail application, do I have to wait until the bail aspect has concluded before claiming the costs of the substantive appeal?</p>	<p>Civil Codes guidance – version 2, October 2007</p> <p>No. In this scenario you should submit a CLR Completed Matter claim for the substantive appeal work following the AIT determination, the bail work can be claimed upon conclusion of that aspect of work.</p>
<p>H5</p> <p>If I undertake bail work under both Legal Help and CLR, would I claim these on two separate lines of the CMRF?</p>	<p>Civil Codes guidance – version 2, October 2007</p> <p>No. All bail work should be claimed together on the same line of the CMRF.</p>

<p>H6</p> <p>If a client is successfully granted bail, do I stage claim the relevant costs and keep the matter open to cover the costs of any subsequent bail renewals?</p>	<p>Civil Codes guidance – version 2, October 2007</p> <p>No. Following a successful bail application a completed matter claim should be submitted. A new CLR Matter Start should be opened to cover the first and any subsequent Bail renewals where required.</p>
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<p>H7</p> <p>In a matter under the GFS, should I wish to pursue an application for bail to the Chief Immigration Officer, would the Stage 1 Graduated Fee cover this?</p>	<p>No, all bail work is to be paid for at hourly rates, for which the asylum/non-asylum Legal Help cost limits would be applicable.</p>
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<p>H8</p> <p>Does the £500 bail only limit include disbursements?</p>	<p>Upper Cost Limit – CLR paragraph 11.47 (c)</p> <p>Yes. The £500 CLR Upper Cost Limit is inclusive of disbursements and counsel fees. This limit is extendable upon application to NIAT.</p>
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<p>H9</p> <p>CLR has been granted for both a substantive asylum appeal and a bail application will the £1600 Upper Cost Limit automatically increase by £500 to £2100?</p>	<p>No. An automatic increase will not be provided; you should apply to NIAT for an extension of the Upper Cost Limit where appropriate. You should clearly distinguish the level of costs incurred in relation to both the bail and the substantive appeal, this will allow a greater understanding from the caseworker of exactly how the costs have been apportioned, the level of work undertaken and therefore the reasonableness of any further costs.</p>
<p>H10</p> <p>If an asylum matter is opened before 1 October 2007, where there is no appeal pending but CLR is granted for a bail application on/after that date, what would be the appropriate CLR Upper Cost limit?</p>	<p>Where CLR is granted on/after 1st October 2007 (but where the substantive matter was opened prior to 1st October) specifically to deal with a bail application, the upper costs limit will be £500. The key date here is the date the merits test for CLR was carried out. If on/after the 1st October the new bail only limit will apply. In these circumstances form CW3 (b) should be used should an extension be required.</p>

Useful web links:

1. Legal Services Commission – The Unified Contract

http://www.legalservices.gov.uk/civil/unified_contract.asp

2. The Unified Contract – Standard Terms February 2007

http://www.legalservices.gov.uk/docs/civil_contracting/unified_contract_standard_terms.pdf

3. Immigration Specification October 2007

http://www.legalservices.gov.uk/docs/civil_contracting/070813_Civil_Specification_Section_11_ImmigrationSpecification.pdf

4. Payment Annex August 2007

http://www.legalservices.gov.uk/docs/civil_contracting/070813_Civil_Specification_and_Family_Mediation_Part_B_-_Payment_Annex.pdf

5. NFP Unified Contract Transition process

http://www.legalservices.gov.uk/docs/civil_contracting/070813_NfPTransition.pdf

6. LSC Immigration Home Page

http://www.legalservices.gov.uk/civil/immigration_asylum.asp

7. LSC processing immigration applications – NIAT

<http://www.legalservices.gov.uk/civil/immigration/5528.asp>

8. LSC Immigration Policy Development

<http://www.legalservices.gov.uk/civil/immigration/5526.asp>

9. LSC Immigration Updates

<http://www.legalservices.gov.uk/civil/immigration/5527.asp>

10. Civil Legal Aid Eligibility

http://www.legalservices.gov.uk/civil/civil_legal_aid_eligibility.asp

11. Electronic Billing – LSC Online

<http://www.legalservices.gov.uk/civil/ebusiness.asp>

12. LSC – Certificated work – application forms

<http://www.legalservices.gov.uk/civil/forms/applications.asp>

13. LSC – Controlled work – application forms

<http://www.legalservices.gov.uk/civil/forms/contracting.asp>

Immigration & Asylum Frequently Asked Questions – October 2007 version 1

14. AIT Practice Directions – consolidated April 2007

http://www.ait.gov.uk/practice_directions/documents/2007_practice_dirs_30apr07.pdf

15. AIT forms and guidance

http://www.ait.gov.uk/forms_and_guidance/forms_and_guidance.htm

16. Solicitor's Regulatory Authority (SRA)

<http://www.sra.org.uk/home.page>

17. BIA Case Resolution Programme

<http://www.ind.homeoffice.gov.uk/applying/asylum/caseresolutionprogammeFAQs/>