

## **GUIDANCE ON SUBMITTING BILLS FOR ASSESSMENT IN THE PUBLIC LAW CARE FIXED FEE SCHEME – CARE AND SUPERVISION MATTERS**

This guidance only applies to cases involving s31 proceedings in Public Law Children cases i.e. those cases for which certificates have been issued that since 1 October 2007. All other work (Private Family work and all other Public Law work) will continue to be assessed in the same way as previously save for any changes that have been set out in the Cost Assessment Manual. This can be found on our website at [http://www.legalservices.gov.uk/docs/cls\\_main/Costs\\_Assessment\\_Guidance\\_Oct\\_07.pdf](http://www.legalservices.gov.uk/docs/cls_main/Costs_Assessment_Guidance_Oct_07.pdf)

This guidance should be read in conjunction with the Cost Assessment Manual and the guidance on completing the CLAIM 1A form (claim for costs in Public Law Fixed Fee Scheme Care and Supervision matters – certificates issued after 1 October 2007) which can be found on our website at [http://www.legalservices.gov.uk/docs/forms/CLSClaim1A\\_Guidance\\_Version\\_1\\_October\\_2007\\_\(40kb\).pdf](http://www.legalservices.gov.uk/docs/forms/CLSClaim1A_Guidance_Version_1_October_2007_(40kb).pdf)

The key changes in the assessment process for care and supervision matters are:

- Who assesses the claim
- When cases should be assessed
- What cases should be assessed
- The format of the bills sent to the court for assessment
- The new style taxation certificate

### **1. Who assesses the claim**

This is set out in the Costs Assessment Manual. There are changes to the previous position and these changes will apply to all family cases and not just to care and supervision matters.

The position is set out in the Cost Assessment Manual which states that:

*Any bill in respect of proceedings that have concluded in the magistrates' or Family Proceedings Courts, regardless of the amount of the claim, must be assessed by the Commission. There is again no option for detailed assessment by the courts (Paragraph 8.9 (b) of the Specification). Where a case has transferred from another court but concludes in the magistrate's court all the costs of the case will be assessed by the Commission in one exercise. This is a change to the previous position, where costs incurred in the other court prior to transfer might have been assessed by the court.*

*By contrast, where a case started in the magistrates' court but concludes in the county court or High Court, the county court/High Court assessment procedure applies.*

**Please note that this position is different to previous guidance.**

### **2. When should a case be assessed**

The Cost Assessment Manual sets out the new position in relation to when costs should be assessed. It states:

*There is no right to separate assessment of magistrates' court costs at the point of transfer (paragraph 8.17 of the Specification). At the conclusion of the case the full costs of the case must be taken into account in determining whether assessment is by the Commission or the court.*

*Where assessment is by the court, the court will assess all the costs of the case in one exercise (including costs in the magistrates' court). This is again a change from the previous procedure in which the costs in each level of court were assessed separately.*

In any event, in s31 cases attracting the standard fee it will only be at the conclusion of the case that it can be determined whether the case has become exceptional.

### **3. What cases should be assessed**

The Cost Assessment Manual sets out which cases should be assessed. It states:

*Assessable costs are defined under the Specification as costs that are claimed from the Community Legal Service fund other than by way of any Standard or Graduated Fee (paragraph 8.12). In most cases the 'assessable costs' will be total costs being claimed. However, in care proceedings under section 31 of the Children Act 1989 (as defined in the Family Specification) the 'assessable costs' will not include claims for the Graduated Fee levels themselves, but will consist of claims for costs as an Exceptional Case, Advocacy Services, appeals against final orders, counsel's fees and disbursements*

*If proceedings have been commenced and the costs exceed £2,500 the Commission may decide, on the application of the supplier or otherwise, to assess the costs where it considers that there are special circumstances, where detailed assessment would be against the interests of the funded client or would increase the amount payable from the fund (Paragraph 8.9(c)).*

*This is a change from the previous position, where such an assessment could be considered only at the request of the supplier. In cases other than section 31 care proceedings, the procedure will remain as before. Where a supplier submits a bill for assessment by the court in accordance with the above provisions, or intends to do so, the Commission will not seek to direct that a claim be prepared instead for assessment by the Commission. The Commission will only consider carrying out an assessment of costs that may exceed the normal assessment limit without the request of the supplier in exceptional circumstances, such as where, following an intervention into the supplier, the file relating to the certificate cannot be found, and a notional assessment is required to pay counsel's fees or account to the client for money held.*

*However, in section 31 care cases, where the £2,500 limit for assessable costs is exceeded solely by virtue of the claim for disbursements and/or payments to Counsel made under the Family Graduated Fee Scheme, the Commission will be prepared to consider this as special circumstances and the bill should be submitted to the Commission for assessment. Therefore, bills should only be submitted to the court where the supplier's profit costs (not covered by the Standard Fee) exceed £2,500.*

#### 4. How are the bills assessed?

Where payment is being claimed for a care and supervision matter the CLS CLAIM 1A form should be used.

Where a case is assessed by the Court then a bill of costs should be submitted to the Court for assessment in the usual way. The bill will need to reflect:

- All the costs of the case (even if a standard fee is payable for the preparation of the case and it is only the advocacy that is being assessed)
- Costs split between core costs and advocacy
- Any enhancements reflected separately

This is to enable the Courts to assess and the LSC to check whether:

- The advocacy costs are reasonable in light of nature and issues of the case
- Whether a case is exceptional and should be paid on hourly rates
- If a case is exceptional what enhancements are subsequently payable

There is no prescribed way for this information to be presented in the bill as long as all this information is clear from the bill. The information may for example be reflected by having the bill in two parts with one part for core costs and the second for advocacy or by having an additional column on the bill to reflect the advocacy and non-advocacy costs separately. We have discussed this with the judiciary, the Association of Costs Draftsmen and the providers of bill software who are aware of this, however you may wish to provide this information to your individual cost draftsmen so that they are aware.

Counsel's fees will continue to be paid in the same way and they will continue to be submitted on the CLAIM 5 to the LSC.

#### 5. New taxation certificate

There is a new taxation certificate to be completed. This has details of the costs split between core costs, enhancements and advocacy.

Under **Part A – Solicitors' Costs as assessed** the following information will need to be recorded:

Advocacy costs	
VAT	
Base profit costs allowed or standard fee (whichever is applicable)	
VAT	
Enhancement on costs (if any)	

The final certificate will be published by the Court Service.

When a bill is submitted to Court for assessment on the basis that it is an exceptional case and following assessment by the Court it transpires that the case is not exceptional then only the relevant standard fee (plus assessed advocacy costs) will be payable and this is the amount that should be entered onto the taxation certificate.