

Litigator Fee Scheme

Questions and Answers for service providers

Consultation

<p>It seems that the LSC is not aware of some of the issues raised by providers during this meeting. Who does the LSC consult with and why doesn't the LSC consult with solicitors for their thoughts and views?</p>	<p>The LSC has consulted extensively with the profession over proposals for a LGFS. Individual practitioners' views and views from solicitor representative bodies such as the Law Society had been sought prior to, during and after a formal consultation period.</p> <p>We have made our decisions on the LGFS policy after taking into account the feedback that we received from individual solicitors and representative bodies such as the London Criminal Courts Solicitors' Association (LCCSA), Legal Aid Practitioners' Group (LAPG) Association of Major Criminal Law Firms (AMCLF) and Independent Defence Lawyers (IDL).</p> <p>For details of who we have consulted with and when, please refer to the LGFS consultation paper and response to consultation, which can be found on our website at http://consult.legalservices.gov.uk/inovem/consult.ti/litigator.graduated.fee/listdocuments.</p>
<p>Have you liaised with the software suppliers regarding the new billing system?</p>	<p>Yes. Information about the LGFS, its impact on software suppliers and litigators has been sent by the LSC online team to software suppliers.</p>

Determining the date of a case

<p>How are you going to determine whether a case started on or after 14/1/2008?</p>	<p>The date of the representation order will determine whether the bill is to be assessed under the current regime or under the LGFS. This applies to both Representation orders granted either in the Magistrates or Crown Court, so irrespective of where the order is granted, it is the date on the order that is of significance.</p> <p>Cases with representation orders dated before 14 January 2008 must be treated under the old standard fee/ex post facto regime of billing.</p> <p>Cases with representation orders dated on or after 14 January 2008 must be dealt with under the LGFS.</p> <p>Solicitors will be required to enter the date of the representation order into the CCLF online system to set up and claim fees under the LGFS on a case.</p>
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Evidence of expenses / disbursements

<p>What evidence of expenses/disbursements will be required to support claims and is there a limit below, which such evidence would not need to be provided? Having made a claim online, sending paperwork in subsequently is duplication and where prior authority has already been granted and recorded on our system why would further evidence be required?</p>	<p>The LFT will require some documentary evidence from Providers such as invoices when paying claims for travel disbursements and hard copies of granted prior authorities, where appropriate, for expert fees.</p> <p>A limit will be set under which there will be no need to provide such documentary evidence. We will obtain advice from the NTT and CCU as to the most appropriate levels to set and this information will be published in the guidance to be published on 14 January 2008.</p>
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Interim claims

<p>Can we make interim claims for disbursements?</p>	<p>Yes</p>
<p>If we make an interim claim for a disbursement will we only be paid if we have obtained prior authority?</p>	<p>Its best to do so, because we cannot assess reasonableness at that time. If there is no prior authority the Litigator Graduated Fees Team will determine if its payable. They will take the same approach as the National Taxing Team (NTT). This will need to occur once the final bill has been submitted as the LFT will not have any information on which to base any assessment before that time.</p>

Online system

<p>What assurance can the LSC give providers that the Lit Fee online system will be working?</p>	<p>CCLF (Crown Court Litigator Fee) online is accessed through LSC online. This means that it uses the same log in procedure. CCLF online is a standalone I.T application/system that is accessed through a portal on LSC online. Therefore, apart from the log in, CCLF online will not be affected by other aspects of LSC online. It is never possible to provide concrete assurances on I.T. systems, but we can assure users that the system is not reliant on any other I.T. system apart from the log in to LSC online. This also means that if something ever goes wrong with CCLF online, it should not affect LSC online.</p>
<p>Until the recent changes were implemented LSC Online was working well however, given the current difficulties how can you guarantee that the system for claiming litigator fees will be operational and that providers will be paid? Why not delay implementation until problems with the system have been resolved?</p>	<p>See above. We will do what we can to ensure the CCLF is fit for provider use and for implementation.</p>
<p>How secure is the system?</p>	<p>The system is secure in so far as it will only be available to be accessed by the approved individual(s) from provider offices who have been identified as the most appropriate person(s) to use the system for crown court billing purposes.</p>

Paperwork

<p>How are you going to match up the paperwork?</p>	<p>When you submit the paperwork quote your firms name and account number. Also, if you set up your case on the I.T. system but subsequently wish to submit a paper based claim, a bill ID code should have been generated by the I.T system for your case, which you can quote on the paper based claim. The paper based forms will provide space to include this information.</p>
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Submitting a claim

<p>When submitting a final bill claim, it was stated that if the provider pressed send, they would not be able to amend the claim – providers felt this was too sudden and did not agree it was an efficient use of time to have to go through an appeals/amendment process if the claim was sent in error. Can providers have better security?</p>	<p>The system has been set up so that the provider inputs the final bill, then presses ‘submit’ and then a prompt box comes up to ask whether the provider is sure that they wish to submit a final claim.</p> <p>Following the presentations, we have had discussions with our I.T development team and have been informed that you will have an opportunity once your final bill has been submitted to ‘cancel payment, pending authorisation’. This means that if the Litigator Fee Team has not authorised your bill, you may cancel the claim you requested online and claim a new payment.</p> <p>The CCLF online user guide (available to download from our website on 4 February 2008) will nevertheless cover the fact that it is important that a final claim is only submitted once all aspects of the case have been inputted for claim (including all disbursements).</p> <p>Regarding using the appeals process to submit further claims after the final bill has been submitted – in practical terms this would involve providers requesting a review from the Litigator Fee Team (of the NCT). Providers would send a short proforma letter/email explaining the error and the LFT team member would log into the system and make the change through the ‘appeals’ screen. In effect, this may only take a few days at most. However, providers and the LSC will naturally wish to avoid this scenario if possible.</p>
<p>Can the additional payments box be available before you submit the claim?</p>	<p>The screens shown in the presentation are ‘prototypes’ and not screenshots so it may well be that on the final system the order is different. However, we understand the issue and will take it back to the developers. The CCLF online user guide will cover this point, especially if we are not able to make any amendment to the screens in time for implementation of the I.T.</p>
<p>What are the time limits for submitting claims?</p>	<p>Providers have 3 months from the end of the case to submit their bills under the LGFS.</p>

Submitting a claim cont ...

<p>Where there is more than one offence, which offence should the claim be based on, for example where a section 18 wounding becomes a section 47 offence? Does it matter at which point in the case there is a change from one offence to another?</p>	<p>Providers are advised to claim the most serious offence on any listed indictment on the case, as they will get more for serious cases.</p>
<p>How can we submit online when we haven't been given a password yet?</p>	<p>We have sent providers an e-let to make sure the right people within their offices have access to the new CCLF online system. They have been asked to email details of their preferred users to cds.directorate@legalservices.gov.uk by 14 January 2008. We will then arrange access for them to the CCLF system when the system goes live.</p> <p>To avoid similar problems to those encountered with LSC online at launch, we'll stagger usage during the first two weeks of going live. Access will be on a first-come, first-served basis.</p>
<p>Where there is a breach of court order what happens if the case has the same T number as the original case?</p>	<p>This circumstance will not arise.</p> <p>Breaches of Crown Court orders are a separate type of crown court case and will have a different number (S) to the original (T) case number.</p> <p>Claims of breaches of crown court orders may be made by solicitors through the CCLF online as a separate case type.</p>

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Payment

<p>Under the current system solicitor advocates send two separate bills for Mags and Crown Court work. How will solicitor advocates get paid under the new system?</p>	<p>Magistrates Court payments are made in the same way as before by SMP. LGFS payments are made by the LGFS system. Both will show up on separate lines on the providers' monthly statement. You should receive a payment for all LGFS claims in the next payment run after your claim has been authorised.</p> <p>If you are a solicitor-advocate and have done both the preparatory and advocacy work on the same case, you will get paid under 2 schemes. You would get paid for any preparatory/litigation work under the LGFS (if case has a representation order dated on or after 14 January 2008) and any advocacy work under the advocates graduated fee scheme by the Courts.</p>
<p>How long will it take from the date of submission to the date of payment? How will we be paid? Will it be paid via BACS and if so in which run?</p>	<p>Most cases will need to be authorized after their submission to the LFT, either electronically or on a paper based form. This will involve checking the details of a claim against Crown Court information held on the IT system at the courts. This may take a few days. Then the authorized claims will be sent for payment. The claims will be paid in the next available BACS payment run. It is likely that payments will take any where between 2 weeks and 6 weeks. Firmer payment details will be provided in the guidance material, which will be available to download from the website on 14 January 2008.</p>
<p>How will we be able to allocate the money to a specific case/client? Will the payment be on a case by case basis and include the bill ID?</p>	<p>The payments will be on a case by case basis and should include the bill ID.</p>
<p>What are the rates of pay?</p>	<p>Final rates have been published in the Regulations exclusive of V.A.T. The regulations can be found at http://www.opsi.gov.uk/si/si2007/uksi_20073552_en_1</p>
<p>Is the advocates fee going to be paid in the same way?</p>	<p>This has not changed since April 2007. You will continue to be paid as now, through the courts.</p>

PPE

<p>How are you calculating PPE? Who is deciding the number of pages?</p>	<p>PPE includes all witness statements, documentary and pictorial exhibits, records of interviews with the assisted person, and records of interviews with other defendants, which form part of the committal or served prosecution documents or which are included in any notice of additional evidence.</p> <p>PPE does not include any document provided on CD-ROM or by other means of electronic communication, 'unused' material or material generated by the defence in their preparation of the case.</p> <p>We are currently examining the possibility of including a method of including additional PPE that does not form part of the paper bundle such as electronic evidence. We will keep you up to date on progress as and when we are informed of developments.</p> <p>Where any or all of the evidence normally served as part of the trial bundle is served in electronic form only and the Litigator Fee Team considers it reasonable to make a payment in excess of the graduated fee payable for evidence normally served on paper, an additional special preparation fee may be paid to the litigator.</p> <p>All interested parties (including the Ministry of Justice, Law Society, CPS, Bar Council) have discussed this issue and continue to investigate the issues around paying for electronic evidence not served as part of the bundle.</p>
<p>How will providers get access to information about the number of prosecution pages according to the court (for claiming purposes)?</p>	<p>Providers may wish to check with the Court before submitting their bill under the LGFS. Courts are likely to be able to establish the PPE of a trial case once the case has concluded</p>
<p>If our fees are reduced how do we see what is on the court file?</p>	<p>We will send a copy of the court's information.</p>

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Reviewing claims

What experience of costs matters will LSC caseworkers dealing with claims have?	The staff recruited to the Litigator Fee Team has the necessary skill and experience to process and review the Litigator Fee payments from implementation.
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The fee

<p>The scheme appears to be based on how barristers operate. Does it take account of and include allowances for things like unused material and tracing witnesses for example?</p>	<p>The introduction of the LGFS brings the fee scheme for Crown Court litigators in line with advocates who have been paid a graduated fee scheme since 1997. However, it is based on how solicitors and not barristers operate.</p> <p>Under the LGFS, litigators are paid a graduated fee for Crown Court cases that are not contracted as Very High Cost Cases. The fee is determined by certain 'proxies' or indicators of complexity such as case type, offence type, length of trial, the number of pages of prosecution evidence (PPE) and the number of defendants represented by the office on a case.</p> <p>Enhancements have been built into the LGFS – payment for unused material is built into the LGFS fees. Therefore, each base fee includes an element of remuneration for unused, third party material, conferences with client, conferences with counsel etc commensurate with an average case of that offence type, trial duration and size of prosecution case (PPE).</p>
<p>If spend 4 days in court for legal argument before the jury is sworn can these days be included in the trial length?</p>	<p>All days in court that pertain to the trial length are being set out in full for inclusion in the guidance material. This material is to be published on the LSC website on 14 January 2008.</p>
<p>What about section 51's. Will they be part and parcel of the litigator's fee scheme?</p>	<p>Yes – the LGFS fees include payments for section 51 hearings.</p>

Unused materials

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<p>Why won't providers be able to claim for reading unused material? Is it right that if providers prepare the same number of pages for a cracked trial and a trial that runs that they would only receive half the amount of money for a cracked trial?</p>	<p>Unused material is modelled within the base fees of the LGFS fee. This means that each claim will receive an element of remuneration for unused material. Very large cases (25 days and over), which have over 10,000pp of unused and meet one of the VHCC criteria, may 'escape' to the VHCC system.</p> <p>Where cases crack, practitioner will receive a cracked trial payment plus an uplift for PPE over and above the threshold (please see the consultation documents and response to consultation for more details about the threshold). Some cracked trial base fees are very similar to the base fees for 1 and 2 day trials for the same offence type.</p>
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