

Family Help - Private Fee Scheme

Questions and answers for service providers

This Q & A replaces the previous version dated 5 March 2007 and has been updated with additional questions received. Any new questions or questions which have been expanded are in red.

The new fee levels

How will the new scheme work?	<p>The new scheme comprises four levels:</p> <table border="1"> <thead> <tr> <th>Level</th> <th>Name of Level</th> <th>Previously</th> </tr> </thead> <tbody> <tr> <td>Level 1</td> <td>Legal Help</td> <td>Controlled Work</td> </tr> <tr> <td>Level 2</td> <td>Family Help Lower</td> <td>Controlled Work</td> </tr> <tr> <td>Level 3</td> <td>Family Help Higher</td> <td>Certificated Work</td> </tr> <tr> <td>Level 4</td> <td>Legal Representation</td> <td>Certificated Work</td> </tr> </tbody> </table> <p>From 1 October 2007, fixed fees will only be introduced for Levels 1 and 2. At these levels, you claim once using the CMRF (Controlled Matter Reporting Form).</p> <p>From 1 October 2007, Level 3 or 4 are covered by a certificate and continue to be paid under hourly rates.</p> <p>We plan to introduce fixed fees for Levels 3 and 4. This will be the subject of a separate consultation issued in September.</p>	Level	Name of Level	Previously	Level 1	Legal Help	Controlled Work	Level 2	Family Help Lower	Controlled Work	Level 3	Family Help Higher	Certificated Work	Level 4	Legal Representation	Certificated Work
Level	Name of Level	Previously														
Level 1	Legal Help	Controlled Work														
Level 2	Family Help Lower	Controlled Work														
Level 3	Family Help Higher	Certificated Work														
Level 4	Legal Representation	Certificated Work														

<p>When will 'General Family Help' end?</p>	<p>On 1 October 2007. Level 2 will cover some of the work included under General Family Help. The rest of what was formerly General Family Help will continue to be paid under a certificate (on hourly rates) but will now be classified as Family Help (Higher).</p> <p>Work done in preparation for and at a final hearing will still be classified as Legal Representation.</p> <p>If a Legal Help matter was started before 1 October, you cannot start Family Help (Lower) on the same matter after that date. However, if you started a Legal Help matter prior to October but need to undertake work previously covered by General Family Help, you can apply for a certificate.</p> <p>Formerly, the certificate would still be Family Help Higher. However, there is discretion for it to cover what would have been further negotiation under General Family Help.</p>
<p>What happens to 'Help at Court' and 'Help with Mediation'?</p>	<p>Both cease to exist as levels of service from 1 October with the introduction of the new Level 1 and 2.</p> <p>Help at Court was used rarely during family cases, usually to assist a respondent in injunction proceedings.</p> <p>The Level 2 fee also covers work previously done under Help with Mediation although Level 1 covers advice about the mediation process. However, a Help with Mediation certificate cannot be granted in a family case after 1 October 2007 even if a client signed a Legal Help form prior to 1 October.</p> <p>There will be cases where a Legal Help matter was started prior to 1 October 2007 but no Help with Mediation certificate was granted before that date. In these cases further assistance in relation to the mediation may be given by the solicitor, either under the existing Legal Help form or by an application for Family Help (Higher) where appropriate.</p>

<p>What cases can be exceptional at Level 1?</p>	<ul style="list-style-type: none"> • Domestic violence (emergency representation can still be applied for in the same way) • Divorce only issues • Child abduction. <p>No fee at Level 2 is therefore available for these matters listed above.</p> <p>No other matters can be exceptional at Level 1 only. It would be expected that if these matters would move to level 2 where there was a significant family dispute.</p>
<p>How is the exceptional case limit calculated at levels 1 and 2</p>	<p>In determining whether the case escapes from the standard fee, the time spent both under Legal Help and Family Help (Lower) in the same matter should be taken into account. If assistance is therefore being provided under Legal Help and then Family Help (Lower) for both finance and children issues, the case will only escape from the standard fee if the total fees for all aspects on an hourly rate basis are at least 3x the aggregate of the Legal Help fee, the Family Help (Lower) fee for children and the Family Help (Lower) fee for finance.</p>
<p>When can I open a new matter start when already advising a client in a family matter?</p>	<p>The definition of matter starts is contained in the Unified Contract Civil Specification at paragraphs 5.7 to 5.22 and in paragraphs 10.67 to 10.71 of the Family Specification. Generally more than one matter start cannot be opened for a client unless the client has more than one separate and distinct legal problem. This will either be where advice is required in a different SQM category or where if legal proceedings were started or other remedies pursued for each problem they would be issued and heard or deal with separately. In addition, each problem must require substantial legal work that does not address the other problem.</p> <p>In addition, the Family Specification states that separate matters should only be opened when they relate to family disputes which are entirely separate (usually because they arise out of different family relationships) and which would, if they resulted in proceedings, be issued and heard separately.</p> <p>Therefore, if a client requires a divorce and has related issues in relation to finance and children only one new matter start at Legal Help should be opened. However, the children and finance issues could both move to Level 2 provided that the criteria were met for a significant family</p>

	<p>dispute for both issues and a separate fee claimed for both.</p>
<p>How does work progress from Level 1 to Level 2?</p>	<p>Generally, Level 1 covers:</p> <ul style="list-style-type: none"> • the initial client meeting and • any work immediately flowing from the meeting such as: <ul style="list-style-type: none"> ○ a letter of advice following the meeting ○ a telephone call on behalf of the client or ○ writing to the other party on behalf of the client to progress the case. <p>Level 2 covers:</p> <ul style="list-style-type: none"> • further negotiation and is payable where there is a significant family dispute relating to children and/or finance that requires work beyond the initial interview and follow-up. <p>The <u>family contract specification</u> contains more information about these two levels of advice as does the <u>family decision-making guidance</u> at paragraphs 20.10 and 20.11.</p> <p>One of the criteria for a significant family dispute contained in the Family Specification is that the dispute must involve or require more than one meeting with the client whether or not followed up by written or telephone advice. Phase 1 of the fee scheme is being reviewed and as part of this review not only the fees themselves but the specification and guidance around how the fee schemes operate will be reviewed.</p> <p>There is a section on page 5 of the CW1 to be completed by the solicitor confirming that the case has moved to level 2 and that the appropriate criteria have been met. No further test for eligibility is required at this point.</p>
<p>Can I claim Level 1 and 3 without claiming Level 2?</p>	<p>Yes, you should claim for the Levels used. In some cases, for example, negotiation and work under Family Help (Lower) may not be appropriate and work done completing the application for a public funding certificate will be carried out under Legal Help.</p>

<p>Can I claim for preparing a consent order in financial matters at Controlled Work level and will this be a Level 1 or Level 2 fee?</p>	<p>Work done under Legal Help and Family Help (Lower) will cover the preparation of a consent order and in addition, court fees are an allowable disbursement under Level 2 for the purpose of obtaining a consent order.</p> <p>Where there are assets, there is negotiation and agreement on ancillary relief issues which is recorded in a consent order and the other criteria for Level 2 are satisfied, then a Level 2 fee will be appropriate and a settlement fee will be payable. However, where there are no assets at all the criteria for level 2 is unlikely to be met as there is no significant family dispute for the purposes of the Family Specification. In particular paragraph 10.55 (iii) states that Family Help (Lower) may not be granted where the dispute, if unresolved, would be unlikely to lead to family proceedings. If advice is required this can be given under Legal Help. If the client did wish a consent order to be filed with the court then the court fee cannot be paid under level 1 as the exception to the payment of court fees at Controlled Work only applies to level 2. The client, could, however, apply for a fee exemption in the usual way.</p>
<p>How does the statutory charge apply for Controlled Work?</p>	<p>Where the work was commenced after 1 October 2007 and completed under Legal Help or Family Help (Lower) then the statutory charge will not apply unless the costs in the case are exceptional and are claimed at an hourly rate. In these cases, the charge will apply to costs above the exceptional case threshold ie the actual costs incurred above 3x the standard fee. In these cases as the matter is Controlled Work the charge will operate in favour of the supplier.</p>

<p>Can the statutory charge be waived for Level 1 and 2 work?</p>	<p>While the way that the statutory charge is calculated at Level 1 & 2 (Controlled Work) has changed, the rules around the application of the charge are the same.</p> <p>Therefore, the matrimonial home will continue to be exempt and you will retain your devolved power to waive either all or part of the charge in circumstances where its enforcement would:</p> <ul style="list-style-type: none"> • cause grave hardship or distress to the client; or • be unreasonably difficult because of the nature of the property.
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If a case covers both children and finance issues but only one of these proceeds to Level 3, would the statutory charge apply to both aspects of the case?

Where the charge arises under a certificate, it will apply to the relevant costs under that certificate plus costs in connection to previous advice provided in relation to these proceedings.

Therefore, where Level 1 and Level 2 have been provided, the appropriate Level 1 and 2 fees, or exceptional case payment, will form part of the charge together with relevant costs under the certificate.

If a settlement fee has been paid at Level 2, however, this will be exempt from the charge.

How will you pay for emergency applications?

You can't claim a separate fee for providing Level 1 or 2 if Emergency Family Help or Emergency Representation is granted on the date of the first meeting.

However, all work carried out on that day can be claimed under the certificate.

Settlement fee

<p>How does the settlement fee work?</p>	<p>As set out in section 10.63 of the <u>family contract specification</u>, you should wait at least 21 days before claiming the settlement fee.</p> <p>It will be your responsibility to report to us, within six months of the date of settlement, if you're aware that the settlement has broken down.</p> <p>Where your client changes their solicitor, we accept that you may not be aware of this or of a settlement breakdown.</p> <p>The settlement bonus is not available for exceptional cases as these will be paid hourly rates and the policy behind the settlement bonus is to encourage early settlement. The settlement bonus should also be excluded when calculating whether a case is exceptional.</p> <p>You will continue to receive your standard monthly payments and any recoupment will occur during the general reconciliation of payments.</p>
<p>Do I have to disclose the settlement bonus to The Law Society?</p>	<p>The Solicitors Regulation Authority now governs your conduct with the client. The information that should be provided to clients in relation to the costs of the case is set out in Rule 2.03 of the Solicitors Regulation Authority code of conduct.</p> <p>You do have an obligation to advise your client of the:</p> <ul style="list-style-type: none">• basis and terms of the charges• likely payments which may need to be made to others and• the client's potential liability for any other party's costs. <p>In addition, if you are acting for a publicly funded client, information must be provided on the circumstances in which the client may be liable for costs and the effect of the statutory charge.</p>

<p>As written agreement for the settlement bonus isn't required, what should appear on the case file?</p>	<p>In ancillary relief and other finance cases, settlement will be evidenced by a consent order or formal written agreement under paragraph 10.62 of the Family Specification.</p> <p>This may not be appropriate in Children Act cases and, in these cases, settlement will usually be evidenced by the exchange of letters on the file showing that agreement was reached.</p>
<p>When is the date of settlement taken from?</p>	<p>The date of settlement will be taken from the date on which settlement was concluded, i.e. the date on which agreement was reached between the parties or the consent order made. It is not the date on which the file may have been closed or billed by you.</p>
<p>If my firm settles a matter and claims the Level 2 settlement fee but the client subsequently sees another firm to get a 'sense check' on the settlement, do I forfeit our settlement fee?</p>	<p>Even if it were appropriate for the second firm to open a new matter start, this would not mean that the settlement fee was automatically reclaimable from you. You would only lose your settlement fee if the settlement broke down (paragraph 10.63 of the Family Specification).</p>
<p>How do I report cases where the settlement has broken down</p>	<p>If the solicitor becomes aware that the settlement has broken down then the case should be reported afresh ie as if it had never previously been reported and you should report all work conducted (including that may have already been reported). The report should be made manually, either by email or in correspondence, to your account manager. That fresh claim will overwrite and replace the initial claim. These cases cannot be reported online as supplemental claims are not recognised. For clarity, all data fields must be reported. This includes all codes and any elements that are unchanged.</p>

Operational questions

<p>If claims made after 1 October comprise both 'old' work and 'new' work (ie work started both before and after the 1st) will there be separate CMRFs or will the start date of the case be sufficient to let the LSC know what fee is appropriate?</p>	<p>The same CMRF should be used for cases started before and after 1 October. The start date of the case will be sufficient to determine whether the fee payable will be the new fixed fee. The claim for levels 1 and 2 should be made at the same time.</p>
<p>What happens when I have a matter which has started prior to 1 October. Can I move on to Level 2?</p>	<p>The new specification applies only to matters commenced on or after 1 October. Therefore if a matter has been opened for a private law case and a Legal Help form signed prior to 1 October, Family Help (Lower) (Level 2) cannot be commenced in relation to the same matter after that date, although you may apply for Family Help (Higher) provided that the relevant Funding Code Criteria are met. However, if Legal Help has been started for public law work prior to 1 October you may commence Family Help (Lower) relating to the same matter where appropriate. In this situation Family Help (Lower) would be claimed as a separate matter start.</p>
<p>Will drafting the bill be included in the fixed fee?</p>	<p>Drafting of the bill is preparation work and the costs of this have been included in the fixed fee.</p>
<p>When will software updates be available for fee claims, etc.?</p>	<p>Software suppliers have been notified of the details of the new fee schemes and are updating software accordingly. Any queries should be directed to the your own software supplier.</p>

<p>What happens when a matter has been closed and claimed but further work is necessary and a separate matter start is not justified?</p>	<p>The <u>Civil Specification</u> at 5.17 deals with what work can be claimed in these circumstances.</p> <p>The work already undertaken and the further work should be taken into account in determining whether the matter is exceptional and escapes from the standard fee. If it is agreed to pay this matter as an exceptional case, any payments already made by way of standard fee will be taken into account. Further disbursements may also be claimed as part of the matter where appropriate. Where the matter has already been paid as an exceptional case the further work is paid on an hourly rate subject to assessment.</p> <p>In these cases the procedure is similar to that for reporting matters where a settlement has broken down. A new matter start should not be claimed. The case should be reported afresh. This means that the case should be reported as if it had never previously been reported and you should report all work conducted (including that already reported). This should be reported manually to your account manager and not online as supplemental claims will not be recognised by the system. The fresh claim will therefore replace the initial claim. For clarity all data fields must be reported including codes that remain unchanged. Where a case is exceptional the entire claim should be reported to the relevant exceptional case team as with any other exceptional case.</p>
<p>What are the hourly rates that are applied for private law matters after 1 October?</p>	<p>For all work commenced after 1 October 2007 hourly rates and standard fees for family matters are now set out in the Payment Annex to the Unified Contract.</p> <p>The standard fees for public law are contained in Table 2 and for Controlled Work family private law in Table 3. Hourly rates for Legal Help and Family Help (Lower) to be used in calculating whether a case has escaped the standard fee are set out in Table 7.</p> <p>The hourly rates applied for certificated family matters are contained in Tables 9 and 10. Table 9(a) applies to care proceedings and Table 9(b) applies to all other matters within the Family Category with the exception of proceedings under the Inheritance (Provision for Family and Dependents) Act 1975, the Trusts of Land and Appointment of Trustees Act 1996 and proceedings for judicial review. These are payable at the non-family prescribed rates in Table 10.</p>

Miscellaneous questions

Are profit costs to implement an order (financial) paid on top of the fixed fee?	Family Help Lower will cover work carried out to implement an agreement or consent order and this work will therefore be carried out under the fixed fee.
Will I need to claim separately for disbursements payable to implement conveyancing?	<p>Disbursements are not included in the standard fee and this includes disbursements eg Land Registry fees which are paid separately.</p> <p>Conveyancing services are excluded from the scope of the Community Legal Service (paragraph 1(b) of Schedule 2 to the Access to Justice Act).</p> <p>However, the previous Lord Chancellor directed that, where it is necessary to provide conveyancing services to give effect to a court order in any funded proceedings or to an agreement reached to settle or avoid family proceedings, the work to implement an agreement will come within scope.</p> <p>Level 2 extends to work to implement an agreement or consent order including any necessary conveyancing work.</p>

<p>When can I claim the petitioner divorce fee?</p>	<p>You can only claim this for assisting a petitioner in a stand-alone divorce matter where no other level of service is required for any family dispute relating to the proceedings. For example, it can't be claimed in conjunction with Level 2. The enhanced Level 1 fee can also be claimed for stand-alone judicial separation, nullity and dissolution of civil partnerships when assisting the petitioner and the Criteria set out in paragraph 10.53 of the <u>Family Specification</u> are met.</p>
<p>For domestic violence cases, how is a police investigation defined for mediation exempt cases?</p>	<p>The exemption from the requirement to consider mediation applies where allegations have resulted in either:</p> <ul style="list-style-type: none"> • police investigations or • the issue of civil proceedings for the protection of the applicant within the 12 months prior to the application for funding <p>In this context, a police investigation is when a report has been made to the police who have attended the relevant premises or interviewed any parties (regardless of any arrest or charge). You don't have to obtain any documents to confirm that the exemption applies.</p> <p>The amended <u>Family Decision Making Guidance</u> defines a police investigation at paragraph 20.16. This is available on the family pages of this website and will be published in the next update to the Legal Services Commission Manual.</p> <p>As was previously the case, where an emergency application for Legal Representation is appropriate because an urgent application needs to be made to the court to protect the client a CLS APP7 is not required.</p>
<p>Will the LSC continue to apply a condition requiring proceedings to be commenced in the family proceedings court where it has jurisdiction?</p>	<p>No. We shall no longer be applying this condition. You should consider whether the family proceedings court has jurisdiction and if so issue proceedings there – unless there are particular or sufficient reasons to commence the proceedings in another level of court. Increasingly the court will in any event “gatekeep” cases to ensure that they are dealt with in the appropriate court.</p>

From 1 October 2007 a client who is receipt of Legal Help will no longer be automatically exempt from court fees. Can the fee for filing a divorce petition be met as a disbursement under Legal Help?

No. Court fees are not allowable disbursements under Controlled Work and this has not changed in the new specification. The only exception in family cases is where an application is made under Family Help (Lower) for a consent order in accordance with the Family Specification. From 1 October under new court rules the fact that a client is in receipt of Legal Help will no longer carry an automatic exemption from court fees and every applicant will be assessed as to whether they are financially eligible for a full or partial remission based solely on their income. If a client is not eligible for a full remission then they will need to pay the full or part fee as determined by the court. Full details as to when a client will be eligible for full remission and how the court will deal with these applications is in the court leaflet EX160A which can be found on the court service website at www.hmcourts-service.gov.uk

Further details as to the evidence of financial eligibility accepted by the court when applying for remission from fees can be found in the documents section at www.legalservices.gov.uk/civil/fains/legal_guidance_updates.asp

In cases where the client is in receipt of Legal Help and an application is filed with the court (usually a divorce petition) the solicitor will not be placed on record as acting for the client. The solicitor will be advising and assisting the client only under Legal Help and the client will, for court purposes, be acting in person. This position has not changed as a result of the amendments to the fees rules.