

# **Legal Services Commission**

## **Immigration & Asylum**

### **Frequently Asked Questions – November 2010 version 6**

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**A. Provisions for cases paid under the Standard Fee Scheme**

<p><b>A1</b></p> <p><b>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?</b></p>	<p>Stage 2: Controlled Legal Representation                      Paragraph 8.65</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>
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## B. Provisions for cases paid at Hourly rates

<p><b>B1</b></p> <p><b>What is the LSC definition of an “unaccompanied” asylum-seeking child?</b></p>	<p>An unaccompanied asylum-seeking child:</p> <ul style="list-style-type: none"><li>• Is applying for asylum in their own right; and</li><li>• Is separated from both parents and not being cared for by an adult who by law or custom has responsibility to do so.</li></ul> <p>This definition is also that currently used by the Border and Immigration Agency.</p>
<p><b>B2</b></p> <p><b>If the Home Office disputes an UASC’s age, would this matter continue to be claimable at hourly rates?</b></p>	<p>Yes. If you continue to act the case will be funded at hourly rates</p>
<p><b>B3</b></p> <p><b>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 Standard Fee Scheme?</b></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 Standard Fee Scheme.</p> <p>Should the Home Office wish to interview the client, you may claim the relevant additional payment for attending the interview with the client.</p>

<p><b>B4</b></p> <p><b>I have been instructed by an Unaccompanied Asylum Seeking Child (UASC) after 15 November, however I am yet to have received my completed enhanced CRB check – am I able to represent the client under the Standard Civil Contract?</b></p>	<p>Caseworkers para 8.11 (d)</p> <p>No. Under the Standard Civil Contract para 8.11 (d) it is mandatory that any adviser who is seeking to act for a UASC must had an enhanced CRB check in the last 24 months, therefore if you have not received the outcome of the check as yet then you cannot act under this contract for any new UASC clients.</p>
<p><b>B5</b></p> <p><b>Does the requirement to have completed an enhanced CRB check in the last 24 months also extend to acting for UASCs where the matter was opened prior to 15 November 2010?</b></p>	<p>No. This requirement only relates to matters opened under the 2010 Standard Civil Contract; matters opened under the Unified Civil Contract continue to be governed by the terms of that contract.</p>



<p><b>C3</b></p> <p><b>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?</b></p>	<p>No. 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 standard 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><b>C4</b></p> <p><b>From 15 November 2010, where I participate in the use of the Voluntary Appointment System or where I am part of an LSC rota, can I continue to claim for any “no shows” which may occur?</b></p>	<p>No. From 15 November the LSC will no longer fund any form of reimbursement where clients do not attend their first appointment with you.</p>
<p><b>C5</b></p> <p><b>Which cases are subject to the Early Legal Advice Process?</b></p>	<p>The ELAP applies to all new asylum cases routed to the Midlands and East of England (MEE) region prior to asylum interview that are:</p> <ul style="list-style-type: none"><li>✓ Singles</li><li>✓ Families</li><li>✓ Unaccompanied Asylum Seeking Children (UASCs)</li></ul> <p>Cases which are not subject to ELAP include, but are not limited to:</p>

	<ul style="list-style-type: none"><li>- Applications for asylum made prior to 15 November 2010</li><li>- Cases transferred into the MEE region post substantive interview</li><li>- Cases outside of MEE region</li><li>- Third Country Unit Cases</li><li>- Detained Fast Track Cases</li><li>- Fresh Claims (including those where the original application was made under ELAP)</li><li>- Prison Cases</li></ul>
<p><b>C6</b></p> <p><b>Can all LSC providers act for clients who are subject to ELAP?</b></p>	<p>Work subject to Exclusive Schedule Arrangements Para 8.5-8.6</p> <p>No. In order to act for clients who are subject to ELAP, and therefore are resident in the Midlands and East of England region, you must hold a contract schedule to provide advice within that Procurement Area. As per 8.6 (a) of the 2010 Standard Civil Contract, the only exception to this is where you have acted for a close family member of the client and knowledge of the family's circumstances is material to the new Client's case.</p> <p>Public funding is not available for these matters unless you either hold a schedule for the MEE region or the above exception is met.</p>

<p><b>C7</b></p> <p><b>Where attendance at interview is not in the scope of public funding, can I send an interpreter to the interview in my absence?</b></p>	<p>No. An interpreter attendance at a Home Office Interview (where the interview is out of scope) is also clearly out of scope under Paragraph 1 Schedule 2 AJA as this refers to ‘services’ in relation to attending an interview, not specifically or only legal representative’s attendance.</p> <p>Furthermore, where the interview is in scope (e.g. UASC/Mental Illness etc) you can only claim for a disbursement linked to the legal advice at the event. So if a legal representative does not attend the event themselves then the interpreter disbursement is not claimable.</p>
<p><b>C8</b></p> <p><b>I have a schedule to provide advice in matters subject to the ELAP; can I instruct an interpreter to attend the Home Office interview?</b></p>	<p>No. Under ELAP we are seeking to test the use of one interpreter at the Home Office interview, namely the interpreter provided by the UK Border Agency. As a result funding will not be available for the attendance of an additional interpreter at the interview.</p> <p>As per C7 above, under ELAP only the attendance of a legal representative at a Home Office interview has been brought back into scope, therefore the funded attendance of an interpreter continues to be out of scope.</p> <p>The only exception to this will be in relation to UASC matters. In these cases the normal funding arrangements apply.</p>
<p><b>C9</b></p> <p><b>How are ELAP cases funded? Are they subject to hourly rates or the Standard Fee Scheme?</b></p>	<p style="text-align: center;">Rates of payment                      para 8.166</p> <p>Under ELAP, the Legal Help stage of a case is payable under Hourly Rates and subject to the relevant cost limits; the Controlled Legal Representation stage is subject to the Standard Fee Scheme.</p>

<p><b>C10</b></p> <p><b>What is the Voluntary Appointment System?</b></p>	<p>The Voluntary Appointment System is an online appointment booking system which is used to help asylum applicants access legal representation in their locality. The system has been tested in several areas of England and Wales and is to be rolled out across the country (except in London) in early 2011.</p> <p>Further information of the system and the previous pilots can be found on the LSC website.</p>
<p><b>C11</b></p> <p><b>Can I claim for “no shows” where I am part of an LSC NAM rota or where I have access to the Voluntary Appointment Scheme?</b></p>	<p>No. From 15 November providers will no longer be able to claim any allowance where a client does not attend their scheduled appointment where the appointment has been made via either a NAM Rota or through the Voluntary Appointment System (VAS).</p> <p>In relation to VAS, providers may wish to review the times at which appointments are offered if they encounter “no-shows” as this may be a relevant factor.</p>
<p><b>C12</b></p> <p><b>My client’s appeal to the Court of Appeal has been remitted to the Upper Tribunal. What funding is available?</b></p>	<p>The matter will be funded under CLR at hourly rates set out in Table 8(c) of the Payment Annex. See 2010 Standard Civil Contract Section 8 immigration Specification paragraph 8.83(d).</p>

## D. Claiming

<b>D1</b>  <b>Is VAT included when SMS calculates whether a claim is exceptional?</b>	No. The exceptional threshold is calculated net of VAT. All figures reported on LSC Online will be net of VAT. There is however a VAT field on the system which providers will use to indicate whether VAT is payable, you should refer to the guidance previous provided in Focus 48 & 49 concerning VAT.
<b>D2</b>  <b>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?</b>	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.
<b>D3</b>  <b>How do the LSC define “legacy” cases for the purpose of reporting on LSC Online?</b>	These are all cases in which an asylum claim/ application was made to the Home Office prior to 1 April 2007. Whether the matter has been determined is not an issue.
<b>D4</b>  <b>Should the same Case ID be used if I am working on two separate matters for the same client?</b>	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.  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><b>D5</b></p> <p><b>In what circumstances am I able to submit an interim stage claim for disbursements in Immigration matters?</b></p>	<p>Claiming interim payment for disbursements para 8.110</p> <p>An interim stage claim for disbursements can only be made where:</p> <ul style="list-style-type: none"><li>- The matter was opened on/after 15 November 2010</li><li>- At least 6 months has passed since the matter was opened</li><li>- There has been no other claim for costs in relation to the same matter (including any earlier disbursement only stage bill) within the last 6 months</li></ul> <p>Providers <u>cannot</u> make an interim stage claim for disbursements for Immigration matters until June 2011.</p>
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**E. Detained matters (including Bail)**

<p><b>E1</b></p> <p><b>If a client is in detention, is my travel and waiting time to see the client included within either the applicable Standard Fee or the appropriate Hourly Rate Cost Limit?</b></p>	<p style="text-align: center;">Detained Cases <span style="float: right;">Paragraph 8.49 (a)</span></p> <p>Whether the matter is claimable under the SFS 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 Standard fee cases this can be claimed in addition to the Standard Fee.</p> <p>For Hourly rates cases these costs can be claimed within the applicable cost limit.</p> <p>Your actual travel disbursements e.g. train ticket, are also claimable. For Standard 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 Cost Limit, which ever may be applicable.</p>
<p><b>E2</b></p> <p><b>Does the 3-hour return travel limitation also apply to travel time for Interpreters?</b></p>	<p>No. However we would expect that interpreters local to the client’s place of detention are instructed to facilitate attendance with the client.</p>
<p><b>E3</b></p> <p><b>Are there any places of detention from which I may claim my full reasonable return travel time rather than a maximum of 3 hours?</b></p>	<p>In addition to the costs claimable (either under the Standard Fee Scheme or Hourly Rates) you may claim, your reasonable additional costs for travel (including travel disbursements), and your actual waiting time, at the following places of detention only:</p>

	<p>HMP Portland; HMP Dartmoor; and HMP The Verne.</p> <p>Providers are reminded that if no reasonable justification has been provided as to why the client could not have been referred to the more local provider, you will not be entitled to claim any costs/time above what the local provider would have claimed.</p>
<p><b>E4</b></p> <p><b>In a matter under the SFS, should I wish to pursue an application for bail to the Chief Immigration Officer, would the Stage 1 Standard Fee cover this?</b></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>
<p><b>E5</b></p> <p><b>Does the £500 bail only limit include disbursements?</b></p>	<p style="text-align: center;">CLR Cost Limit – CLR                      paragraph 8.92 (a)</p> <p>Yes. The £500 CLR Cost Limit is inclusive of disbursements and counsel fees. This limit is extendable upon application to NIAT.</p>
<p><b>E6</b></p> <p><b>CLR has been granted for both a substantive asylum appeal and a bail application will the £1600 Cost Limit automatically increase by £500 to £2100?</b></p>	<p>No. An automatic increase will not be provided; you should apply to NIAT for an extension of the 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><b>E7</b></p> <p><b>In a Standard Fee matter in which bail work is also being funded at hourly rates, if I attend on a client in detention and take instructions on both bail and the substantive claim, should I apportion the costs/time for attendance, preparation, travel and waiting between the two?</b></p>	<p>Yes. The costs/time for attendance and preparation should be apportioned between the two fee schemes. This should be based on the approximate proportion of time that was spent on each aspect e.g. if you spent 75% of the time on the substantive issue and 25% on bail you should apportion any costs/time accordingly.</p> <p>In relation to the travel/waiting time and costs, for instances where advice is given both in relation to the substantive and bail aspects in the same attendance, <b>all</b> of the travel/waiting time &amp; costs should be claimed on the Standard Fee substantive claim.</p>
<p><b>E8</b></p> <p><b>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?</b></p>	<p>Refusing or withdrawing CLR Paragraph 8.46</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><b>E9</b></p> <p><b>If a matter proceeds to the stage at which an appeal is brought to the Upper Tribunal, and the client also requires advice in relation Bail – how is the Bail element funded?</b></p>	<p>Any work in relation to bail should continue under the same matter start as the substantive appeal, the costs however for the bail element of work would be subject to a cost limit. If the earlier appeal before the First Tier Tribunal was funded at Hourly rates, then you would be required to obtain an extension to the £1600 limit to cover any further bail work.</p> <p>If the First Tier appeal was payable under the Standard Fee Scheme, the £500 Bail limit will apply.</p> <p>Upon reporting costs to the LSC, bail costs should be reported separately from any costs relating the Upper Tribunal appeal.</p>
<p><b>E10</b></p> <p><b>From 15 November 2010, I do not hold an exclusive contract schedule to provide services at any of the Immigration Removal Centres, if a detainee in one of these centres seeks to instruct me can I be funded to act for them?</b></p>	<p>Work subject to an Exclusive Schedule Arrangements Para 8.5-8.6</p> <p>No, unless specified exceptions apply. Only those providers who hold a contract schedule to provide services in a particular IRC can provide publically funded advice to detainees in that centre, subject to the exceptions set out in para 8.6 of the 2010 Standard Civil Contract.</p>