

Public Law Care Proceedings Graduated Fee Scheme Questions and answers for service providers

This Q & A replaces the previous versions and has been updated with additional questions received. Any new questions or questions which have been expanded to include further information are in red.

What's included/excluded in the fee?

Is attendance at a child protection conference included in Level 1?	<p>Generally, it is not appropriate for you to attend a child protection conference, given your limited role at them and also that you can provide client support in other ways e.g. pre- or post-conference advice.</p> <p>However, in some exceptional circumstances to enable proper legal advice to be given at the conference, you may feel it necessary to attend the conference and this would then be included in the Level 1 fee. Cases at Level 1 public law may become exceptional where costs at an hourly rate exceed 3x the standard fee.</p>
Is counsel attendance at case conferences included in the fixed fee?	<p>We wouldn't expect counsel to attend at a case conference.</p> <p>If no proceedings have been issued and, therefore, the matter is being dealt with under Legal Help or Family Help (Lower), counsel are paid out of the standard fee, unless the case becomes exceptional</p> <p>If proceedings have been issued, we would not expect counsel to attend a case conference. It is not an advocates meeting for the purposes of the Protocol.</p>

<p>If I instruct an agent, are the preparation costs paid separately, in addition to the advocacy costs, or are they included in the fixed fee?</p>	<p>When you use an agent, preparation is included in the fixed fee and is not paid separately. Work falling within the definition of advocacy is paid on hourly rates.</p>
<p>Are the client's costs for attending hearings/assessment claimable as separate disbursements?</p>	<p>These are claimable where appropriate as separate disbursements as at present.</p>
<p>Why are panel uplifts only payable outside the fixed fee?</p>	<p>The money historically spent on the panel uplift has been included in the new fees. We believe that, under a fixed fee, more experienced staff will have their expertise rewarded (as they deal with cases more efficiently within the fee).</p> <p>The panel uplift remains for exceptional cases and for advocacy following our consultation; but also to ensure consistency in claims for cases paid under hourly rates in the short term.</p>
<p>If I represent a client in s.31 proceedings and then need to apply for parental responsibility, residence, contact or special guardianship within those proceedings, do I need to apply for a separate certificate or will this work be covered under the fixed fee?</p>	<p>If a client is being represented in Section 31 proceedings and then requires further representation, the existing certificate may be amended to cover related proceedings (defined at criterion 11.8 of the Funding Code).</p> <p>The costs of related proceedings are covered in the fixed fee.</p> <p>Our family decision making guidance (create link) details the above and the need for a specific amendment (see paragraph 20.27 Volume 3, Legal Services Commission Manual).</p> <p>Related proceedings include representation on an application for a placement order when dealt together with the Special Children Act Proceedings. If an application for a placement order is made after care proceedings are concluded these will not be related proceedings and will be remunerated at hourly rates.</p>

When as a solicitor, I sit behind counsel, can I claim disbursements (for travelling to/from court and payment of car parking fees, etc.) separately?

As a solicitor, your costs for travelling to court can be claimed as disbursements in the usual way.

Will you pay for professionals meetings?

Professionals' meetings will be claimed by the relevant professionals as a disbursement and, therefore, are separate from the fee.

Where you, as a solicitor, incur costs in attending a meeting, these are included in the fee as they are part of preparation. However, out-of-pocket expenses may be incurred in addition to the fee. These meetings do not fall within the definition of advocacy.

<p>Is there a limit to the number of advocates' meetings that can be claimed</p>	<p>Advocates meetings held in accordance with the Protocol (or the PLO), which provides for two such meetings, can be claimed at the applicable hourly rate. Provided that the meetings take place in accordance with the Protocol or PLO then they do not have to take place at court. However, only the meetings provided for in the Protocol or PLO can be claimed separately as advocacy under the appropriate hourly rates. Any further meetings attended by the supplier will be covered by the standard fee.</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>What happens if a further child is born during the proceedings?</p>	<p>In most cases any proceedings in respect of the new baby would be joined or heard together with the existing proceedings. If a further child is born during the proceedings and the solicitor is already acting for two children in the proceedings, then the fee to be claimed would remain that for two or more children unless the case became exceptional. An application for a separate certificate for the child must, however, be made. If the solicitor was already acting for one child then the fee for two children or more should be claimed when the case is billed.</p> <p>The position if acting for the parents and a new baby is born during the proceedings is the same. In most cases the proceedings will be consolidated with the existing proceedings and will all be related proceedings. A new certificate is not granted for each parent for each child. One certificate will cover the care proceedings regardless of the number of children. The fee payable for representing the parent is not dependant upon the number of children who are the subject of the proceedings. However, the more complex the case, the more likely that it may become exceptional when calculated on hourly rates at the conclusion.</p> <p>In cases where proceedings have begun prior to the 1 October 2007 and a certificate was issued to the parent before that date as stated above, no new certificate would be issued in respect of a new child being joined into the proceedings and the matter would continue to be billed at hourly rates. Where the supplier is already acting for a child in the proceedings then a new certificate will be issued for each child. For a certificate issued after 1 October a fixed fee will therefore be payable in respect of the work done for that child and costs should be apportioned accordingly.</p>

Funding Code (residential assessments), and means and merits testing

How has the Funding Code changed?

Following consultation, we have proposed two changes to the Funding Code aimed at controlling legal aid expenditure. The House of Commons approved these on 18 July 2007, the House of Lords on 25 July 2007. The two changes are:

1. Removal of residential assessments from the scope of legal aid
We are returning to the pre-2005 position when local authorities funded such assessments. Prior to the *Lambeth* case in 2005, these costs fell to local authorities in relation to their duties to children in need. But since then, the costs of such assessments have increasingly been transferred to publicly funded clients and, therefore, to our limited legal aid budget.

Therefore, the cost of such assessments is not a new burden on local authorities, which have duties to a child in need and post interim care order.

Removal of residential assessments will allow us to focus our limited legal aid budget on funding specialist legal services, not paying for: therapy, education, rehabilitation and the associated accommodation costs.

As previously costs/expenses for/relating to treatment, therapy, training or other interventions of an educative or rehabilitative nature remain excluded.

Further information can be found in Volume 1 of the Legal Services Commission Manual in section D at paragraph 5.8

How has the Funding Code changed? (cont)

2. Introduction of an 'appropriate use of funding' test

We will not introduce generic merits criteria at this stage but will introduce specific tests around separate representation.

There will be a test on whether a child is in need of separate representation from other children who are also the subject of the proceedings. In some cases, the issues for all of the children will be the same. This amendment will mean that, where this is the case, a single representative can be instructed. This has its advantages – to the legal aid fund, the courts and vulnerable children – enabling cases to be resolved more quickly.

There will also be merits test for parents and people with parental responsibility who, in the absence of any conflict of interest, can have their legal rights protected by being jointly represented with another party.

These tests are applied at the outset of the case and are set out in the Family Decision Making Guidance at paragraph 20.15(a) and 20.26.15.

What is a residential assessment?

Residential assessments are defined as any assessment of a child, whether under section 38(6) of the Children Act 1989 or otherwise, in which the child, alone or with others, is assessed, on a residential basis, at any location other than his or her normal residence.

It includes an assessment or viability assessment, whether residential or not, preparatory to or with a view to the possibility of a residential assessment (Funding Code paragraph 2.4).

Other assessments can be met under the funded client's certificate of Legal Representation but the costs involved must constitute a disbursement and be appropriately apportioned as between the parties. Whether such costs will be met falls to be decided by the appropriate costs assessor unless prior authority has been obtained.

<p>When should I stop claiming for residential assessments?</p>	<p>Where a residential assessment is ongoing on 1 October 2007, we will continue to pay for it. However, where additional instructions around a residential assessment or a new residential assessment is directed on or after 1 October 2007, these can no longer be allowed as disbursements.</p>
<p>What is the position on disbursements if a viability assessment is ordered but not undertaken?</p>	<p>The key date is the date of commissioning the assessment (viability or a full residential) rather than the issue of the certificate. Note: criterion 1.3 of the Funding Code has been amended in relation to any disbursement incurred on or after 1 October 2007.</p> <p>The earliest a disbursement can be incurred is when the relevant work is commissioned (but not necessarily undertaken or completed). Once work has been commissioned, provided that this is prior to 1 October, we would accept that it is within scope until its conclusion (but not where the work to be undertaken is widened or extended, either in terms of the parties or areas to be covered or the duration of any assessment).</p> <p>Therefore, if a viability assessment was commissioned prior to 1 October, it would be in scope; but if a residential assessment was then to be undertaken and was commissioned on/after 1 October it would be out of scope.</p>
<p>Will means testing apply to all fee levels?</p>	<p>Level 1 will continue to be means tested, Level 2 will be non-means tested and applies to parents and those with parental responsibility. Level 3 will continue to be non-means tested for the child, parents and those with parental responsibility. Other parties to the proceedings will be means tested.</p> <p>There is a separate Q&A specifically on legal advice in pre-action proceedings that covers matters including how it is applied and remunerated. This is available on the LSC website at: www.legalservices.gov.uk/civil/fains/legal_guidance_updates.asp</p>

Where do the two new merits tests – connected with separate representation for children and parents - start?

The revised Funding Code applies to all levels of service granted on/after 1 October 2007.

The CLS APP5 has been amended to include a new question on whether separate representation is appropriate. Once funding has been granted, you have an ongoing duty to report any new information or changes of circumstance which might affect the terms of the certificate under Procedure 43 of the Funding Code.

Is there any difference in the way in which the application for public funding in Special Children Act proceedings is made? Do I continue to use the same form?

The deeming provision which previously existed in Special Children Act cases and which deemed work carried out prior to the issue of the certificate as work done whilst the certificate was in force has been replaced by a specific devolved power in these cases. Under paragraph 10.32 of the Family Specification suppliers have a devolved power to grant Legal Representation in Special Children Act cases. The CLS APP5 should be completed as before and in addition, the devolved power section on page 5 of that form must be completed stating the date on which devolved powers were exercised and confirming that the criterion as to separate representation is met.

It should be noted that non means, non merits tested representation in Special Children Act proceedings is only available where proceedings have been issued by the local authority and where acting for the parent, person with parental responsibility or a child who is the subject of the proceedings. If these criteria are not met, a certificate cannot be issued.

You should also note that where the application is based on a delegation of parental responsibility you will need to give an explanation in writing of the delegation and how it has been exercised in the past. Where a sufficient explanation is not provided, the application will be refused as it will not fall within the definition of Special Children Act proceedings and there a non means, non merits tested certificate cannot be issued (paragraph 20.26 of the Family Decision Making Guidance)

A separate application should continue to be made for each child and a certificate will be issued for each child.

Where would I find the wording codes and limitations that I would use when exercising my devolved powers in care and supervision cases?

Wording codes for applications for care and supervision orders together with the most commonly used limitation can be found on the LSC website together with the [Family Decision Making guidance](#). A costs limitation will continue to be applied as before.

How much information do you require on justifying separate representation of parents?

The [Family Decision-Making Guidance](#) on our website contains information on this at paragraphs 20.15 and 20.26.15.

You must consider all the circumstances of the case known at the time of the application for funding. You should also note Rule 3 of the Solicitors Code of Conduct 2007, issued by the Solicitors' Regulation Authority, in deciding whether the client requires separate representation; as well as paragraph 5.4 of the Good Practice in Child Care Cases, issued by The Law Society.

You need to explain on the CLS APP5, where relevant, why it is appropriate for the client to be separately represented. This is likely to be of relevance where parents or other parties with parental responsibility would appear to have the same interests in the proceedings and, in the case of a couple, they are not living separate and apart.

If separate representation is justified on the basis of a known conflict of interests, brief details should be given and - if a conflict is anticipated - this should be explained, in terms of the particular circumstances of the case.

It is unlikely that children who are the subject of proceedings will be in conflict at the commencement of proceedings

Do I need to consider whether funded clients in a public law Children Act case, including Special Children Act proceedings, continue to require separate representation during the course of the case?

Yes. Funding Code Criterion 5.4.5 and a specific reporting obligation apply. You must report where you become aware that the client's interest in the proceedings is no longer sufficiently distinct from that of any other party to justify separate representation. If you fail to do so costs may be disallowed or reduced if they have been unnecessarily incurred. Before you report you should consider, including with the other relevant solicitor(s), how the representation of the client should most reasonably proceed. This could be by an amendment of the certificate to show a change of solicitor.

Level 2

What is the purpose of Level 2?

To ensure that parents and those with parental responsibility have access to legal advice before care and supervision proceedings start.

We hope that the new level will encourage more parents to (re-)engage with their local authority and that the local authority will work with them to avoid proceedings; or, where this is not possible, to narrow the issues in proceedings so that proceedings can be dealt with more quickly.

Level 2 responds to the Child Care Proceedings Review's recommendations on greater engagement between parents and the local authority and improved parental awareness of the proceedings process.

The letter before proceedings may suggest that a meeting is held between the client and the local authority to discuss the concerns raised in the letter and Level 2 will cover attending this meeting with the client as necessary. This may in some cases be referred to as a family meeting.

<p>What about other parties to proceedings?</p>	<p>At this stage, Level 2 will only apply to parents and people with parental responsibility.</p> <p>We will monitor this new level of service, considering whether it should be extended or reviewed depending on its effectiveness.</p>
<p>How is Level 2 triggered?</p>	<p>By written notice from the local authority of its intention to start care and supervision proceedings.</p> <p>The Department for Children, Schools and Families (DCSF) - formerly the Department for Education and Skills - and the Welsh Assembly Government (WAG) are consulting on new statutory guidance for local authorities. This will set out the steps to be taken before a care and supervision application can be made. It will expect local authorities to give written notice of care and supervision proceedings.</p> <p>The DCSF guidance is available at: www.dfes.gov.uk/consultations (see paragraphs 3.16 and 3.17).</p>
<p>How can Level 2 be triggered when the guidance is not yet in place?</p>	<p>By a local authority giving appropriate written notice in anticipation of the revised guidance.</p> <p>This supports the Public Law Outline (PLO) initiative, being taken forward by the President of the Family Division. Information on the PLO is available on the LSC website at: www.legalservices.gov.uk/civil/fains/legal_guidance_updates.asp</p>
<p>Can I trigger Level 2 advice by writing to a local authority and asking whether they intend to issue proceedings?</p>	<p>As a solicitor, you may write to the local authority but the trigger for Level 2 will be written notice from the local authority of their intention to issue proceedings. If no written notice is received from the local authority the criteria for Level 2 will not be met.</p>

<p>Does the intention to issue criteria (Level 2) include a threat from the local authority to issue if the parent doesn't comply with the Child Protection Conference agreement?</p>	<p>Non-means tested Family Help (Lower) will be available where the local authority has given written notice of their intention to issue proceedings including in anticipation of the DCSF/Welsh Assembly Government guidance.</p> <p>Where there has been a Child Protection Conference resulting in an agreement which, if complied with, would avoid proceedings, this would not constitute notice.</p> <p>However, the DCSF/Welsh Assembly Government guidance is draft and will be considered further once it has been finalised.</p>
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<p>Can you update me on the Public Law Outline and the requirement for local authorities to provide written notice of their intention to issue proceedings?</p>	<p>The Public Law Outline initiative has been taken forward in 10 initiative areas and is to be introduced on a national basis from April 2008.</p> <p>The Public Law Outline is an initiative of the President of the Family Division, supported by a Practice Direction. It was developed after a review of the Protocol for Judicial Case Management in Public Law Children Act Cases. Inter-agency training, including for local authority lawyers has been provided in preparation for the implementation in April 2008 and guidance issued to local authorities to support this approach.</p> <p>In the meantime, it is possible that other courts may apply the principles of the Outline or, more likely, that local authorities begin to give written notice of their intention to take care proceedings.</p> <p>The operation of the Public Law Outline will be monitored and evaluated. Feedback can be given to the Care Proceedings Programme at careproceedings@hmcourts-service.gov.uk . Information on the programme is available at www.justice.gov.uk/guidance/careproceedings.htm and includes a Frequently Asked Questions document.</p> <p>The Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 is being amended to enable counsel to be paid under the Public Law Outline.</p>
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<p>How do I apply for funding for Level 2?</p>	<p>Level 2 is controlled work and no certificate will therefore be issued. The new form CW1PL should be completed in all circumstances where the case moves to Level 2 and the notice of intention to issue care proceedings should be attached to the form. The CW1 should continue to be completed for public law matters which start at Legal Help (Level 1).</p>
<p>What disbursements am I able to claim at Level 2?</p>	<p>Disbursements for both Levels 1 and 2 are claimed in addition to any standard fee payable. A disbursement may be incurred where it is in the best interests of the client to do so, it is reasonable to incur the disbursement for the purpose of providing Controlled Work and the amount is reasonable. A list of disbursements which may not be claimed under Controlled Work is contained in paragraph 5.26 of the Unified Contract Civil Specification.</p> <p>Disbursements (for example experts' fees) which are not out of pocket expenses should not be incurred under Controlled Work. Any outstanding assessments would be undertaken by the local authority pre-proceedings or considered by the court in the context of proceedings.</p>
<p>Can public funding be used to pay for Family Group Conferences?</p>	<p>A Family Group Conference is intended to be a meeting of the family (including relevant extended family members) where they reach decisions/make an action plan in the absence of professionals. Such meetings, or other alternative dispute resolution, may be arranged by the local authority in cases where they have become concerned about the family. The costs of, or expenses in relation to such meetings are not recoverable disbursements in accordance with the Unified Contract Civil Specification.</p>

Advocacy related questions

<p>What is included in the definition of advocacy and how is it remunerated?</p>	<p>The <u>family contract specification</u> (see sections 10.40 to 10.42) defines advocacy. Attendance as advocate at court will include time spent in negotiation, meetings and conferences at court on the day of the hearing. Such time may be claimed at the preparation and attendance rate. Travel to and waiting at court will also be claimed at the appropriate rate.</p>
<p>Why is counsel still paid for preparation for advocacy (under the Family Graduated Fee Scheme) when the new fixed fee covers solicitors' preparation?</p>	<p>Hourly rates for solicitors undertaking advocacy is as an interim measure. We intend to introduce a single advocacy fee, covering both solicitors and barristers, paying the same amount irrespective of who does the work.</p> <p>Integrating advocacy work into the solicitors' fixed fee while allowing counsel to continue to be paid under Family Graduated Fees would create too great an incentive for solicitors to instruct counsel, rather than undertaking their own advocacy where appropriate. The new fee scheme aims to ensure greater control and certainty over costs. Had preparation been excluded, this objective would not have been achieved as the scheme would have covered a much smaller proportion of the Fund spend.</p> <p>The historical cost of solicitor preparation time for advocacy work has been taken into account in calculating the Level 3 fee and, as such, it should be sufficient to cover preparation work across a range of cases.</p>

<p>If counsel are instructed can I claim the time spent for sitting behind counsel? If so at what rate or is it part of the standard fee?</p>	<p>If you attend court with counsel then you will not be able to claim as attending as advocate at the hearing and any costs will be included in the standard fee. However, you can include travel, waiting, attendance with counsel etc., at the appropriate hourly rate when the case becomes exceptional and subject to the application of the maximum fee principle as now in the family proceedings court.</p>
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<p>How will the maximum fee principle apply in the Family Proceedings Court?</p>	<p>As now, you will still be required to seek prior authority to instruct counsel in these courts.</p> <p>Where there is no prior authority to instruct counsel, counsel will be able to claim solicitor rates as at present but, as a solicitor, you may not count the cost of attending hearings with counsel in the exceptional case calculation.</p>
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Operational questions

<p>How do I claim for exceptional cases at levels 1 and 2?</p>	<p>A case becomes exceptional in public law matters where the costs of all levels of advice provided at Controlled Work, calculated at hourly rates exceed three times the relevant fees. Therefore, where level 1 and level 2 advice has been provided costs calculated at an hourly rate should exceed three times the level 1 and level 2 fees combined for a case to be considered exceptional. If advice at level 1 or level 2 only has been provided then the exceptional limit will be three times the fees for that level of service only.</p> <p>As set out in section 10.31 of the family contract specification and Table 7c) of the payment annex, the hourly rates used in calculating whether a case is exceptional for level 2 advice (and any associated level 1 advice) should be at CLR rates.</p>
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<p>What uplifts are payable in exceptional cases?</p>	<p>Cases which are exceptional at Controlled Work level will be calculated at hourly rates in accordance with the payment annex. No uplift is payable for Controlled Work.</p> <p>In certificated cases any uplift payable cannot be taken into account for the purpose of determining whether a case becomes exceptional. However, once a case has become exceptional both any appropriate panel uplift and any enhancement of hourly rates as before in accordance with the costs assessment guidance and paragraphs 10.18 to 10.20 of the Family Specification.</p>
<p>How should I bill when a case moves up from the family proceedings court to a county court?</p>	<p>Any portion of the case undertaken in the family proceedings court costs should be claimed at the conclusion of the case. At this point it will be known whether the standard fee will be paid for the whole case or whether the case has become exceptional and all costs are to be paid at hourly rates. If a case concludes in the county court and needs to be assessed (ie the assessable costs are in excess of £2500) then all the costs incurred in both the FPC and the county court will be assessed by the court.</p>
<p>Where an Emergency Protection Order (EPO) is issued, and the application for an interim care order is made at the same time, do I need to complete separate forms?</p>	<p>A separate certificate will be issued for care proceedings as these applications will be paid under the new fee scheme.</p> <p>EPOs and applications for secure accommodation orders will continue to be paid at an hourly rate. Therefore, you will need to complete a separate application for a new certificate. Costs should be allocated to the appropriate certificate ensuring that there is no element of double-counting.</p>

<p>Will I be able to still claim payments on account?</p>	<p>Payments on account are still payable for Level 3 'certificated' work. Applications for payments on account may not exceed: 75% of the costs incurred by you, calculated on hourly rates and should not exceed 75% of the relevant fixed fee.</p> <p>Where costs are sufficient to escape the fixed fee, you may claim up to 75% of the hourly rates incurred.</p> <p>Where you provide advocacy as a solicitor at one or more hearings, payment on account may also be claimed for this work on the same form. Again, this should not exceed 75% of the costs.</p> <p>Counsel will continue to claim for fees in the usual way.</p>
<p>Will a cost limitation still be applied to a certificate in cases where a fixed fee may apply?</p>	<p>A costs limitation will continue to be applied to each certificate for public funding as before. An application for an extension to the costs limit will be needed on a CLS APP8 if the costs limitation is likely to be exceeded, usually if a case becomes exceptional or because of additional costs of advocacy or disbursements. As previously a cost limit of £5000 will be initially applied on a certificate. This is sufficient for the costs under the standard fee as well as some additional costs to be incurred for disbursements and advocacy. To avoid confusion the initial limitation will be the same regardless of the regional fee paid or the status of the client in the proceedings.</p> <p>The highest standard fees payable when acting for two or more clients are in excess of the £5000 limit. However, in these cases two or more certificates will have been issued each with an individual costs limitation and the final fee will be apportioned between the certificates issued.</p>
<p>Where you or the court assesses a case, do I need to provide a detailed break down of non-assessable costs, i.e. those covered by the fixed fee?</p>	<p>If we assess the claim, only the relevant parts of the CLAIM 1A will need to be completed, i.e. if the only assessable costs are advocacy then a breakdown of these costs only will be required. You do not need to provide a full breakdown of costs covered by the fixed fees.</p> <p>If the court does the assessment, you will need to provide a breakdown of all costs on the bill in the usual way. We will be discussing further with the court and costs draftsmen changes to the presentation of these bills for the future.</p>

<p>What format will bills need to be in now that the court is only taxing assessable costs?</p>	<p>Where a case is assessed by the court then a bill of costs should be submitted to the court in the usual way. The bill will need to reflect all the costs of the case (even if a standard fee is payable and it is only the advocacy element which is being assessed), with costs split between core costs and advocacy and any enhancements reflected separately. This will not change how bills are assessed. However, it may result in some minor amendments in the way in which bills are presented.</p> <p>This has been discussed with the Supreme Court Costs Office, the Association of Costs Draftsmen and the software vendors. Bills in the future should be presented in such a way that the advocacy elements and enhancements are reflected separately.</p>
<p>When will the new forms master pack and guidance be available?</p>	<p>The new forms master pack was distributed at the end of September.</p> <p>Guidance on completing a form CLS CLAIM 1A is available in the Masterpack and on the forms section of the website. Further guidance on submitting bills for assessment in care proceedings is also available on the website at www.legalservices.gov.uk/docs/fains_and_mediation/GuidanceforprovidersV4Dec07_1.pdf</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>

If claims made after 1 October comprise both 'old' work and 'new' work, (i.e. 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?

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.

Miscellaneous

Why are Levels 1 to 3 being introduced for family public law but not for family private law?

For the Care Proceedings Fee Scheme, advocacy is excluded.

In private law, we are still discussing the inclusion of advocacy with representative bodies in light of the concerns raised during our consultation.

What happens when I represent both parents and one/both of them transfer to another solicitor due to a conflict of interest?

When your client changes to another solicitor for justified reasons, if they transfers part way through Level 1 or 2, the full fee for the level(s) of work undertaken by each solicitor is payable.

At Level 3 the approach is slightly different. Where you, the first solicitor, cease to provide representation in the proceedings, having carried out work within the scope of the fixed fee, you and any other solicitor should calculate your fees separately based on hourly rates.

If the costs, based on hourly rates, are:

- less than the applicable fixed fee, half the fee is payable
- equal to or greater than the fixed fee, the fixed fee is payable
- more than twice the fee, the case qualifies as exceptional.

Where a client transfers but you, the first solicitor, continues to represent one or more of the clients, you are entitled to a full fixed fee in the normal way.

If you have represented more than one client in at least one hearing during the case, the 2+ fee may be claimed.

Further detail on this is contained in sections 10.37 and 10.38 of the Family Contract Specification.

Will the courts continue to assess cases over £2,500 at Level 3?

The Court will continue to assess cases which complete in the county court or High Court and where costs are in excess of £2500. However, in cases which fall within the standard fee scheme for care and supervision proceedings where the £2500 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, these bills 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.

Are there any special rules for cases involving an Official Solicitor?

No. The involvement of the Official Solicitor does not mean that a case will be outside the scope of the new fee scheme and the matter should be billed in the usual way.

However, any additional complexity of the matter - including the involvement of the Official Solicitor - may mean that in some cases the matter will become exceptional.