

Training on the family fee schemes

September 2007



What we will cover

- Family fee schemes
- Funding Code changes
- How to claim fees
- On-line services
- Key Performance Indicators (KPIs)



Family fee schemes

Private law



The scope

1 October: introduce standard fees for Controlled Work in private family matters

Level 1, Legal Help = initial advice

- all work included
- emergency proceedings, domestic violence, child abduction & stand-alone divorce cases restricted to Level 1

Level 2, Family Help Lower = further negotiation

- all work included, other than above exclusions
- includes Help with Mediation and some areas of what was General Family Help



The scope cont/d

Level 3, Family Help Higher = new service level

- fee level replaces General Family Help proceedings and Help with Mediation
- new fee not implemented in October - hourly rates, under certificate, continue

Level 4, Legal Representation

- covers final hearings
- hourly rates continue



The fees: levels 1 & 2

Level 1: national fee

- stand-alone petitioner divorce cases get a higher fee

Level 2: London and non-London fees

- separate children and finance fee paid at this level
- disbursements for level 1 & 2 work paid on top of fees

Levels 3 & 4: hourly rates

- covers work from issue of proceedings up to/including final hearing



Level 1, initial advice

- Only one fee payable regardless of number of issues raised
- A higher fee for petitioners in stand-alone divorce cases
- However, if case moves to level 2, the standard – not higher – Level 1 fee applies, even for petitioners



What makes a case exceptional?

- Only stand-alone divorce, domestic violence and child abduction cases can be exceptional at Level 1
- Emergency proceedings should be claimed on a certificate



Level 2, negotiation

- Covers significant family disputes (as defined in Contract Specification)
- Relates to children and/or finance issues:
 - that require work beyond Level 1, i.e. the initial interview + follow-up
 - where work beyond Level 1 = on-going assistance up to, but not including, the issue of proceedings



Settlement payment

When/how does it apply?

- For cases that settle at Level 2
- One settlement fee per case
- Excluded from the exceptional case calculation
- Not paid for exceptional cases



Settlement payment cont/d

What constitutes a settlement?

- Children cases – agreement on issues and no further legal representation required
- Finance cases – agreement embodied in a consent order/another binding written agreement
- Settlement defined in more detail in Contract Specification, e.g. reconciliation would not constitute settlement



Settlement payment cont/d

- Claim 21 days after the end of the case
- Case must remain settled for six months
- If client comes back before six months because settlement has broken down, you need to inform us and we will reclaim the payment



Level 3: private family help (higher)

- New level of service will apply from October - covers work from the issue of proceedings
- General Family Help (GFH) ends
- Work previously covered by GFH, falls into:
 - Family Help (Lower) and
 - Family Help (Higher) when it relates to proceedings
- We will continue to pay hourly rates (we consulted on this level of service but want to properly consider our response)
- Certificates issued on/after 1 October will refer to Family Help (Higher)



Exceptional Cases

- Can be claimed at Level 2 when the case cost is x3 the total fixed fees claimable
 - add together the Level 1 + 2 fee if both levels of advice given
- Calculation excludes the settlement payment
- For children and finance cases, exceptional cases = x3 the total fixed fees payable
 - e.g. Level 1 where provided + Level 2 children fee + Level 2 finance Fee
- Hourly legal help rates paid



Solicitor's charge

Level 1: exempt from charge if case concludes at this level

Level 2: charge only applies for exceptional case that concludes at this level

- charge only applies to: costs above the exceptional case threshold (x3 fee), disbursements and VAT

Level 2: charge in favour of provider

- matrimonial home is exempt from the charge
- Charge waived where enforcement would cause grave hardship or distress



Statutory Charge

- Usual rules on recovery or preservation apply to relevant costs under the certificate & costs of previous advice relating to those proceedings
- Level 1 and 2 work included
- Based on cost to Fund, so at Level 1 & 2 either: standard fees or exceptional case payment
- Where Legal Help provided before 1 October, current payment rules apply



Changes to mediation exemptions

- Mediator must certify domestic abuse exemption
- To protect the applicant, solicitors can still certify domestic violence cases:
 - if there was a police investigation or
 - prior to DV proceedings (if within last 12 months)
- Respondent to proceedings exemption shortened from 8 to 6 weeks
- FAInS exemption removed – pilot ended



The family fee schemes

Public law



The scheme's scope

- **Level 1:** includes all public law family cases
- **Level 2:** care & supervision proceedings (s31 Children Act 1989) and related proceedings
 - only where the client is a parent/person with parental responsibility
 - written notice of intention to issue proceedings must be received from local authority
- **Level 3:** care & supervision proceedings (s31 Children Act 1989) and related proceedings



The scheme's scope cont/d

- Cases defined in Funding Code (criteria, paragraph 2.2)
- Fees include preparation & attendance
- Fees exclude advocacy and travel & waiting
- Fees payable at each stage: Level 1 + 2 + 3

Note: if you only provide Level 3 assistance, you only get paid the Level 3 fee



The scheme's scope cont/d

- Emergency Protection Orders (EPOs) - excluded
- Other Special Children Act non-s31 proceedings - outside the scheme's scope if not 'related'
- EPO certificates - cannot amend to add care & supervision and vice versa
- Beyond Level 1, all public law family work - excluded (paid under existing arrangements)
- High cost cases (over £25,000) – managed separately outside the scheme
- Disbursements – excluded (paid on top of fees)



The fees

Levels 1 + 2: national fees

Level 3: supra-region fees

We are structuring Level 3 fees on four supra-regions because this has the least detrimental potential impact on access to advice across the regions



Level 1: Legal Help

- Covers initial advice
- Covers all public law work
- Controlled Work
- Exceptional case = x3 the fee using hourly legal help rates



Level 2: negotiation

- Controlled work
- A new level of service, recommended by Child Care Proceedings Review, for parents/those with parental responsibility
- Parental advice/support focused on liaison/negotiation with the local authority that could resolve or limit disputes
- Triggered by local authority providing 'written notice' of intention to issue proceedings
- DCFS & WAG consulting on Children Act guidance – proposes that local authorities 'provide notice' of intention to issue proceedings



Level 2: cont/d

- National fee calculated on London and non-London hourly rates - combined - for Controlled Legal Representation
- Only available where 'intention to issue proceedings' has been received
- If proceedings are issued, level 3 applies
- This level does not cover Emergency Protection Orders



Exceptional cases: Level 1 & 2

- Based on levels of work done
- Can be exceptional at 1 & 2:
 - if work is done at both levels, the exceptional case limit is based on the level 1 & 2 fees combined
 - exceptional cases are paid on corresponding hourly rates
- x3 the fixed fee
 - Level 1 = legal help rates
 - Level 2 = CLR rates
 - Levels 1 + 2 = CLR rates



Level 3: fees

- Covers:
 - all work from issue of proceedings to final hearing
 - work that follows from the final hearing
- If clients aren't involved in proceeding throughout the case, get fixed fee
- Applies to applications for certificates made on/after 1 October



Level 3: advocacy

- Advocacy currently excluded from scheme
- Preparation for advocacy included in the fee
- Advocacy includes:
 - court appearances and associated travel
 - meetings
 - attendance and waiting as the advocate at conferences
 - negotiations at court on hearing date
 - attendance at advocates meetings, as defined under the protocol



Advocacy cont/d

- Only one person may claim advocacy (unless provided under the graduated fees order), otherwise work included in standard fee
- These are interim measures - before introduction of same fees for solicitors and barristers
- Current Family Graduated Fee Scheme (FGS) continues to apply
- If counsel is used in Family Proceedings Court without prior authority, counsel will be paid at solicitor hourly rates (max fee principle continues to apply)



Change of solicitor: Level 3

If a client transfers during a case and the solicitor is left without a client, if costs:

- **are less** than the standard fee, half the fee is paid (to existing and new solicitor)
- **equal/greater** than the standard fee but less than the exceptional threshold, the full fee is paid (to existing and new solicitor)
- **exceed** the exceptional threshold, the case is assessed and paid on hourly rates (to existing and new solicitor)



Fees for more than one client

- Different fee when acting for two or more individuals:
 - children - 50% higher
 - parents - 25% higher
- To get these fees, solicitors must represent both clients at one hearing at least
- If one client transfers during the case and one or more clients are left, the solicitor is entitled to the full standard fee



High court fee

- Higher high court fee
- Costs are historically higher than other courts
- Fee payable for court where case finishes



Exceptional cases: level 3

- x2 the standard fee
- Calculated on hourly rates, excluding:
 - advocacy
 - uplifts (uplift payments integrated into standard fee)
 - VAT
- Uplifts payable if case is exceptional



Exceptional cases: process

- New form (CLS Claim1A) for cases covered by the fee scheme
- Claims subject to assessment:
 - by the courts (non-Family Proceedings Court where costs exceed £2,500)
 - by the LSC for all other cases
- Assessable costs:
 - profit costs in exceptional cases
 - solicitor advocacy and counsel fees
 - disbursements



Payments on account (POA)

Can claim:

- 3 months after issue of certificate
- no more than 2 POAs in rolling 12 month period
- 75% of profit costs as POA (max of 75% of fixed fee)
- 75% of actual costs for exceptional cases
- 75% of advocacy costs if you are solicitor undertaking own advocacy
- POA for disbursements as normal

Use new form (CLS Claim4A) for Public Law cases covered by the scheme



Two strands of Funding Code changes

- Supporting the family fee schemes and the new levels of service
- Relating to the merits test and residential assessments



Funding Code cont

- Levels of service
- Merits criteria - appropriate use of funding test
- Residential assessments



Exceptional cases

- Four new CMRFs for reporting TFF replacement, family, immigration & asylum and mental health
- Report your costs in full
- System will 'flag' the case as exceptional, i.e. next to the case line on the online service, the exceptional case box will be 'checked'
- Where case is exceptional, submit the file for assessment with new EC-CLAIM1 form



Processing the form

- Exceptional cases processed in Business Delivery Centres: Nottingham, Liverpool & Newcastle
- View on the system: original case value, new value, and reasons for change
- Notified by letter and e-alert
- Initially fixed fee is credited - any further amount owed after assessment is added



Assessment length

- 8 week turnaround (same as current national target for civil bills)
- Fast track:
 - solicitor's charge cases so that client money can be released
 - cases where file is needed for an imminent court date – please advise us using the EC-CLAIM1 form
 - For care proceeding cases at Level 3, exceptional cases paid after assessment



LSC Online and KPIs



LSC Online

- Civil providers must use LSC Online from 1 Oct
- You must submit September claims by 15 Oct
- You must register with LSC Online before 10 October
- No access to LSC Online between 15 Oct-5 Nov
- You will not be able to make your October submissions until 5 Nov
- You will need a new user name and password to use LSC Online after 5 Nov



Current developments

- Enhanced functionality
 - data maintenance
 - fee calculation
 - improved validation
 - view performance information
 - access to financial statements
 - electronic notification system
 - control user access
- Implementation dates to be confirmed soon



Key Performance Indicators for civil legal aid

- Introduced in Unified Contract (Apr 07)
- Defined in Clause 10 and Annex G of Unified Contract, Standard Terms.
- KPIs relate to:
 - matters providing substantive client benefit
 - assessment rates for Licensed work & exceptional cases at Controlled Work level
 - fixed fee margins
 - matter start usage
- Peer Review scores reported with the KPIs although this is a contractual clause in itself. We use most recent Peer Review score for the category of law



KPIs

Key Performance Indicators – summary of performance levels

| | |
|--|--------------------------------|
| Civil – matters and cases providing substantive benefit to clients | 40% (min) |
| Civil Controlled Work (non fixed fee) – assessment reductions | 10% (max) |
| Licensed Work – assessment reductions | 10% (max) |
| Civil - fixed fee margin | 20% (max) |
| Matter Start usage | 85% (min) |
| Crime – assessment rates (NSF & exceptional cases) | 15% (max) |
| Peer Review | 3 – threshold competence (min) |



Thank you

- Thank you for attending
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