

FGF Changes – Q&A

Q. If we have a 5-day hearing commencing on the 3 August day 1 will be under the old scheme and day 2 onwards will be under the new scheme?

A. If you are instructed pre-4 August for a 5-day hearing, then the whole hearing will be paid at pre-4 August rates. This is because the instruction for the hearing came prior to the new scheme coming in to force.

Q. Will the changes also apply to all certificates pre: the amended scheme in 2005?

A. The changes do not apply to work carried out under pre-2005 certificates.

Q. Why are we using the date of instruction as the determining factor for the applicable rate, rather than the date of the actual hearing?

A. The new arrangements are implemented on the 4 August 2009. The reason why it is being applied to the date of instruction rather than the date of the hearing is so that the barrister knows the applicable rate of pay when they accept the case. It is often the case that barristers get instructed to attend a hearing well in advance of the actual date and it seems unreasonable to accept a case on the understanding that it will be paid at a certain price for it to then subsequently change.

If for example the hearing is on the 4 August, it is likely that the barrister will have done preparation in advance of that date and it was therefore considered reasonable that the old arrangements should apply in these circumstances. Of course if they get instructed on the 4th and the hearing is on the 4th then the new arrangements would apply.

Q. What is the position for new hearings within ongoing proceedings? Does the date of instruction refer to the point where counsel takes on a case, or the date counsel is specifically requested to do each hearing within those proceedings?

A. The date of instruction refers to specific instructions for elements of work in a case, and not the entire case. Therefore, new hearings in ongoing proceedings are treated separately, and the date of instruction for each hearing is that which will dictate the payment rate.

Q. I have several cases where I know there are going to be more hearings to come but they won't be fixed (and hence I won't have any formal letter/brief) until after the 4 August. The solicitor/s using us are assuming their chosen counsel's ongoing involvement but I cannot obtain written documentary evidence without the impending dates.

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Q. One of my counsel had a 4 day case listed this prior to 4 August which was put back to 10 August due to lack of court time. There would normally be no

further brief as his current one still stands - does there need to be one? Is the assumption of continuity enough?

A. Yes, the assumption of continuity is enough, as the date of instruction for this specific hearing is prior to 4 August. There does not need to be a further brief, as the existing one stands.

Q. If counsel were instructed to attend a five-day final hearing and say only attends two days and the hearing is then adjourned, would they need further evidence of 'Instructed Date' once the further final hearings are heard or is the original instructed date sufficient?

A. In this instance the original date of instruction would apply, as the instruction is for a particular piece of work, and the instruction comes prior to 4 August.

Q. I have been asked to stand in for a fellow barrister who cannot complete a Function they have been instructed on. The original instruction came prior to 4 August, but I was handed the work after 4 August. Which rates are applicable?

A. The original date of instruction for the original barrister is now applicable to you in this case.

Q. Will there be a 2-month transition period whereby old version of the CLAIM5 form will be accepted along with revised versions of the form from the 4 August 2009?

A. Yes, there will be a 2-month transition period where we will accept both the old and revised versions of the CLAIM5 form.

Q. Where can I access the relevant Forms (CLAIM5, SIP Form, SPF Form)?

A. These Forms can be downloaded from the following web page:

LSC Forms Page - <http://www.legalservices.gov.uk/civil/forms/7455.asp>