

Guidance for Claiming Immigration Controlled Work Disbursements for Cases Commenced Prior to 01 October 2007.

Proposed Disbursement Claim

In order to ease the cash-flow difficulties experienced by Immigration providers that have large volumes of disbursements incurred in respect of cases opened before 1st October 2007, but not yet able to be claimed or part-claimed, the Commission has agreed to a one-off exercise allowing providers to submit disbursement claims¹ - outside the normal billing rules.

Where cases have already been Stage Claimed (either under existing or previous contractual provisions) only the additional disbursements incurred since that point, on cases opened before 1st October 2007, should be claimed.

What type of Case is eligible?

All asylum and non-asylum cases where the matter was opened by you before 1st October 2007.

It does not cover cases commenced on/after 1st October 2007 regardless of whether those cases are paid at hourly rates or under the Graduated Fee Scheme.

As such, disbursements incurred in respect of cases commenced on/after 1st October 2007 will continue to be claimable only when the case reaches one of the billing points specified under Paragraph 11.70 (for Graduated Fee Scheme cases) or 11.71 (for Hourly Rates cases) of the Unified Contract Immigration Specification.

What Can Be Claimed?

Providers can only claim those unclaimed disbursements incurred up to (and including) 30th September 2008 in cases commenced before 1st October 2007. Counsel's fees may also be claimed but not in relation to review/reconsideration cases.

Providers will only be allowed to make these disbursement and/or counsel fee claims up until 20 August 2009 i.e. the date by which the July 2009 CMRF submission is made electronically.

What Can't Be Claimed?

It is important to emphasise that the Commission is not introducing a new Stage Claim.

¹ This will also include counsel's fees.

Providers must not claim for any profit costs incurred. Only disbursements incurred in respect of eligible cases may be claimed.

Under this exercise providers must not claim for any disbursements incurred on/after 1st October 2008.

Providers must not claim for any disbursements already claimed as part of an earlier Stage Claim.²

It is not anticipated that a provider will need to make a disbursement claim under Legal Help and CLR on the same matter, because where a case has progressed to CLR the provider should already have made a Legal Help Stage Claim for all of the Legal Help work including the disbursements.

How to Make the Claim?

In order to make a claim a provider will need to enter a separate line on the CMRF for each individual case.

a) Which Matter Type 1 Code to Use?

Providers must use one of the existing 4 Matter Type 1 codes set aside for cases commenced before 1st October 2007, namely:-

- IALH - For disbursements incurred under Legal Help in an Asylum case;
- IMLH - For disbursements incurred under Legal Help in a Non-Asylum case;
- IAAP - For disbursements incurred under CLR in an Asylum case;
- IMAP - For disbursements incurred under CLR in a Non-Asylum case.

b) Which Matter Type II Code to use?

The Matter Type II that best describes the type of case (e.g. IGOL/IFRA etc), and would have been used if a stage / final bill was to be submitted, should be used.

NB: For Review and Reconsideration (RAR) disbursements the Matter Type II must be either IRAR or IRHO – depending on whether a cost order is required or not.

c) Which Stage Reached Code to Use?

Providers must use the following Stage Reached codes set aside for Stage Claims:-

IR- For disbursements incurred under Legal Help;

² For example, in a matter at the CLR/appeal stage, an IR Legal Help Stage Claim should have been made already and this should have included all disbursements incurred up to the point of carry out the CLR merits test. As such, only those disbursements incurred since the original Legal Help Stage Claim should be claimed as part of the IO CLR Stage Claim for the disbursements claimed at the CLR/appeal stage.

- IO - For disbursements incurred under CLR, up to the initial Substantive Hearing
- IQ - For disbursements incurred under CLR, for Review and Reconsideration (as there is no stage claim facility for Review and Reconsideration this workaround has been proposed).

d) Which Outcome Code to Use?

Outcome Code '-- (apostrophe dash dash) must be used for all claims.

e) What Do I Enter in the Monetary Value Fields of the CMRF?

The figure 0 (zero) must be entered in the Net Profit Costs field. The actual disbursement and/or counsel costs should be entered in the Disbursement and/or Counsel fields as appropriate.

f) What to Enter in the Case Start Date?

For all disbursement claims made as part of this one-off exercise, the Case Start Date will be the date that the client was first signed up under Controlled Work in the current matter. Since this disbursement claim facility only applies to cases opened before 1st October 2007, the Case Start Date should not be on/after 1st October 2007 for any disbursement claims made as part of this exercise.

g) What to Enter in the Case Concluded Date?

For all disbursement claims made as part of this one-off exercise, the Case Concluded Date, must be entered as ~~25/12/04~~ 25/12/08

h) Do I tick the VAT indicator field if I am claiming counsel fees and this includes an element of VAT?

Under current HMRC guidance this will depend on whether the client has UK residency status or not. This would suggest that where a client is not a UK resident they are not liable for VAT and this should not be claimed – either in respect of profit costs or Counsel Fees.

The above does not apply to disbursements.

i) What Should I Enter in the Other CMRF Fields?

All other CMRF fields should be completed as they would be for any “normal” Immigration or Asylum CMRF claim.