

# **Legal Services Commission**

## **Immigration & Asylum**

### **Frequently Asked Questions – June 2009 version 5**

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## A. Provisions for cases paid under the Graduated Fee Scheme

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| <p><b>A1</b></p> <p><b>Are the costs of a travel fare covered by the £290 additional payment for attendance at the Home Office interview?</b></p>   | <p>Additional payments                      Table 4 (b) of the Payment Annex</p> <p>No. The £290 additional fee covers the travel and waiting time and attendance at a Home Office interview; any travel fare will be covered by the Stage 1 Legal Help Disbursement limit of £400.</p> |
| <p><b>A2</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 11.10</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>   |

## B. Provisions for cases paid at Hourly rates

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| <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 Graduated 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 Graduated 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>       |

**C. General Provisions**

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| <p><b>C1</b></p> <p><b>Does assistance with matters relating to NASS continue to be funded as a non-asylum Immigration matter?</b></p>   | <p>No. From 1 October, work in relation to NASS assistance would ordinarily be undertaken as a Welfare Benefit matter, it couldn't be conducted under an Immigration matter start.</p> <p>You should have been allocated a number of tolerance matter starts; they can be opened for this purpose. The relevant fixed fees are detailed in the Payment Annex to the Civil Specification.</p>   |  |  |  |
| <p><b>C2</b></p> <p><b>Can a supplier be funded for establishing (as per Rule 11.69) whether there is good reason to transfer a matter from another supplier?</b></p>  | <table border="0" style="width: 100%;"> <tr> <td style="width: 33%;">Previous Controlled Work</td> <td style="width: 33%;">Rule B9.1<br/>Rules 2.22 to 2.30<br/>Paragraph 11.69</td> <td style="width: 33%;">Funding Code<br/>Civil Specification<br/>Immigration Specification</td> </tr> </table> <p>No. It is part of assessing the merits / sufficient benefits of a case and determining whether a second supplier can grant funding. This will have been undertaken prior to a Legal Help or CLR form having been signed. Only time spent on a case after completing the appropriate forms (having opened a new NMS) can be claimed.</p> | Previous Controlled Work   | Rule B9.1<br>Rules 2.22 to 2.30<br>Paragraph 11.69 | Funding Code<br>Civil Specification<br>Immigration Specification |
| Previous Controlled Work   | Rule B9.1<br>Rules 2.22 to 2.30<br>Paragraph 11.69   | Funding Code<br>Civil Specification<br>Immigration Specification |  |  |
| <p><b>C3</b></p> <p><b>If I advise a client prior to attendance at the ASU, will I be required to obtain formal confirmation that they cease to instruct me in order that I may claim up the £100 for initial advice as per Rule 11.36 (c)(i)?</b></p> | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">Legal Help Cost Limit</td> <td style="width: 50%;">Paragraph 11.36 (c)(i)</td> </tr> </table> <p>No. If after a reasonable period (and no longer than 3 months) the client does not return to give further instructions then for the purposes of claiming any payment for the initial advice you take that as a cessation of instruction.</p>   | Legal Help Cost Limit  | Paragraph 11.36 (c)(i)                             |  |
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| <p><b>C4</b></p> <p><b>If a client's appeal before the AIT is successful but there are issues with a delay in receiving status papers or in correcting the details on the papers, would these costs be covered by the Stage 2b GF or the CLR Upper Cost Limit?</b></p> | <p>Neither. The Stage 2b Graduated Fee covers all work up to advising the client on their rights and entitlements, however should there be any problems concerning a delay in receiving status papers, advising on an application for travel documents or in those matters in which there are errors on any such papers, a new matter start should be opened to cover any advice in relation to such matters where you believe specialist legal advice is required.</p> <p>Any work in relation to legal advice in relation to form filling, applying for a certificate and/or complying with pre-action protocol will be funded under Hourly Rates as per Rule 11.2.</p> |
| <p><b>C5</b></p> <p><b>Prior to 1 October our organization did not have Devolved Powers, however from 1 October we have been granted Devolved Powers for CLR, do these also extend to certificated work?</b></p>   | <p>No. For those suppliers granted Devolved Powers from 1 October 2007, these will only apply to CLR; you would still be required to make an application for an emergency certificate to NIAT using the App6 procedure. If you have been granted Devolved Powers prior to this date, then these powers would also extend to certificated matters.</p>   |
| <p><b>C6</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. A new 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 graduated 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>   |

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| <p><b>C7</b></p> <p><b>What can I claim if I have been referred a NAM client through a LSC rota<sup>1</sup> and the client does not show up, and how do I report this on the CMRF?</b></p>   | <p>You may claim costs of up to the equivalent of 1 hour (£52.55) in this circumstance. This can cover the costs of an interpreter attending your offices and/or your time in the event the client does not attend, but in any event no more than £52.55 may be claimed.</p> <p>You should use the following codes when reporting on the costs on the CMRF</p> <p>Matter type I code: IAXL<br/>Matter type II code: IGOL</p> <p>Stage Reached code: IE<br/>Outcome code: IX</p> <p>Please note that you are not required to open a new matter start in order to claim a 'no-show' payment.</p>  |
| <p><b>C8</b></p> <p><b>I have attended upon a new client who has not himself received a 'legacy questionnaire' from the Home Office. Can I photocopy a blank legacy questionnaire and submit this to the Home Office on behalf of my new client?</b></p> | <p>The LSC will not fund (or grant extensions for) such work, which in all likelihood will not move the client's case forward. The Home Office and Case Resolution Directorate have given clear guidance as to how they are dealing with the legacy backlog. They have set out the priority and order of cases. The courts also have given guidance on this, see R (Housein &amp; Others) v SSHD, S (Afghanistan). If your client requires advice in relation to their outstanding (legacy) case and/ or has received a legacy questionnaire or comes within the ambit of the court guidance then you may provide legal advice in relation to this.</p> |

<sup>1</sup> Currently these operate in Leeds, Liverpool, Cardiff and Solihull

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| <p><b>C9</b></p> <p><b>In a deportation matter, where we are pursuing a claim based on article 3 of the ECHR, would this matter be classed as an asylum matter for the purposes of funding?</b></p> | <p>Yes. The relevant provisions of paragraph 11.2 should also be considered in determining whether the matter would be paid at Hourly Rates or under the Graduated Fee Scheme.</p>   |
| <p><b>C10</b></p> <p><b>Can the supplier claim for attendance with client at First Reporting Event?</b></p>   | <p>No. The LSC does not provide funded attendance at the ‘First Reporting Event’ (FRE). The FRE does not touch on the basis of the convention claim for which legal advice may be required at the event.</p> <p>The LSC concentrates resources on those areas where legal advice is required. For avoidance of doubt, funded legal attendance is not available for the Decision Event, as legal advice is not required at the event. It is up to the individual supplier to assess what further or additional attendance is required with the client after these events.</p> <p>Similarly the LSC will not fund the attendance of a supplier with a client at an expert’s office if legal advice is not required in that attendance. Where attendance at the supplier’s office either before and/or after the attendance with the expert, is believed to be appropriate and necessary, then funding may be available for that purpose.</p> |

## D. Claiming

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| <p><b>D1</b></p> <p><b>Is VAT included when SMS calculates whether a claim is exceptional?</b></p>  | <p>No. The exceptional threshold is calculated net of VAT. All figures reported on the CMRF will be net of VAT. There is however a VAT field on the CMRF which providers will use to indicate whether VAT is payable, you should refer to the guidance previous provided in Focus 48 &amp; 49 concerning VAT.</p>   |
| <p><b>D2</b></p> <p><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></p> | <p>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.</p>  |
| <p><b>D3</b></p> <p><b>Can I claim an oral CMRH additional payment if I attend a Pre-Hearing Review under the GFS?</b></p>  | <p>For each pre-hearing review that requires your attendance and that you attend, you will be entitled to claim an additional payment of £175. You should enter 'O' in the relevant field of the CMRF as you would if you had attended an Oral CMRH.</p> <p>Should you attend the AIT for more than 1 Pre-hearing review, you can claim the further additional payments as per the process set out in question G10 above.</p> |
| <p><b>D4</b></p> <p><b>How do the LSC define “legacy” cases for the purpose of reporting on the CMRF?</b></p>   | <p>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.</p>   |

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| <p><b>D5</b></p> <p><b>What fields are picked up by SMS when calculating the Profit Costs of a case to determine whether a claim is exceptional?</b></p>   | <p>In all Graduated Fee cases, SMS will pick up the values entered in the 'Net Profit Costs' and 'Net Counsel Fee' fields to ascertain the "value" of the work claimed.</p>  |
| <p><b>D6</b></p> <p><b>Should the same Case ID be used if I am working on two separate matters for the same client?</b></p>  | <p>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.</p> <p>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> |
| <p><b>D7</b></p> <p><b>If I open a matter under Legal Help to assess the merits of an application for review under s103A of the NIA 2002, and then grant CLR to make an application for review, if the application and cost order are refused by the AIT/High Court, what costs can I claim and how?</b></p> | <p>In this scenario, as a cost order has been refused, any Profit Costs and Counsel Fees incurred under CLR <u>cannot</u> be claimed. You would be entitled to claim up to £100 under Legal Help for the assessment of merits plus any reasonable disbursements incurred under CLR.</p> <p>In this scenario you would report the Legal Help and any claimable CLR disbursement costs together on one line of the CMRF using the following codes:</p>   |

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|--|----------------|-------------|
|  | Matter Type I  | IAXC / IMXC |
|  | Matter Type II | IRAR        |
|  | Stage Reached  | IK          |
|  | Outcome        | IE          |

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| <p><b>D8</b></p> <p><b>Whilst my client’s claim is pending a decision with the Case Resolution Directorate (CRD), can I submit a stage or completed claim for the costs incurred to date?</b></p> | <p>Recently The Commission has announced that a facility has been introduced to allow providers to submit disbursement claims incurred in respect of cases commenced prior to 1 October 2007. This was a step to alleviate the cash flow difficulties arising as a result of firms carrying unmanageable disbursement work in progress levels. Full details of this are available on the LSC website.</p> <p><a href="http://www.legalservices.gov.uk/aboutus/whats_new_9485.asp">http://www.legalservices.gov.uk/aboutus/whats_new_9485.asp</a></p> <p>Link to the Immigration Policy Development page, which contains the paper itself;</p> <p><a href="http://www.legalservices.gov.uk/civil/immigration/5526.asp">http://www.legalservices.gov.uk/civil/immigration/5526.asp</a></p> <p>If the matter in question commenced prior to 1 October 2007, then the above guidance may apply, but only in relation to disbursements.</p> <p>Aside from the above exercise concerning disbursements, a stage claim can only be made in the circumstances set out in the Immigration Specification at 11.70/71, this does not include where a decision is pending from CRD.</p> <p>A completed claim can only be made when one of the circumstances set out at para 5.33 of the Unified Contract General Specification are met. A decision pending from the CRD, will not justify a completed claim to be made.</p> |
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| <p><b>rather than a maximum of 3 hours?</b></p>   | <p>In addition to the costs claimable (either under the Graduated 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;<br/>HMP Dartmoor; and<br/>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>Please refer to para 8.37 (c) of the Civil Specification and para 3.5 of the Costs Assessment Guidance for further detail on such matters.</p> |
| <p><b>E4</b></p> <p><b>Does the limit of 3 hours per return journey in relation to detained matters apply to matters opened prior to 1 October 2007?</b></p>                            | <p>No. The 3-hour limit on each return journey only applies to matters opened on/after 1 October 2007.</p>   |
| <p><b>E5</b></p> <p><b>In a matter under the GFS, should I wish to pursue an application for bail to the Chief Immigration Officer, would the Stage 1 Graduated 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>  |

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| <p><b>E6</b></p> <p><b>Does the £500 bail only limit include disbursements?</b></p>   | <p>Upper Cost Limit – CLR paragraph 11.47 (c)</p> <p>Yes. The £500 CLR Upper Cost Limit is inclusive of disbursements and counsel fees. This limit is extendable upon application to NIAT.</p>  |
| <p><b>E7</b></p> <p><b>CLR has been granted for both a substantive asylum appeal and a bail application will the £1600 Upper 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 Upper 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>E8</b></p> <p><b>In a Graduated 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 Graduated Fee substantive claim.</p> |

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| <p><b>E9</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>Review by the Independent Funding Adjudicator Paragraph 11.147</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> |
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**Useful web links:**

1. Legal Services Commission – The Unified Contract

[http://www.legalservices.gov.uk/civil/unified\\_contract.asp](http://www.legalservices.gov.uk/civil/unified_contract.asp)

2. The Unified Contract – Standard Terms February 2007

[http://www.legalservices.gov.uk/docs/civil\\_contracting/unified\\_contract\\_standard\\_terms.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/unified_contract_standard_terms.pdf)

3. Immigration Specification October 2007

[http://www.legalservices.gov.uk/docs/civil\\_contracting/070813\\_Civil\\_Specification\\_Section\\_11\\_ImmigrationSpecification.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/070813_Civil_Specification_Section_11_ImmigrationSpecification.pdf)

4. Payment Annex 2008

<http://www.legalservices.gov.uk/docs/forms/080701PaymentAnnex2008.pdf>

5. NFP Unified Contract Transition process

[http://www.legalservices.gov.uk/docs/civil\\_contracting/070813\\_NfPTransition.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/070813_NfPTransition.pdf)

6. LSC Immigration Home Page

[http://www.legalservices.gov.uk/civil/immigration\\_asylum.asp](http://www.legalservices.gov.uk/civil/immigration_asylum.asp)

7. LSC processing immigration applications – NIAT

<http://www.legalservices.gov.uk/civil/immigration/5528.asp>

8. LSC Immigration Policy Development

<http://www.legalservices.gov.uk/civil/immigration/5526.asp>

9. LSC Immigration Updates

<http://www.legalservices.gov.uk/civil/immigration/5527.asp>

10. Civil Legal Aid Eligibility

[http://www.legalservices.gov.uk/civil/civil\\_legal\\_aid\\_eligibility.asp](http://www.legalservices.gov.uk/civil/civil_legal_aid_eligibility.asp)

11. Electronic Billing – LSC Online

<http://www.legalservices.gov.uk/civil/ebusiness.asp>

12. LSC – Certificated work – application forms

<http://www.legalservices.gov.uk/civil/forms/7453.asp>

13. LSC – Controlled work – application forms

<http://www.legalservices.gov.uk/civil/forms/7451.asp>

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14. AIT Practice Directions – consolidated April 2007

[http://www.ait.gov.uk/practice\\_directions/documents/2007\\_practice\\_dirs\\_30apr07.pdf](http://www.ait.gov.uk/practice_directions/documents/2007_practice_dirs_30apr07.pdf)

15. AIT forms and guidance

[http://www.ait.gov.uk/forms\\_and\\_guidance/forms\\_and\\_guidance.htm](http://www.ait.gov.uk/forms_and_guidance/forms_and_guidance.htm)

16. Solicitor's Regulatory Authority (SRA)

<http://www.sra.org.uk/home.page>

17. UKBA Case Resolution Programme

<http://ukba.homeoffice.gov.uk/asylum/oldercases>

18. LSC Funding Code Decision making guidance – Immigration Section 29

[http://www.legalservices.gov.uk/civil/guidance/funding\\_code.asp](http://www.legalservices.gov.uk/civil/guidance/funding_code.asp)