

# UNIFIED CONTRACT

## CIVIL SPECIFICATION

### 10. Family Category of Law Specific Provisions

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## PART A - GENERAL REMUNERATION

### Levels of Service

10.1 The following tables set out the Funding Code Levels of Service available in the Family Category for Public and Private Law Work, how they are funded and how they correspond to the Fee Levels established for the purpose of the family fee schemes:

#### Public Law

Fee Level	Level of Service	Funded As
1	Legal Help	Controlled Work
2	Family Help (Lower)	Controlled Work
3	Legal Representation	Licensed Work

#### Private Law

Fee Level	Level of Service	Funded As
1	Legal Help	Controlled Work
2	Family Help (Lower)	Controlled Work
3	Family Help (Higher)	Licensed Work
4	Legal Representation	Licensed Work

The grant of each level is subject to all relevant Funding Code Criteria and Guidance in Volume 3 of the LSC Manual (or as published on our website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)).

### Remuneration for Family Work

10.2 The following table shows the remuneration regime for all Levels of Service and categories of case within the Family Category, subject to the further detailed provisions of this Section. The headings “Public Law” and “Private Law” relate to services other than Family Advocacy.

LEVELS OF SERVICE								
	Legal Help		Family Help (Lower)		Family Help (Higher)		Legal Representation	
	Payment By	Escape	Payment By	Escape	Payment By	Escape	Payment By	Escape
PUBLIC LAW								
s31 Care Proceedings	SF	3	SF	3	N/A	N/A	SF	2
Other Public Law	SF	3	N/A	N/A	N/A	N/A	HR	N/A
PRIVATE LAW								
Divorce Only cases	SF	3	N/A	N/A	N/A	N/A	N/A	N/A
Child Abduction Proceedings	SF	3	N/A	N/A	N/A	N/A	HR	N/A
Domestic Abuse Proceedings	SF	3	N/A	N/A	N/A	N/A	SF	3
Private Law Children	SF	N/A	SF	3	SF	3	SF	3
Private Law Finance	SF	N/A	SF	3	SF	3	SF	3
Inheritance and Specified Proceedings	SF	N/A	SF	3	HR	N/A	HR	N/A
FAMILY ADVOCACY								
Public Law Advocacy	N/A	N/A	N/A	N/A	N/A	N/A	GF	N/A
Private Law Advocacy	N/A	N/A	N/A	N/A	GF	N/A	GF	N/A

10.3 The “Payment By” columns show how payment is determined using the following codes:

- GF = Graduated Fees, i.e. a range of Standard Fees are available for this service, and more than one Standard Fee may be claimed for one Level of Service.
- SF = payment is by way of Standard Fee, entitlement being determined by this Specification. Note that for work normally covered by a Standard Fee, certain proceedings and services, as detailed in this Specification, fall outside the Standard Fee scheme and are payable by Hourly Rates.
- HR = Hourly Rates.
- N/A = Not Available or Not Applicable.

10.4 The “Escape” Columns show whether a case can escape from the Standard Fee and be paid by way of Hourly Rates. For example “3” means that if remuneration calculated on an Hourly Rates basis, would be more than three times the amount payable by way of Standard fee, payment will be made solely by way of Hourly Rates. Note that this does not apply to the Graduated Fee Scheme for Family Advocacy where it is not possible to escape from the Standard Fee but additional payments may be due in certain cases as set out in Part D of this Family Specification.

10.5 The Standard Fees and Hourly Rates payable for Family work are set out in sections 2, 3, 7, 9, 10, 11 and 12 of the Payment Annex 2011. All fees payable are exclusive of VAT and disbursements.

## Regional Fees

10.6 Whilst some fees are of national application, certain Standard Fees vary according to region. All regional fees are set out in the Payment Annex. Where a regional fee applies, you should claim the regional fee for the work of the fee-earner whose office is situated in the applicable LSC Region.

10.7 Regional fees are determined in accordance with the LSC Regional Arrangements 2000 as follows:-

Regional Fee	LSC Region (Regional Office)
North	North Western Region (Manchester)
	North Eastern Region (Newcastle)
	Yorkshire & Humberside Region (Leeds)
Midlands	Merseyside Region (Liverpool)
	West Midlands Region (Birmingham)
	East Midlands Region (Nottingham)
London	Eastern Region (Cambridge)
	London Region (London)
South	South Eastern Region (Reading)
	South Western Region (Bristol)
Wales	Wales Region (Cardiff)

## Level of Court

- 10.8 Most Standard and Graduated Fees in the Payment Annex vary according to the level of court involved. In sections 2 and 3 of the Payment Annex, fees specified as “High Court” relate to the High Court or Court of Protection and “Other” relate to the County Court, Family Proceedings Court and any other courts. If a case transfers between courts and work within the scope of a single Standard Fee is carried out at more than one level, the fee claimed should be that specified for the court at which the case concluded at first instance. Otherwise fees must be claimed according to the level of court at which the relevant services were provided.

## Cases Involving More Than One Fee

- 10.9 Where more than one Level of Service is legitimately provided for a Client, remuneration may be claimed separately for each Level of Service. For example, if a Client receives Legal Help followed by Family Help (Lower) the Legal Help fee is claimable in addition to the Family Help (Lower) fee.
- 10.10 Where the Payment Annex sets out more than one Standard Fee for a particular Level of Service only one Standard Fee may be claimed per case for that Level of Service, unless otherwise specifically permitted under a Graduated Fee scheme. The Specification will determine which is the appropriate fee to claim.
- 10.11 Where you are providing a particular Level of Service you may not go on to grant or apply for a further Level of Service unless all work which could be carried out under the existing Level of Service has been completed. For example, if you are providing Family Help (Lower) you may not apply for a Certificate for Family Help (Higher) unless you have completed all work within the scope of Family Help (Lower) and all other relevant criteria are satisfied. See in particular Funding Code Criteria 11.3.3 and 5.4.4. The level of remuneration payable for a Level of Service is not a relevant consideration in deciding whether it is appropriate to move on to the next level.
- 10.12 Where it is appropriate to provide a particular Level of Service, such as Legal Representation, it does not follow that all lower Levels of Service may be claimed. In particular, if at the first meeting with the Client it is appropriate to grant the Client Emergency Family Help (see Paragraph 10.68 below) or Emergency Representation, no fee may be claimed for providing Legal Help or Family Help (Lower). However the necessary work can be claimed under the certificate and may be claimed under the relevant Standard Fee scheme.
- 10.13 If, at the first meeting with the Client, it is appropriate to make an application for Family Help (Higher) or Legal Representation, but you do not have a Devolved Power to grant those Levels of Service, you may claim Legal Help to advise the Client and make the application for a certificate, but you may not claim Family Help (Lower). If the Client instructs you after proceedings have been issued, a grant of Family Help (Lower) in respect of the same Aspect is unlikely to be appropriate.
- 10.14 In some cases, for example Domestic Abuse and Child Abduction proceedings, there is no specific Standard Fee for Family Help as it is not anticipated that it will be necessary to negotiate before issuing proceedings. In

such cases you may proceed from Legal Help straight to Legal Representation where all other relevant Funding Code Criteria are satisfied.

## **Changes of Supplier**

- 10.15 General Provisions of the Specification restrict the ability of a Supplier to provide Legal Help where the Client has received Legal Help from another Supplier, except in specified circumstances. This approach applies equally to Family Help.
- 10.16 Where a Client changes Supplier during the provision of Legal Help or Family Help (Lower) the general rule is that both the old and new Supplier are separately entitled to payment for work done, including any Standard Fee for the Level of Service provided under this Specification. For these Levels of Service, if you would be entitled to a Standard Fee for work done either before or after the Client transferred, any entitlement to escape from that Standard Fee should be determined solely on the basis of the work you have undertaken.
- 10.17 Where a Client changes Supplier during the provision of Family Help (Higher) or Legal Representation when within the scope of a Standard Fee scheme, the remuneration rules are set out in the relevant part of this Specification - see Paragraphs 10.44 to 10.45 for s31 Care Proceedings and Paragraphs 10.91 to 10.92 for Private Law. Note however that:
- (a) nothing in those rules creates a new entitlement to apply to us for payment. This is governed by the provisions on Payments on Account and Final Payments – see the General Provisions and Paragraphs 10.23 to 10.26.
  - (b) those rules do not create any entitlement to a Standard Fee (or half a Standard Fee) in cases where:
    - (i) you are instructed for less than 24 hours;
    - (ii) where the Client has previously instructed a different supplier in respect of the same work and the certificate has not been transferred, or
    - (iii) where you act for a Client whose application to be joined in proceedings is refused
- in all these cases you may apply to us for payment of any work reasonably done by way of Hourly Rates.

## **Enhancement of Family Prescribed Rates**

- 10.18 The rules on enhancement of Hourly Rates in the General Provisions apply to Family Work subject to Paragraphs 10.19 to 10.22 below.
- 10.19 No enhancement or potential for enhancement of Hourly Rates may be taken into account for the purpose of determining whether a case escapes from any Standard Fee or whether a half or full Standard Fee is payable on transfer of Supplier (See Paragraphs 10.44 to 10.45 below)
- 10.20 The percentage by which Hourly Rates for Family Work may be enhanced may never exceed 100%.

### *Panel Membership Enhancement in Family Cases*

- 10.21 Where the relevant work is done by a member of a relevant panel:
- (a) the Threshold Test in the General Provisions shall be deemed to be satisfied in respect of that work; and
  - (b) the minimum level of enhancement allowed in respect of that work shall be 15%.

- 10.22 In paragraph 10.21:

“relevant panel” means:-

- (a) the panel of Resolution Accredited Specialists;
- (b) in relation to work done under a Certificate which includes proceedings relating to children, the Law Society’s Children Panel Accreditation Scheme; or
- (c) the Law Society’s Family Law - Advanced Accreditation Scheme.

“proceedings relating to children” means proceedings in which the welfare of children is determined, including, without limitation, proceedings under the Children Act 1989 or under the inherent jurisdiction of the High Court in relation to children.

### **Payments on Account and Final Payments**

- 10.23 Payments on Account may be claimed for Family Work in accordance with the General Provisions (see Clause 17 of the Unified Contract Standard Terms) subject to the following rules:

- (a) Applications for Payments on Account may not exceed 75% of the costs incurred by you calculated on an Hourly Rates Basis;
- (b) Where an application relates to work within the scope of a Standard Fee the application may not be for more than 75% of the Standard Fee unless, at the time the application for Payment on Account is made, you have already incurred sufficient costs to escape that Fee (if permitted under the relevant scheme);
- (c) As there is no “escape” mechanism for payments under the Family Advocacy Scheme any Payment on Account to you for work within that Scheme may not exceed 75% of the relevant Standard Fees and Bolt-on Fees due – see Paragraph 10.26 below for the position of Counsel;
- (d) For the avoidance of the doubt Payments on Account of disbursements may continue to be claimed at 100%

- 10.24 The above rules do not restrict applications for final assessment and payment. Subject to General Provisions you may also claim payment when a particular Aspect of a case has concluded – Domestic Abuse, Children or Finance (see

further Paragraphs 10.55, 10.59 and 10.74). Payment may be claimed at 100% of all Standard and Graduated fees related to that Aspect, even if the certificate is continuing for other Aspects. However when claiming a Standard Fee under this Paragraph you must certify that you have not previously claimed any Payment on Account for work within the scope of that Standard Fee. If you are unable to do so, any Payments on Account made under the certificate may be recouped from the Standard Fee claimed.

- 10.25 Where a payment has been made under the above Paragraph but further work is subsequently carried out on the same case (for example because a reconciliation between the parties has broken down) whether under the same or a new certificate, we will treat any such payments made as a Payment on Account for the purposes of the final assessment (but this will not count towards one of the two Payment on Account applications permitted under Clause 17.6 of the Unified Contract Standard Terms
- 10.26 No Payment on Account may be claimed in relation to services provided by Counsel (as defined at Paragraph 10.112 below) under the Family Advocacy Scheme (FAS) as set out in Part D of this Family Specification. Instead Counsel may apply to us, on a form approved by us, for payment under that scheme as soon as the relevant hearing or other item of work is concluded. When requested by Counsel you must, within 7 days of receipt of the request, provide Counsel with such information as he or she may reasonably require for the purposes of making a claim under the FAS (or challenging any reduction in fees payable under FAS).
- 10.27 All payments under FAS count towards any relevant Cost Limitation on a certificate. Payments to you under the certificate therefore may not exceed the Cost Limitation less all payments to Counsel under FAS. When applying to us for a final payment, including final payment for an Aspect under Paragraph 10.24, you must include details of all relevant claims made under FAS, whether made by you or by any Counsel instructed in the case.

## **TRANSITIONAL PROVISIONS**

- 10.28. This Family Specification will apply from 9<sup>th</sup> May 2011.
- 10.29. In relation to fees and remuneration for Licensed Work, remuneration under a certificate granted following an application made prior to 9<sup>th</sup> May will operate as if this Specification had not come into force, provided that all relevant application forms have been signed by you or your Client before 9<sup>th</sup> May and are received by us before 16<sup>th</sup> May 2011.
- 10.30. In relation to all other matters, this Specification applies to all work done on or after 9<sup>th</sup> May 2011.

## **PART B – PUBLIC LAW FEE SCHEMES**

### **Scope of Public Law Work**

- 10.31 For the purposes of remuneration, “Public Law Work” covers all work which either:-
- Falls within section 11.7, 11.8 or 11.9 of the Funding Code Criteria (Special Children Act Proceedings, Related Proceedings and Other Public Law Children cases); or
  - Relates to a Family Dispute which, if it proceeded to Legal Representation, would fall within any of those sections of the Funding Code.
- 10.32 Public Law Work is subject to the remuneration regime set out in the “Public Law” section of the table at Paragraph 10.2 above. Where Public Law Work is payable by means of a Standard fee, the fee payable is as set out in section 2 of the Payment Annex.
- 10.33 “Public Law Proceedings” mean proceedings funded under sections 11.7, 11.8 or 11.9 of the Funding Code Criteria.

### **Fee Scheme Definitions**

- 10.34 In the table at Paragraph 10.2 above:
- “s31 Care Proceedings” means proceedings or potential proceedings under section 31 of the Children Act 1989.
- “Other Public Law” means any Public Law Work other than s31 Care Proceedings.
- 10.35 In the Payment Annex, fees for s31 Care Proceedings vary according to the identity of the party represented, the Court and the number of parties represented:
- “Child” applies where you represent the Child who is the subject of the proceedings.
- “Parent” applies where you represent the parent of such a Child or a person who has parental responsibility for such a Child.
- “Joined Party” applies to all other Clients in s31 Care Proceedings (but see Paragraph 10.17 in relation to Clients who are unsuccessful in applying to join proceedings).

Where you represent more than one party in the proceedings only one Standard Fee may be claimed by you, but this will be the higher fee marked “2” or “2+” in the Payment Annex. In order to claim the higher fee you must have represented more than one party at at least one court hearing during the case.

Where you act for a Client whose status changes during the period covered by a Standard Fee, you must claim on the basis of the higher relevant fee. For example if you act for a grandparent who loses parental responsibility and

continues as a Joined Party, the Standard Fee and escape provisions applicable to acting for a Parent will apply.

### **Payment for Family Help (Lower)**

- 10.36 Family Help (Lower) may only be granted where all criteria at section 11.3 of the Funding Code are satisfied. In addition, in Public Law Work remuneration for Family Help (Lower) may only be claimed where the following conditions are satisfied:-
- (a) the Local Authority has given written notice of potential s31 Care Proceedings in accordance with the DCSF/Welsh Assembly government guidance issued under the Children Act 1989 guidance and regulations, Volume 1, but no proceedings have yet been issued (application for an Emergency Protection Order does not count as issue of proceedings for this purpose);
  - (b) your Client is a Parent (as defined above);
  - (c) your Client requires advice and assistance with a view to avoiding the proceedings, or narrowing and resolving any issues with the Local Authority.

### **Escape from the Family Help (Lower) Standard Fee**

- 10.37 In determining whether you are entitled to claim Hourly Rates for Family Help (Lower) rather than the Standard Fee, you must take into account the time spent both under Family Help (Lower) and under Legal Help in relation to the same matter. In order to escape, your fees calculated on an Hourly Rate basis must be at least three times the aggregate of the Legal Help Standard Fee and the Family Help (Lower) Standard Fee. If you are entitled to escape, Hourly Rates may then be claimed for both Legal Help work and Family Help (Lower) work.
- 10.38 For the purposes of calculating whether a case escapes from the Standard Fee, or for payment where a case has escaped, the relevant Hourly Rate for all work is that specified at section 7 (c) of the Payment Annex. In s31 Care proceedings where Legal Help is provided but there is no grant of Family Help (Lower), the relevant Hourly Rate is that specified at section 7(b) of the Payment Annex.

### **Legal Representation Devolved Powers**

- 10.39 Unless otherwise notified by us, you have the Devolved Power to grant Legal Representation in Special Children Act Proceedings (as defined at section 2.2 of the Funding Code) and Related Proceedings (as defined at Paragraph 10.47 below). This Devolved Power replaces the previous deeming provision in relation to work done prior to the issue of a certificate. The Devolved Power must, of course, be exercised only when all relevant Funding Code Criteria are satisfied, including whether separate representation is justified for your Client (Funding Code Criterion 5.4.5)
- 10.40 You may not exercise the Devolved Power if Legal Representation has previously been refused for or withdrawn from your Client earlier in the same proceedings.

- 10.41 This Devolved Power does not replace or limit your Devolved Power to grant Emergency Representation where the criteria and guidance for doing so are satisfied.
- 10.42 As with other Devolved Powers, where you grant Legal Representation you must notify the Regional Office within five working days of the decision to grant in accordance with Funding Code procedures Rule C17. This notification should explain, where it is relevant, why it is appropriate for your Client to be separately represented.

### **Reporting Obligations for Public Law Cases**

- 10.43 Without prejudice to any other reporting obligations contained in this Contract and in the Funding Code procedures (see Rules C43 and 44 of the Procedures), where Legal Representation has been granted in any Public Law Proceedings, you must report to the Director where you become aware that your 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 promptly, we reserve the right to reduce or disallow any costs which have thereby been unnecessarily incurred.

### **Remuneration on Transfer of Supplier**

- 10.44 The following rules apply where a certificate is transferred in s31 Care Proceedings to a new Supplier, and the first Supplier ceases to provide representation in the proceedings but both the first and one or more subsequent Suppliers carry out work which is within the scope of the Standard Fee:
- (a) Each Supplier should calculate their fees separately on an Hourly Rates basis – any Supplier whose fees on that basis are equal to or greater than the Standard Fee is entitled to the Standard Fee;
  - (b) Any such Supplier whose fees on an Hourly Rates basis are less than the Standard Fee is entitled to half the Standard Fee;
  - (c) If any of the Suppliers concerned have represented two or more Clients at one or more court hearings during the case, the Standard Fee for that Supplier will be that for representing 2+ Clients (or half of this fee as appropriate);
  - (d) In deciding whether a case escapes the Standard Fee, each Supplier is considered separately. Therefore, a Supplier may only escape the Standard Fee if their fees on an Hourly Rates basis for the proportion of the case in which they acted are more than twice the relevant Standard Fee.
- 10.45 The following rules apply where a Supplier acts for more than one party and a Client's certificate is transferred to a new Supplier during the case (typically for conflict of interest reasons) but the first Supplier continues to represent one or more Clients:

- (a) The first Supplier is entitled to a full Standard Fee in the normal way (see 10.35 for where the “2” or “2+” fee can be claimed), unless the case escapes that fee;
- (b) In deciding whether a case escapes from the Standard Fee, each Supplier is considered separately. Only their own costs are taken into account for this purpose;
- (c) Any Supplier who takes on a Client and who was not previously acting for any party in the proceedings is entitled to either a half or a full Standard Fee, applying the rules in Paragraph 10.44(a) and (b) above; and
- (d) Such a Supplier will escape from the Standard Fee if their own costs on an Hourly Rate basis are more than twice the full Standard Fee, in the normal way.

### **Remuneration for Advocacy Services**

10.46 Standard Fees for s31 Care Proceedings cover all work in the proceedings at first instance except for services within the scope of the Family Advocacy Scheme set out in Part D of this Family Specification. Preparation for advocacy is similarly outside the Standard Fee, except where a solicitor (not Counsel) prepares for a hearing that does not take place and no fee is claimed for the hearing under the Family Advocacy Scheme. In that situation, solicitor preparation for advocacy may be treated as preparation in the case generally and may therefore be taken into account in determining whether a case becomes Exceptional.

### **Related Proceedings**

10.47 In this Specification “Related Proceedings” are proceedings which are being heard together with public law proceedings, or in which an order is being sought as an alternative to an order in such proceedings. An example is contact and residence proceedings which are being considered by the court, together with care proceedings.

10.48 Related Proceedings count as Public Law Work for remuneration purposes. No separate fee may be claimed for Related Proceedings, but any work done in Related Proceedings may be taken into account for the purpose of determining whether the case escapes from the Standard Fee.

### **Final Appeals**

10.49 Standard Fees for s31 Care Proceedings cover work done (other than advocacy) up to conclusion of the proceedings at first instance. This includes:

- (a) representation on any interim appeal
- (b) any advice on the merits of an appeal against the final order, and
- (c) an application to the court of first instance for permission to appeal.

10.50 Where Legal Representation is granted to bring or defend any appeal against the final order, this work will be paid by way of Hourly Rates.

## **Escape from the Legal Representation Standard Fee**

- 10.51 In deciding whether a case escapes from a Standard Fee, only work which is within the scope of the Standard Fee scheme may be taken into account. Therefore all costs relating to advocacy services, disbursements and Final Appeals (see Paragraph 10.49 above) should be disregarded for this purpose.
- 10.52 Further, in determining whether a case escapes, no enhancement of Hourly Rates may be taken into account, whether on the basis of panel membership or otherwise. However if on this basis a case does escape and becomes payable by way of Hourly Rates then enhancements can be claimed on Hourly Rates as allowed for in this Specification (see paragraphs 10.18 to 10.22 above)
- 10.53 Cases escape the Standard Fee regime where costs on an Hourly Rates basis exceed twice the Standard Fee. For this purpose the fee to use is always the one which would be payable if the case did not escape.

*For example: if a case transfers from the County Court to the High Court and concludes in the High Court, the High Court Standard Fee is payable and should also be used to calculate whether the case escapes. However in calculating the relevant Hourly Rate, County Court hourly rates shall be used for all work carried out in that court.*

## **PART C – PRIVATE LAW FEE SCHEMES**

### **Scope of Private Law Work**

- 10.54 The remuneration rules governing Private Law work apply to all work within the Family Category other than Public Law Work. Fees for advocacy services in Private Law cases are governed by the Family Advocacy Scheme set out in Part D of this Family Specification.

### **Private Law Definitions**

- 10.55 In this Part of the Family Specification, in the table at Paragraph 10.2 above and in the Payment Annex, Private Law categories have the following meanings:

“Aspect” means one of the three possible Aspects of Private Law work, namely Domestic Abuse, Children and Finance. Any Private Law work which does not fall within Domestic Abuse or Children will be treated as falling within the Finance Aspect;

“Child Abduction Proceedings” means cases considered under section 11.13 of the Code or services in relation to a Family Dispute which, if it proceeded to Legal Representation, would be considered under that section of the Code; note that, unless otherwise stated, rules applying to Child Abduction Proceedings in this Family Specification apply whether your Client is the applicant or the respondent in the proceedings;

“Divorce Only Cases” has the meaning given at Paragraph 10.56 below;

“Domestic Abuse” or “Domestic Abuse Proceedings” means cases considered under section 11.10 of the Funding Code or services relating to a Family Dispute which, if it proceeded to Legal Representation, would be considered under that section of the Code. This includes proceedings for a forced marriage protection order under the Forced Marriage (Civil Protection) Act 2007;

“Higher Standard Fee Scheme” means the Standard Fee Scheme applying to Private Law Licensed Work (Family Help (Higher) and Legal Representation) as described below from Paragraph 10.69 onwards;

“Higher Standard Fee Excluded Proceedings” means the proceedings excluded from the Higher Standard Fee Scheme as listed at Paragraph 10.69;

“Private Law Children” or “Children” means Private Law Children Cases as defined in the Funding Code;

“Private Law Finance” or “Finance” means cases considered under section 11.12 of the Code or services in relation to a Family Dispute which if it proceeded to Legal Representation, would be considered under that section of the Code. Note that the remuneration rules and rates for Private Law Finance also apply to all other Private Law Work which does not fall in any other category in the table at Paragraph 10.2;

## **Legal Help Divorce Only cases**

- 10.56 The Payment Annex provides a higher Standard Fee for Legal Help for “Divorce Only”. This fee may only be claimed where:
- (a) Your Client requires advice and assistance in order to initiate and progress proceedings for divorce, nullity, judicial separation or the dissolution of a civil partnership; and
  - (b) Those proceedings are issued; and
  - (c) Three months after proceedings are issued or when the proceedings are concluded (whichever is sooner) no other Level of Service is granted to your Client for any Family Dispute related to those proceedings; and
  - (d) You are satisfied that at that time it is unlikely that the Client will require any further services related to those proceedings.
- 10.57 In all other cases the basic fee for “Legal Help” at table 3(a) of the Payment Annex applies. Note that for Divorce Only cases, Domestic Abuse Proceedings and Child Abduction Proceedings cases can escape from the Standard Fee for Legal Help – for all other family matters this is not possible.

## **Criteria for Family Help (Lower) – meaning of “significant family dispute”**

- 10.58 You may only grant Family Help (Lower) where all relevant Funding Code criteria are satisfied, taking into account any guidance on those criteria as published on our website. Family Help (Lower) may only be granted for those Family Disputes:
- (a) Which involve more than simply taking instructions from and advising the Client, and providing any follow up written or telephone advice; and
  - (b) Where you are involved in substantive negotiations with a third party (either by conducting the negotiations yourself or by advice and assistance in support of mediation); and
  - (c) Where the dispute, if unresolved, would be likely to lead to family proceedings; and
  - (d) Which do not primarily concern processing a divorce, nullity, judicial separation or dissolution of a civil partnership; and
  - (e) Which do not primarily concern advice about a will, change of name or issues relating to child support.

## **Cases with Finance, Children and/or Domestic Abuse issues**

- 10.59 A Client may be granted a particular Level of Service separately for different Aspects of a case and may claim a separate Standard Fee for each Aspect, but the Funding Code Criteria must be considered and satisfied for each Aspect separately. For example, where a Client's divorce raises significant Finance issues and also Children issues, but the Children issues would not satisfy the cost benefit criterion for Family Help (Lower) then the Client may be assisted generally under Legal Help (but this would involve only one Matter Start and one Standard Fee – see Paragraph 10.155 below), but Family Help (Lower) should be granted for the Finance issues only. All work carried out must be recorded against the Aspect to which it relates and if work relates to more than one Aspect, the time spent must be apportioned equally between each such Aspect. These principles also apply to the Higher Standard Fee Schemes – see further Paragraphs 10.74 to 10.77 below.

## **Escape from Family Help (Lower) Standard Fees**

- 10.60 In determining whether you are entitled to claim Hourly Rates for Family Help (Lower) rather than the Standard Fee, you must take into account the time spent both under Family Help (Lower) and under Legal Help in relation to the same matter. In order to escape, your fees calculated on an Hourly Rate basis must be at least three times the aggregate of the Legal Help Standard Fee and the Family Help (Lower) Standard Fee. If you are entitled to escape, Hourly Rates may then be claimed for both Legal Help work and Family Help (Lower) work.
- 10.61 The Hourly Rate payable under the Payment Annex for Legal Help should be used both for determining whether a case escapes and, if a case does escape, determining remuneration payable.
- 10.62 The Settlement Fee should not be taken into account in deciding whether a case escapes the Standard Fee but if it does so, no Settlement Fee may be claimed.
- 10.63 If you are providing Family Help (Lower) for both Finance and Children issues, you will only escape from the Standard Fee if your total fees for all Aspects on an Hourly Rates basis are at least three times the aggregate of the Legal Help Standard Fee, the Family Help (Lower) Standard Fee for Children and the Family Help (Lower) Standard Fee for Finance. If the case as a whole escapes the Standard Fees in this way, all the work may then be claimed under Hourly Rates.

## **Court Fees**

- 10.64 Court fees are an allowable disbursement under Family Help (Lower) only where such fees are incurred for the purpose of obtaining a consent order. In all cases, court fees may only be incurred where they are a reasonable and proportionate step which satisfies the private Client cost benefit criterion (Funding Code criterion 11.3.2).

## **Settlement Fee – Family Help (Lower)**

- 10.65 The Payment Annex provides for a Settlement Fee which are payable for cases which conclude under Family Help (Lower). A Settlement Fee is payable in addition to any Standard Fee payable and may be claimed separately for settling children and finance disputes. A Settlement Fee may only be claimed if the following conditions are satisfied:
- (a) That Aspect of the case (i.e. Children or Finance) has been fully concluded under Family Help (Lower);
  - (b) That Aspect of the case does not proceed further to a new Level of Service within three months of the settlement in the case of Children, or six months of the settlement in the case of Finance, either with you or, so far as you are aware, another Supplier;
  - (c) There has been a genuine settlement to conclude that Aspect of the case, rather than, for example, a reconciliation between the parties or one party dying or disengaging from the case;
  - (d) In the case of financial disputes, the settlement is recorded in a formal written agreement or consent order; and
  - (e) The case has not escaped from the Standard Fee
- 10.66 When a settlement is concluded you must wait for at least 21 days before claiming the Settlement Fee. If you receive a Settlement Fee but you become aware that the settlement breaks down within the relevant period specified in sub-paragraph (b) above you must notify us of that fact and the Settlement Fee will be reclaimable from you.

## **Proceeding beyond Family Help (Lower)**

- 10.67 Before applying for a Certificate for Family Help (Higher) you must complete all work which could be carried out under Family Help (Lower). The application for Family Help (Higher) should be made only when it becomes necessary to issue proceedings other than for the purpose of a consent order or in the case of a Respondent such proceedings have been issued. Once a certificate has been granted covering Family Help (Higher) for an Aspect, all further reasonable work within the scope of the certificate relating to that Aspect should be carried out under that Level of Service.

## **Emergency Family Help**

- 10.68 In some cases the Client will need representation in the interests of justice as a matter of urgency before a stage has been reached in the case, such that a grant of Emergency Legal Representation would be appropriate. For example, if you are first contacted by a Client who has an imminent hearing pending which is not the final hearing, the appropriate Level of Service would be Family Help (Higher) rather than Legal Representation. Unless we have told you otherwise, you have a Devolved Power to grant Family Help (Higher) in such cases. You must apply the same procedures and criteria when granting Family Help (Higher) as you would when granting Emergency Representation, with necessary modifications. Further, if you grant Legal Representation under a Devolved Power and we consider that the appropriate Level of Service should have been Family Help (Higher) we will limit the certificate to Family

Help (Higher) and no Standard Fee for Legal Representation may be claimed unless the certificate is subsequently extended to that Level.

## **Exclusions from the Higher Standard Fee Scheme**

### *Proceedings Excluded from the Scheme*

10.69 Family Help (Higher) and Legal Representation in the following proceedings fall outside the Higher Standard Fee Scheme and are remunerated at Hourly Rates:

- (a) Child Abduction Proceedings
- (b) Proceedings under the Inheritance (Provision for Family and Dependents) Act 1975
- (c) Proceedings under the Trusts of Land and Appointment of Trustees Act 1996
- (d) Proceedings in which you provide separate representation of a child in proceedings which are neither specified Proceedings (as defined in section 41(6) of the Children Act 1989), nor proceedings which are being heard together with Specified Proceedings
- (e) Applications for Forced Marriage Protection Orders under the Forced Marriage (Civil Protection) Act 2007
- (f) Defended proceedings for divorce, judicial separation, dissolution of a civil partnership or for the legal separation of civil partners
- (g) Nullity proceedings (including proceedings for annulment of a civil partnership)
- (h) Proceedings under the inherent jurisdiction of the High Court in relation to children
- (i) Applications for Parental Orders under the Human Fertilisation and Embryology Act 2008

10.70 A certificate covering Child Abduction Proceedings may not cover any other family proceedings.

10.71 A certificate may cover Higher Standard Fee Excluded Proceedings as well as proceedings which fall within the Higher Standard Fee Scheme, although this will not be common. Work relating to Higher Standard Fee Excluded Proceedings may only be claimed if those proceedings are expressly covered under the certificate. If that is the case, time spent in the Excluded Proceedings must be recorded separately and claimed at Hourly Rates in addition to any Standard Fees claimed under the certificate.

### *Services Excluded from the Scheme*

10.72 For proceedings which are within the scope of the Higher Standard Fee Scheme the following work falls outside that Scheme and is remunerated separately as follows:

- (a) Family Advocacy i.e. all work within the scope of the Family Advocacy Scheme as set out at Part D of this Specification (but see Paragraph 10.73 below)
- (b) Very High Cost Cases – remuneration is governed by the terms of the Individual Case Contract
- (d) Final Appeals i.e. any appeal against a final order – remuneration for final appeals is governed by Hourly Rates, but see Paragraph 10.93 below
- (d) Exceptional Cases - these are paid at Hourly Rates – see Paragraphs 10.81 and 10.82 below
- (e) Disbursements – reasonable disbursements actually incurred may be claimed in addition to any Standard Fee

10.73 Note that preparation for advocacy is generally covered by the Family Advocacy Scheme, whether the advocacy is undertaken by a solicitor or by Counsel. Therefore time spent in advocacy preparation may not be taken into account in determining whether a case becomes Exceptional under the Higher Standard Fee Scheme. The exception is where a solicitor (not Counsel) prepares for a hearing that does not take place and no fee is claimed for the hearing under the Family Advocacy Scheme. In that situation, solicitor preparation for advocacy may be treated as preparation in the case generally. Note also that time spent by a solicitor in instructing Counsel is not covered by the Family Advocacy Scheme but is in principle within the Higher Standard Fee Scheme.

### **Higher Standard Fee Scheme – General Principles**

- 10.74 Separate Standard Fees are specified in the Payment Annex for the three Aspects of a Private Law family case: Domestic Abuse, Children and Finance. Note that Finance covers all work within the scope of the Higher Standard Fee Scheme not covered by Domestic Abuse or Children. Any combination of fees may be claimed under a certificate, provided the relevant merits criteria in the Funding Code are satisfied for each Aspect and Level of Service granted. Where a certificate covers more than one Aspect, each Aspect and Level of Service covered must be specified on the certificate.
- 10.75 Different Levels of Service may be combined in a certificate, generating the appropriate Standard Fee. For example a certificate may cover Legal Representation for Domestic Abuse Proceedings and Family Help (Higher) for Children and/or Finance issues. If a certificate covers Family Help (Higher) for an Aspect of a case and this is extended to Legal Representation, the Standard Fees for each Level of Service may be claimed.
- 10.76 The Standard Fee for a particular Aspect of a case may not be claimed more than once under a single certificate unless this is expressly authorised under this Specification. See Paragraphs 10.84 to 10.86 (Domestic Abuse) and 10.88 to 10.90 (Enforcement).
- 10.77 Representing more than one party in Private Law family proceedings does not create any entitlement to an additional Standard Fee or bolt-on payment. Where you hold more than one certificate relating to the same family

proceedings, remuneration will be determined exactly as if all work had been carried out under a single certificate.

### **Proceeding beyond Family Help (Higher)**

- 10.78 You may only apply for Legal Representation for any Aspect of a case when all work which could be completed under Family Help (Higher) has been completed. The material difference between the scope of Family Help and Legal Representation is that Family Help does not cover preparation for, or representation at, any final hearing. Therefore you may only apply for Legal Representation once any interim hearings have taken place and where the next step is to prepare for the final hearing. For this purpose, a final hearing is any hearing which the court has listed for the purpose of making a final determination, either of the whole case or of all issues relating to an Aspect of the case (Children, Finance or Domestic Abuse).

### **Issue and Control of Certificates**

- 10.79 In accordance with the Funding Code Procedures, Rule C 35.6, multiple certificates for a client will not be permitted for Private Law proceedings (save for Child Abduction Proceedings which are administered separately). Subject to Paragraph 10.17 if a second or subsequent certificate is issued for Private Law work when one is already in force, all work carried out shall be deemed to have been carried out under the first certificate issued, which for this purpose shall be deemed to have continued until the last certificate is discharged.
- 10.80 A certificate should not be discharged under section 15.5(v) of the Funding Code Criteria until all Aspects of the case covered by the certificate have been concluded. If a certificate covering work within the Higher Standard Fee Scheme is discharged or revoked but a further certificate is subsequently granted for such work to the same Client, all such work shall be deemed to have been carried out under the first certificate (hence no additional Standard Fee shall be payable) unless 6 months has elapsed between the discharge or revocation of the first certificate and the issue of the second. But see Paragraphs 10.88 to 10.90 below regarding enforcement.

### **Escape from the Higher Standard Fee Scheme**

- 10.81 The Escape Threshold is 3 for all Private Law fee schemes, i.e. a case will escape the Standard Fee and be paid entirely by Hourly Rates if remuneration for all work within the scope of the Standard Fee calculated on the basis of Hourly Rates would be at least three times the amount of the Standard Fee.
- 10.82 Where a certificate covers two or more Aspects of a case falling within the Higher Standard Fee Scheme each Aspect will be considered separately for the purpose of escaping from the Scheme. For example in a certificate covering Children and Finance proceedings, you will escape the Children Standard Fee only if your time properly attributed to that Aspect is such that your fees calculated on an Hourly Rates basis is at least three times that Standard Fee. If you do escape the Children Standard Fee you will still be paid the Finance Standard Fee unless your time spent on Finance issues is sufficient to escape that Fee.
- 10.83 Where a certificate covers more than one Level of Service i.e. Family Help (Higher) and Legal Representation, the Escape Threshold is based on the aggregate of the two Standard Fees payable under the certificate. Therefore in

the above example, if both Family Help (Higher) and Legal Representation had been granted for the Children Aspect, you would escape the Standard Fee for those Levels of Service only if your fees relating to the Children Aspect, calculated on an Hourly Rates basis, would be at least three times the combined total of the Standard Fees for both levels.

## **Standard Fees for Domestic Abuse Proceedings**

- 10.84 The Standard Fee for Domestic Abuse Proceedings covers all work up to and including the conclusion of the final hearing which the court list for all parties to attend to determine whether to grant or continue the relief sought. Ex parte or other interim hearings do not generate any additional Standard Fee although advocacy at such hearings may be claimed under the Family Advocacy Scheme. As usual, the full Standard Fee may be claimed even if the case concludes in advance of the final hearing.
- 10.85 If an injunction is granted at the final hearing but one or more further court hearings are necessary to deal with breach of the injunction, by application for committal or otherwise (and assuming all relevant criteria and guidance are satisfied to grant funding for such work), a second Standard Fee for Domestic Abuse Proceedings may be claimed under the certificate (or under a new certificate if the original one has been discharged).
- 10.86 The trigger for claiming this additional fee is attendance by an advocate at one or more enforcement/committal hearing. No more than two Standard Fees may be claimed for one set of Domestic Abuse proceedings, regardless of the number of hearings. As usual, where a second Standard Fee is payable, it is the aggregate of the two fees which determines the Escape Threshold.

## **Settlement Fee – Finance Cases**

- 10.87 The Payment Annex provides for Settlement Fees which are payable for Finance cases which conclude under Family Help (Higher). A Settlement Fee is payable in addition to any Standard Fee payable but may only be claimed if the following conditions are satisfied:
- (a) The Finance Aspect of the case has been fully concluded under Family Help (Higher);
  - (b) The Finance Aspect of the case does not proceed further to a new Level of Service within six months of the settlement, either with you or, so far as you are aware, another Supplier;
  - (c) There has been a genuine settlement to conclude that Aspect of the case, rather than, for example, a reconciliation between the parties or one party dying or disengaging from the case;
  - (d) The settlement is recorded in the form of a Consent Order approved by the Court;
  - (e) The Finance Aspect of the case has not escaped from the Standard Fee (however the Settlement Fee will not be taken into account in any calculation of whether a case escapes the Standard Fee)

## **Enforcement Proceedings**

- 10.88 The Higher Standard Fee Scheme for Children and Finance cases covers all work other than final appeals and other services excluded under Paragraph 10.72 above. However, if it is necessary to return to court after a final hearing for a further hearing for enforcement proceedings for that Aspect, and such representation is authorised under the certificate, an Additional Fee may be claimed.
- 10.89 Where such an Additional Fee is payable, this is a sum equal to half the relevant (i.e. Finance or Children) Standard Fee for Legal Representation. No more than one Additional Fee may ever be claimed in one set of proceedings. However, work reasonably carried out in enforcement proceedings may be taken into account in determining whether a case becomes Exceptional. As usual, if an Additional Fee is payable, the threshold to escape the Standard Fee should be based on three times the aggregate of all Fees payable. Once a case has escaped the Standard Fee any further enforcement action will be payable under Hourly Rates, whether such work is carried out under one or more than one certificate.
- 10.90 The Additional Fee under Paragraph 10.88 above is only payable for enforcement proceedings. If any other type of hearing takes place relating to an Aspect of the case after a final hearing has taken place for that Aspect, as defined at Paragraph 10.78, no further Standard Fee or Additional Fee is payable. This may for example happen where the court has listed a hearing with a view to finally disposing of an Aspect, for which Legal Representation is granted, but a review hearing is also listed or a subsequent application is made which relates to that Aspect and requires a further hearing.

## **Remuneration on Transfer of Supplier**

- 10.91 The following rules apply where a certificate is transferred to a new Supplier during Private Law proceedings, and the first Supplier ceases to provide representation in the proceedings but both the first and one or more subsequent Suppliers carry out work which is within the scope of the Standard Fee:
- (a) Each Supplier should calculate their fees separately on an Hourly Rates basis – any Supplier whose fees on that basis are equal to or greater than the Standard Fee may claim the Standard Fee;
  - (b) Any such Supplier whose fees on an Hourly Rates basis are less than the Standard Fee may claim half the Standard Fee;
  - (c) In deciding whether a case escapes the Standard Fee, each Supplier is considered separately. Therefore, any Supplier whose fees on an hourly rates basis are more than three times the relevant Standard Fee may claim hourly rates on the basis that that portion of the case will be classed as exceptional.
- 10.92 Where a Supplier acts for more than one party and a Client's certificate is transferred to a new Supplier during the case (typically for conflict of interest reasons) but the first Supplier continues to represent one or more Clients, each Supplier is remunerated separately and each will be entitled to a full Standard Fee, subject to the usual escape provisions.

## **Final Appeals**

- 10.93 The Higher Standard Fee Scheme covers all work done at first instance (other than services excluded under paragraph 10.72 above) and also include the following:
- (a) Representation on any appeal against an interim order;
  - (b) Any application to the court of first instance for permission to appeal ; and
  - (c) Any advice on the merits of an appeal against the final order.
- 10.94 In all other respects, appeals against final orders are excluded from the Scheme, whether the appeal lies to the Supreme Court, Court of Appeal, Divisional Court or from the Family Proceedings Court to the County Court – see the Access to Justice Act (Destination of Appeals) (Family Proceedings) Order 2009. Where Legal Representation is granted to bring or defend any such appeal, this work falls outside the Standard Fee scheme and will be paid by way of Hourly Rates.

## **PART D - FAMILY ADVOCACY SCHEME**

### **Nature of the scheme**

- 10.95 The Family Advocacy Scheme (“FAS”) is a Graduated Fee Scheme. Standard Fees may be claimed for individual items of work as detailed in this Specification. Unless otherwise stated, there is no limit on the number of fees which can be claimed per case. Payments to Counsel under the FAS are in the nature of final payments rather than Payments on Account (see Paragraph 10.26), but a payment under FAS may be recouped if it subsequently comes to light that the payment was made outside the rules of the scheme. If this occurs during an assessment of your costs, you must ensure that Counsel is notified of any proposed recoupment and the reasons for it. Except for payments to Counsel, the FAS creates no new entitlement to apply to us for payment; this is governed by the rules on Payments on Account and Final Payments (see Paragraphs 10.23 to 25).
- 10.96 Note that there is no “escape” mechanism from the Standard Fees payable under the FAS. Those fees apply to all cases within the scope of the FAS, although the FAS does also provide for a range of Bolt-on Fees as described further in this Part.
- 10.97 Fees payable under the FAS are payable for a specific activity, such as advocacy at a particular court hearing. No additional fee or bolt-on is payable for representing more than one party or if the hearing covers more than one set of proceedings listed together.
- 10.98 The FAS is separate from the Public and Private Law Fee Schemes set out in Parts B and C of this Family Specification. Therefore any work which falls within the scope of the FAS may not be taken into account in determining whether a case escapes any Standard Fee payable under the Private or Public Law Fee Schemes, nor may any work within the scope of the FAS be claimed at Hourly Rates.

### **Scope of the Scheme**

- 10.99 The Family Advocacy Scheme applies to the following work in the Family Category (referred to below as “Advocacy Services”), subject to the exclusions and detailed provisions below:
- Advocacy at Court Hearings
  - Advocates’ Meetings (Public Law only)
  - Conferences (Counsel only)
  - Counsel’s Opinions (Counsel only)
- 10.100 Preparation, attendances, travelling and waiting time related to any of the above activities is also within the scope of the FAS, although no separate fee is claimable for such time unless specifically authorised below.
- 10.101 Only one Standard Fee may be claimed per activity under the FAS. In relation to advocacy, only one legal representative (solicitor or counsel) may claim for advocacy at a particular hearing (unless this is otherwise authorised under an Individual Case Contract). Attendance at court with the advocate or

attendance at a conference with counsel is therefore outside the scope of the FAS (but may be within the Public or Private Law Fee Schemes).

## **Exclusions from the FAS**

### *Proceedings Excluded from the FAS*

10.102 Advocacy Services in the following proceedings fall outside the FAS:

- (a) Child Abduction Proceedings;
- (b) Proceedings under the Inheritance (Provision for Family and Dependants) Act 1975;
- (c) Proceedings under the Trusts of Land and Appointment of Trustees Act 1996;
- (d) Proceedings in which you provide separate representation of a child in proceedings which are neither Specified Proceedings (as defined in section 41(6) of the Children Act 1989) nor proceedings which are being heard together with Specified Proceedings;
- (e) Applications for Forced Marriage Protection Orders under the Forced Marriage (Civil Protection) Act 2007;
- (f) Defended proceedings for divorce, judicial separation, dissolution of a civil partnership or for the legal separation of civil partners;
- (g) Nullity proceedings (including proceedings for annulment of a civil partnership);
- (h) Proceedings under the inherent jurisdiction of the High Court in relation to the children;
- (i) Applications for Parental Orders under the Human Fertilisation and Embryology Act 2008.

### *Other Advocacy Services Excluded from the FAS*

10.103 Advocacy Services are also excluded from the FAS where they are provided:

- (a) under an Individual Case Contract for a Very High Cost Case
- (b) by Queens Counsel acting as such under a prior authority (see paragraph 107 below)
- (c) in relation to any Appeal against a final order (see Paragraph 10.104 below)
- (d) before the Court of Appeal or Supreme Court

10.104. The exclusion for appeals against any final order applies to all levels of court including such an appeal from the Family Proceedings Court to the County Court. Appeals against any interim order, for example an interim care order, are within the scope of the FAS unless they have reached the Court of Appeal or Supreme Court.

- 10.105 An application to a court of first instance for permission to appeal is within the scope of the FAS but will be treated as part of the provision of advocacy at the hearing before that court. Counsel's written advice on whether to bring an appeal may be claimed under the FAS subject to the rules on Counsel's Opinions set out at Paragraphs 10.132 to 133 below.

### *Remuneration for Excluded Advocacy Services*

- 10.106 Advocacy services under an Individual Case Contract are remunerated in accordance with that contract. For the avoidance of doubt, it is open to such a contract to provide for payments in accordance with the FAS.
- 10.107 Advocacy services provided by Queen's Counsel acting as such and having been instructed under a Prior Authority obtained under General Provisions will be remunerated in accordance with that Prior Authority subject to any relevant guidance.
- 10.108 Otherwise, where you provide Advocacy Services in proceedings or circumstances excluded from the FAS under Paragraphs 10.102 or 103 you should claim for such work under the relevant Hourly Rates set out in the Payment Annex. Where such advocacy services are provided by Counsel, they are subject to reasonable remuneration as determined on cost assessment under this Specification. Any such assessment of the reasonableness of counsel's fees may however take into account the rates which would be payable under this Specification if the services had been provided by a solicitor, and the rates which would have been paid under the Community Legal Service (Funding) (Counsel in Family Proceedings) (Remuneration) Order 2001.
- 10.109 Where a single hearing or activity involves significant work both within and excluded from the FAS the whole hearing or activity will be treated as excluded from the FAS for remuneration purposes.
- 10.110 Where Advocacy Services are excluded from the FAS and are claimed at Hourly Rates under Paragraph 10.108, the Preparation rate contained in the Payment Annex should be used for preparation for advocacy (where this is claimable – but see the rules on cancelled hearings at Paragraph 10.129 below).

### **Solicitor and Counsel**

- 10.111 Under the FAS, the majority of fees for Advocacy Services are payable regardless of who undertakes the advocacy. However certain fees apply to "Counsel only".
- 10.112 For the purposes of this Family Specification only, "Counsel" means either:
- (a) a barrister in independent private practice; or
  - (b) a solicitor or Fellow of the Institute of Legal Executives who works on a self-employed and independent (i.e. non-partnership) basis and does not hold a Unified Contract.
- 10.113 Solicitor advocates (including solicitors with higher rights of audience) who work for or as part of a partnership or barristers who are employed or who

work in partnership with any other legal representatives do not count as Counsel under this Family Specification. If you instruct a solicitor or other advocate from another firm to carry out contract work they will do so as your Agent. In that situation you are responsible for agreeing and paying the fees of the Agent but you may claim from us under the FAS as if you had directly provided the services.

- 10.114 Nothing in this Specification prevents you from instructing Counsel to undertake contract work when you consider it appropriate and in the interests of the client to do so. No prior authority is required to do so. However when you instruct Counsel to undertake work within the scope of the FAS we will pay Counsel directly the sums due under this Specification. You may not instruct Counsel to carry out work within the scope of the FAS at an amount less than is due under the scheme, nor on the basis of claiming or reclaiming from counsel any part of the fees due. You may instruct Counsel to carry out work which is outside the scope of the FAS, for example help in drafting documents or in attending a settlement meeting. However you would be responsible for agreeing and paying any such additional fees and you may not pass such fees on to the client or treat them as a disbursement.

### **Categories of Case**

- 10.115 The FAS provides Graduated Fees for five different categories of case as set out in the Payment Annex. These categories are:

Public Law	s31 Care Proceedings Other Public Law
Private Law	Domestic Abuse Proceedings Children Finance

- 10.116 The definitions of these categories for the purposes of the FAS are the same as for the Public and Private Law fee schemes set out in Parts B and C of this Family Specification respectively. For definitions of Public Law categories see Paragraphs 10.31 to 34. For definitions of Private Law categories see Paragraph 10.54 to 55.
- 10.117 Note that any proceedings in the Family Category which do not fall within the definition of Public Law will be treated as Private Law. Any Private Law proceedings which do not fall within the definitions of Domestic Abuse Proceedings or Private Law Children will be treated as Private Law Finance.
- 10.118 Private Law Related Proceedings (as defined at Paragraph 10.47 above) are treated as Public Law Work but do not create any entitlement to a separate Standard Fee under the FAS, even if the Related Proceedings are heard or determined consecutively to the Public Law work or there is evidence or submissions which are relevant only to the Related Proceedings. All work in the Public Law and Related Proceedings will be remunerated on the basis that it is a single set of proceedings leading to a single final hearing (whether heard continuously or adjourned).

## Standard Fees for Hearings

### *One Fee per Hearing*

- 10.119 Standard Fees under the FAS for the provision of advocacy at court hearings are set out in the Payment Annex. These are calculated differently according to whether a hearing is an Interim Hearing or a Final Hearing as defined below. Fees also vary according to the category of case as described above.
- 10.120 Only one Standard Fee may be claimed per hearing, although Bolt-on payments may be claimed as described at Paragraphs 10.137 to 150 below. If different matters concerning your Client are dealt with together by the court, whether listed together or listed consecutively, they should be treated as one hearing for the purposes of the FAS.
- 10.121 If a hearing acts as a Final Hearing for certain Aspects of a case and as an Interim Hearing for others (applying the definitions at Paragraphs 10.122 to 124 below), the hearing must be claimed as Final Hearing under the FAS. Otherwise if a single hearing covers significant work in two or more categories of case (as defined at Paragraphs 10.115 to 118 above), you may choose which category to claim the hearing under.

### *Interim and Final Hearings*

- 10.122 A Final Hearing is any hearing which the court has listed for the purpose of making a final determination, either of the whole case or of all issues relating to an Aspect of the case (Domestic Abuse, Children or Finance). Subject to Paragraph 10.123, there can only be one Final Hearing per Aspect and a hearing listed only to determine particular facts or issues is not a Final Hearing. A hearing listed with a view to the issues being dealt with under a consent order, or which is otherwise not expected to be effective or contested, is not a Final Hearing. Any hearing which is not a Final Hearing is an Interim Hearing.
- 10.123 The following hearings are also deemed to be Final Hearings for the purposes of the FAS only:
- (a) In Public Law proceedings, if a case is concluded at an Issues Resolution Hearing and therefore does not proceed further, the Issues Resolution Hearing will be treated as a Final Hearing
  - (b) Subject to Paragraph 10.122, in Private Law Children proceedings, a hearing listed for the purpose of findings of fact pursuant to the 'Practice Direction: Residence and Contact Orders: Domestic Violence and Harm' issued by the President of the Family Division on 14 January 2009.
- 10.124 If a Final Hearing is listed for a split hearing in a Public Law matter with certain issues being heard and/or determined in advance of other issues, this must be claimed as a Final Hearing, rather than as an Interim Hearing plus a Final Hearing.
- 10.125 It is possible for more than one Final Hearing fee to be claimed under a single certificate. In particular this can occur where a Final Hearing has taken place but subsequent enforcement proceedings are listed at first instance. Provided

the enforcement issues are listed to be finally determined at the further hearing, an additional Final Hearing fee may be justified.

### *Payment for Interim Hearings*

- 10.126 The fee payable under FAS for an Interim Hearing depends on its length. For this purpose the length of hearing is measured from the time that the hearing is listed at court to start (or such earlier time as the court specifically directs the advocate to attend) to the time that the hearing concludes, disregarding any period in which the court is adjourned overnight or for a lunch break. Time spent when a hearing or resumed hearing is delayed because the court is dealing with other business may however be taken into account. In the case of an Interim Hearing taking place by telephone or video link, time only runs from the time the call is made. If for an emergency hearing the court has not listed a time for the hearing or a time for the advocate to attend and the papers were only issued by the court on the day of the proposed hearing (so that the advocate must wait at court to be heard in the matter), the length of hearing may be measured from the time that the papers were issued.
- 10.127 The Payment Annex specifies fees as Hearing Unit 1 and 2. The fee payable for advocacy at an Interim Hearing is as follows:

<b>Length of Hearing</b>	<b>Fee</b>
Up to 1 hour	Hearing Unit 1
More than 1 hour but less than 2.5 hours	Hearing Unit 2
Over 2.5 hours	A multiple of Hearing Unit 2 based on the total length of the hearing in hours divided by 2.5 and rounded up.

*Example: a complex Interim Hearing lasts five and a half hours in total, spread over two days. As the length of hearing is more than twice the basic unit of 2.5 hours, the fee payable is Hearing Unit 2 times three. Note that it is never possible to claim both Hearing Unit 1 and 2 for the same hearing or to claim multiples of Hearing Unit 1.*

### *Payment for Final Hearings*

- 10.128 The Payment Annex specifies a Daily Fee for Final Hearings. This fee is payable for each day of the Final Hearing, regardless of the actual length of the hearing in court. Therefore if a hearing lasts a full day but just runs into a second day, two Final Hearing Daily Fees are payable.

### *Cancelled Hearings (Counsel only)*

- 10.129 Where Counsel is instructed to provide advocacy at a hearing and carries out at least 30 minutes of preparation work for the hearing, but the hearing does not take place, Counsel may claim a Hearing Unit 1 payment if the cancelled hearing was an Interim Hearing or half of the Final Hearing fee if the cancelled hearing was a Final Hearing. No Bolt-on fees may be claimed with any claim for a cancelled hearing.

## **Advocates' Meetings (Public Law)**

- 10.130 A separate Standard Fee is payable for advocates (solicitor or counsel) attending an Advocates' Meeting. This applies for any Public Law proceedings but only where the Advocates' Meeting is directed by the court pursuant to the Public Law Outline (namely the Practice Direction issued by the President of the Family Division on 15<sup>th</sup> January 2008 and any amendments thereto). The fee may not be claimed for meetings of advocates which take place on any other basis.
- 10.131 Although Advocates' Meetings usually involve attendance in person, the Advocates' Meeting Fee may be claimed where the meeting under the Public Law Outline takes place by video link or telephone where this is appropriate in the circumstances. Where, in s31 Care Proceedings, the advocates concerned are able to discuss all relevant matters without the need for an Advocates' Meeting (but the requirements of Paragraph 10.130 are otherwise satisfied), one half of the Standard Fee for an Advocates' Meeting may be claimed, but without any Bolt-on Fee.

## **Counsel's Opinions (Counsel only)**

- 10.132 A separate Standard Fee may be claimed where Counsel is instructed to provide an opinion and provides an opinion in writing. The fee is not claimable for any opinion provided by an in-house advocate. An opinion should only be obtained where it is a useful and proportionate step to take, applying the Private Client Test (see Funding Code Decision Making Guidance section 4.8). If on assessment of your costs it is held that an Opinion was not reasonable or proportionate in the circumstances of the case, your bill may be reduced by any amount paid or payable to Counsel for the opinion under the FAS.
- 10.133 No more than two Counsel's Opinion fees may be claimed under the FAS per case, unless the opinion relates to a proposed appeal against a final order. Such an opinion does not count towards the maximum limit of two opinions per case. For the purpose of this Paragraph, in Private Law proceedings each Aspect of the case (Children or Finance) counts as a separate case. However no fee for Counsel's opinion may be claimed under the FAS in Domestic Abuse Proceedings.

## **Conferences (Counsel only)**

- 10.134 The separate Standard Fee may be claimed by Counsel for advising the Client in conference. This can include conferences with the Client by video link or telephone where this is appropriate in the circumstances. As for opinions, the Private Client Test should be applied in deciding whether a conference is reasonable or proportionate and, if not, your bill may be reduced on assessment by any amount paid to Counsel for the conference under the FAS.
- 10.135 No Conference Standard Fee may be claimed for any conference provided on a day on which a Final Hearing fee is claimed. Any discussions or negotiations taking place on any day of a Final Hearing will be treated as covered by the fee for advocacy at that hearing. Counsel may claim a Conference fee for advising the Client in conference on the same day as an Interim Hearing, but only if the conference takes place outside any time period

which is taken into account in calculating the fee for the Interim Hearing. Therefore no Conference fee may be claimed for a conference which takes place between the time that the hearing is listed to start and the time that the hearing actually starts.

- 10.136 No more than two Conference Standard Fees may be claimed per case. As for Opinions, in Private Law proceedings the Children and Finance Aspects of a case will be considered separately. However no Conference fee may be claimed under the FAS in Domestic Abuse proceedings.

## **Bolt-On Fees**

### *Entitlement to Bolt-Ons*

- 10.137 Bolt-on Fees are fees which are payable under the FAS in addition to the main Standard fee. No Bolt-on Fees are payable under the FAS for Counsel's Opinions. Bolt-on fees may therefore only be claimed where you are claiming a Hearing Fee (Interim or Final), Advocates' Meeting Fee or Conference Fee under the FAS. However the only Bolt-on potentially claimable for an Advocates' Meeting or Conference is the Exceptional Travel Fee.
- 10.138 There are six Bolt-on Fees under the FAS. These are expressed in the Payment Annex either as percentage of the basic fee or as a lump sum. Where a Bolt-on is expressed a percentage of the basic fee, this is calculated as a percentage of the basic fee as set out in the Payment Annex, not as a percentage of the fee plus any other Bolt-on Fees payable.
- 10.139 The six Bolt-on Fees are claimable only for Hearing and Advocates' Meetings in the types of case specified in this table, and subject to the detailed rules for each Bolt-on set out at Paragraphs 10.140 to 153 below:

<b>Bolt-on Fee</b>	<b>May be Claimed for:</b>
Client – Allegations of Harm	Public Law Hearings or Private Law Children Hearings
Client – Lack of Understanding etc	Public Law Hearings
Court Bundle Payment	All Hearings other than Domestic Abuse Proceedings (see Paragraphs 10.143 to 145)
Early Resolution Fee	Private Finance Hearings only
Exceptional Travel Fee	All Hearings or Advocates' Meetings Conferences
Expert's Cross Examination	Public Law Hearings or Private Law Children Hearings

*Client – Allegations of Significant Harm*

- 10.140 This Bolt-on Fee is claimable only where your Client is facing allegations that he or she has caused significant harm to a child. It applies only so long as those allegations remain a live issue in the proceedings. For this purpose only the following conditions constitute significant harm:
- (a) Death,
  - (b) Significant head and/or fracture injuries,
  - (c) Burns or scalds,
  - (d) Fabricated illness,
  - (e) Extensive bruising involving more than one part of the body,
  - (f) Multiple injuries of different kinds,
  - (g) Other significant ill-treatment (such as suffocation or starvation) likely to endanger life,
  - (h) Sexual abuse.

10.141 Although this bolt-on is available in Private Law Children Proceedings as well as in Public Law, in Public Law proceedings it only applies if a local authority is making or adopting the allegations against your Client. Allegations made by another party to Public Law proceedings, and not adopted by the local authority, do not trigger the Bolt-on Fee.

*Client – Lack of Understanding etc*

- 10.142 This bolt-on applies to Hearings in Public Law proceedings where:
- (a) Your Client has difficulty in giving instructions or understanding advice,
  - (b) This is attributable to a mental disorder (as defined in section 1(2) of the Mental Health Act 1983) or to a significant impairment of intelligence or social functioning, and
  - (c) The Client's condition is verified by a medical report from either a psychologist or psychiatrist

*Court Bundle Payments*

10.143 There are three levels of court bundle payments specified in the Payment Annex as CBP 1, 2 and 3. These are payable dependent on the type of hearing and size of the court bundle, according to the following table:

Hearing Type	Court Bundle size	Bolt-on Fee
Interim	Over 350 and up to 700 pages	CBP 1
	Over 700 pages	CBP 2

Final	Over 350 and up to 700 pages	CBP 1
	Over 700 and up to 1,400 pages	CBP 2
	Over 1,400 pages	CBP 3

- 10.144 There are restrictions on the circumstances and number of times within a set of proceedings that a court bundle payment may be claimed for Interim Hearings. In Public Law proceedings, court bundle payments may be claimed for no more than two Interim Hearings and each of these must be either a Case Management Conference, an Issues Resolution Hearing or otherwise a hearing which is listed for the hearing of contested evidence. A Court Bundle Payment may never be claimed more than once per Hearing.
- 10.145 In Private Law proceedings court bundle payments may only be claimed at one Interim Hearing per case. For this purpose the Children and Finance Aspects of a case will be treated separately.
- 10.146 Court bundle payments may not be claimed in Domestic Abuse Proceedings, either for Interim or Final Hearings.

### *Early Resolution Fee*

- 10.147 This Bolt-on Fee is claimable only in Private Law Finance cases which settle at the first appointment or Financial Dispute Resolution (“FDR”) hearing. It may only be claimed by an advocate who is entitled to the Hearing fee for that hearing but only if the following conditions are satisfied:
- (a) The Finance Aspect of the case has been fully concluded at the first appointment or FDR hearing;
  - (b) The advocate attending that hearing materially assisted in reaching the settlement
  - (c) The Finance Aspect of the case does not proceed further to a new Level of Service within six months of the settlement, either with you or, so far as you are aware, another Supplier;
  - (d) There has been a genuine settlement to conclude that Aspect of the case, rather than, for example, a reconciliation between the parties or one party dying or disengaging from the case;
  - (e) The settlement is recorded in a form of a Consent Order approved by the Court, either at the hearing itself or subsequently.
- 10.148 Entitlement to this Bolt-on Fee is separate to entitlement to a Settlement Fee under the Private Law Fee Scheme (see Paragraph 10.87). For example, if a case is in substance settled between solicitors prior to the FDR Hearing and that hearing takes place only to secure a Consent Order, no Bolt-on Fee would be claimable by the advocate. However if the advocate had materially assisted in the settlement negotiations or by way of legal advice or drafting, the Bolt-on Fee could be claimed provided the hearing took place and the above conditions were satisfied.

### *Exceptional Travel Fee*

- 10.149 This Bolt-on payment is available for all Hearings and is the only Bolt-on which can also be claimed for attendance at an Advocates' Meeting in Public Law cases and for Conferences (Counsel only). However the exceptional travel fee is payable only where we are satisfied that:
- (a) It was reasonable to instruct the advocate in question in all the circumstances of the case, taking into account whether there are any suitable potential advocates situated more locally to the court
  - (b) The journey from the advocate's office or chambers to the court (or location of the Advocates' Meeting) exceeds 25 miles each way.
- 10.150 Where an Interim Hearing or Final Hearing lasts for more than one day, an exceptional travel fee is payable in respect of each day of the hearing provided that the advocate does not claim for accommodation costs as a disbursement in respect of the Hearing.

### *Expert's Cross Examination*

- 10.151 This bolt-on applies only for Public Law and Private Law Children Hearings where :
- (a) an independent expert witness is required to attend court to give evidence;
  - (b) the evidence of that witness is intended to be the subject of substantial challenge in cross examination by any party to the proceedings; and
  - (c) either the witness attends court for the purpose of giving evidence or the requirement for the witness to attend is cancelled less than 72 hours before the hearing is listed to commence.
- 10.152 For the purposes of Paragraph 10.151 the following do not count as independent expert witnesses:
- (a) an officer of Cafcass or Welsh family proceedings officer;
  - (b) any social worker employed by, or acting on behalf of, a local authority;
  - (c) an employee of any party to the proceedings.
- 10.153 This bolt-on is payable only in respect of the individual hearing at which the independent expert witness was required to attend court to give evidence, but is payable to every advocate appearing at that hearing.

## **PART E – OTHER PROVISIONS**

### **Separate Matter Types**

- 10.154 It is in the nature of family cases for Clients to have more than one Family Dispute at any given time. However, the family remuneration provisions, including Standard Fees, have been calculated on the basis of cases with more than one Aspect. Therefore multiple cases and fees may not be claimed for a single Client, except in accordance with the provisions of this Specification.
- 10.155 Except as provided below, you may not have more than one Legal Help Matter Start opened for a Client in the Family Category. As with other Categories of Work, where a Legal Help Matter Start has been concluded in the Family Category you may not start a new Matter Start in the Family Category for that Client unless the conditions set out in the Matter Start Rules at Paragraphs 5.15 to 5.22 of the General Provisions are satisfied.
- 10.156 An exception to the rule in the first sentence of Paragraph 10.155 is that separate matters may be opened where they relate to Family Disputes which are entirely separate (typically because they arise out of different family relationships) and which would, if they resulted in proceedings, be issued and heard separately.
- 10.157 Where Legal Help has been provided, a grant of Family Help (Lower) or two grants of Family Help (Lower) in cases which have both Children and Finance Aspects, do not count as a new Matter Start. A Client may never be in receipt of more than two grants of Family Help (Lower) at any time.
- 10.158 Where Family Help (Lower) has been concluded, you may not grant Family Help (Lower) for the same Aspect (Children or Finance) for the same Client unless the conditions set out in the Matter Start Rules referred to above are satisfied.

### **Use of Counsel**

- 10.159 Counsel may be instructed under any Level of Service but if Counsel is instructed under Legal Help or Family Help (Lower), you are responsible for agreeing Counsel's fees and paying Counsel out of the Standard Fee. Counsel's fees under Legal Help or Family Help (Lower) do not count as a disbursement unless the case escapes from the relevant Standard Fee and may not be taken into account in determining whether a case escapes from that Fee.
- 10.160 If you instruct Counsel under Legal Help or Family Help (Lower) and the case escapes from the Standard Fee you may, when claiming your fees on the basis of Hourly Rates, claim payment from us of Counsel's fees as if such fees were a disbursement incurred by you. However in that situation the amount claimed from us may not exceed the sum which would have been due from us had counsel claimed for equivalent work under the Family Advocacy Scheme.
- 10.161 In any case where you instruct Counsel and Counsel's fees are not payable by us under the Family Advocacy Scheme, you must pay counsel within 28 days of receipt of Counsel's fee note.

- 10.162 If Counsel is instructed under Family Help (Higher) or Legal Representation, Counsel may claim and be paid by us under the Family Advocacy Scheme.
- 10.163 When instructing Counsel for work which is covered by the Family Advocacy Scheme you must provide Counsel with all information necessary to claim the appropriate payment due under that scheme

### **Recovery of costs from another Party**

- 10.164 Where you recover costs from another party to proceedings or potential proceedings, whether by way of court order or agreement, and those costs relate to work which falls within the scope of any Standard or Graduated Fee, you must choose one of the following options:
- (a) accept and retain the costs recovered from the other party but make no claim from the fund for any work which falls within the scope of the Standard or Graduated Fee (for the avoidance of doubt you may not in that situation claim any 'legal aid only costs' under General Provisions; or
  - (b) pay all costs recovered from the other party into the fund but claim remuneration under this Specification in the normal way.

### **Experts working with Children**

- 10.165 Where you are instructing any expert or other person who will, or be likely to, work or engage direct with a child/children in carrying out your instructions you must make it a term of their engagement that all those likely to work with or coming into direct contact with a child/children have either been subject to appropriate Criminal Records Bureau checks or have been registered with the Independent Safeguarding Authority. In either case you must make a term of their engagement that you are entitled to ask for confirmatory evidence to be provided.

### **Applying for a Criminal Representation Order in Family Proceedings**

- 10.166 Any Supplier of family services under this Contract, may also provide representation under Section 14 of the Access to Justice Act 1999 in:
- (a) Enforcement proceedings in the magistrates' court arising out of the breach of an order of that court in Family Proceedings where there is a risk of imprisonment;
  - (b) To a child who is the subject of proceedings for an Anti-Social Behaviour or Sex Offender Order and/or to the parent of any such child in relation to an Associated Parenting Order; or
  - (c) To a parent in relation to a Parenting Order made on the conviction of a child where the parent cannot reasonably be represented by the child's solicitor

provided that is in the interests of justice to provide representation (see Schedule 3 to the Access to Justice Act 1999).

- 10.167 Payment for representation under Paragraph 10.166 will be in accordance with the relevant Standard Fee scheme applicable to such cases under the 2010 Standard Crime Contract.

10.168 Representation under this Paragraph is part of the Criminal Defence Service (even though provided for under this Contract) and may also be performed by those with a Contract for CDS services. You may apply for a Representation Order by completing forms CDS14 and CDS15 and sending them to the magistrates' court which is dealing with the matter. Representation Orders in the magistrates' court are granted subject to the individual passing the means test in the CDS (Financial Eligibility) Regulations 2006.

### **Experts' Fees**

10.169 In relation to instruction of an expert under this specification, the following may not be claimed as disbursements, either under Controlled or Licensed Work:

- (a) any separate administration fee charged by an expert; "administration fee" includes, but is not limited to, a fee in respect of offices and consultation rooms, administrative support including typing services, subsistence and couriers;
- (b) any cancellation fee charged by an expert, where notice of cancellation is given more than 72 hours before the relevant hearing or appointment.

10.170. Where you instruct an expert:

- (a) we will not pay in excess of 45p per mile for vehicle mileage; and
- (b) we will not pay in excess of £40 per hour travelling time.

### **Independent Social Work**

10.171 The costs of and expenses relating to independent social work enquiries or expertise, whether provided by Cafcass, CAFCASS Cymru, a guardian ad litem or any other person, is not an allowable disbursement where such work is provided outside England and Wales

10.172 In all other cases, if independent social work expertise is claimed as a disbursement, it may not be claimed at a rate in excess of such rates as we may from time to time specify on our website. Such rates will be comparable to the rates usually payable for such services by Cafcass or CAFCASS Cymru.

### **Contact Related Activities**

10.173 Cost and expenses relating to the following activities are not allowable disbursements under this contract:

- (a) Risk assessments within section 16A of the Children Act 1989 (as amended), and undertaken by Cafcass officers or Welsh family proceedings officers, including assessments of the risk of harm to a child in connection with domestic abuse to the child or another person
- (b) All activities to promote contact with a child directed by the court under section 11A to 11G of the Children Act 1989. This includes all programmes, consideration of suitability under section 11E and other work with a view to establishing, maintaining or improving contact with a child or, by addressing violent behaviour, with a view to enabling or

facilitating contact with a child (in so far as such costs or expenses are not irrecoverable under section 1.3 of the Funding Code). Funding for assessments under Code Criterion 11.5.1 (assessments of suitability of mediation to the dispute, the parties and all the circumstances) are not affected by the exclusion in this Paragraph.

- (c) Fees, charges and costs of child contact centres, including assessments and reports on supervised contact and of other professional assessments of contact between children and adults.