

FGFS payments – work done under the Protocol for Judicial Case Management – First Briefing Note to counsel

In November 2003, the Protocol for Judicial Case Management (“the Protocol”) will come into force for: all new proceedings, under Part IV of the Children Act 1989, issued on or after 1 November and for existing proceedings, transferred up from the Family Proceedings Court after that date.

The Protocol changes the court’s case management approach in care cases to minimise delay. This clarification of focus introduces new types of hearings and events within a strict timetable.

This brief note outlines how counsel will be paid for Protocol work within the Family Graduated Fee Scheme (FGFS). A more detailed information pack will be made available in October, which will include the revisions to the Commission’s guidance and other changes affecting FGFS.

The review of FGFS is continuing and changes arising are likely to be implemented in early 2004. Further details of these changes will be published as they become available.

Protocol Work – how will it be paid?

➤ ***The Case Management Conference (CMC): Step 4***

The CMC is a function F3 hearing and will be paid as such. However, in recognition of the additional preparatory work required of counsel, an additional lump-sum payment will be paid—equal to 50% of the single hearing unit fee.

➤ ***The Pre Hearing Review (PHR): Step 5***

This is the directions hearing held immediately prior to the final hearing to ensure all parties are ready for the final hearing. The Protocol encourages attendance at the PHR by the advocate retained for the final hearing. Ordinarily, a PHR would be a function F3 but, in support of the Protocol, if the same advocate attends the final hearing, the PHR will be treated as the F5 Primary hearing unit. In the event that separate advocates attend each of the hearings, the PHR will be paid as an F3 as usual.

➤ ***Advocates Meetings(AM) : Prior to Steps 4 & 5***

The Protocol requires the advocates to meet prior to the CMC and PHR to undertake specific preparatory work to narrow the issues prior to the hearing. If the meeting takes place prior to the day of the CMC and PHR, it will be paid as a F3 function. If it takes place on the day of the CMC, the start of the AM will be deemed to be the start of the F3 hearing unit.

➤ ***Written Submissions at the main hearing: Step 6***

If the court requires written submissions on consequential orders and directions to be lodged at the conclusion of the main hearing, these will be paid as a function F5 secondary unit.

What other changes will be made to FGFS in November?

- The scope of the scheme will be amended so that: cases brought under the Child Abduction Act 1985 will now be paid under category 2; and cases brought under either the Inheritance (Provision for Family & Dependents) Act

1985 or the Trusts of Land Act and Appointment of Trustees Act 1996 will be removed from the remit of the scheme

- Payment for court bundles that are over 700 pages will change so that the fixed payment for bundles over 350 pages (CBP2) will always be paid. Where the preparation is substantially more than the norm, counsel may also apply for a special preparation fee.
- The rule on travel expenses will be relaxed and will be subject to a general test to ensure that expenses are reasonably and necessarily incurred

How will further details be published?

This is an outline of the changes that will take place in November. The Commission will provide a detailed briefing pack, direct to counsel, in October. We also hope to circulate as much information to clerks as possible. If you would like to receive a briefing pack, please contact Ruth Symons by email at ruth.symons@legalservices.gov.uk or by telephone on 0207 759 0375.