



Legal Aid  
Agency

# High Cost Family – Family Full Case Planning Information Pack For Cases Registered from 1 October 2015

<b>Version:</b>	<b>Issue date:</b>	<b>Last review date:</b>	<b>Owned by:</b>
2	08/06/2022	01/10/2015	High Cost Family Team

## Version History

Version:	Date	Reason
1	01/10/2015	Full Case Plan process separately.
2	08/06/2022	Updated to reflect new team name and branding

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## 1. Overview

This Information Pack applies to all High Cost Family cases registered as high cost from 01 October 2015.

This Information Pack provides information and assistance on the Legal Aid Agency's procedures for individual very high cost family cases where the case exceptionally requires full case planning. It sets out what actions should be taken when you take on a new case which is going to be very expensive, or when an existing case increases in cost to become very expensive.

This pack sets out:

- The Background to High Cost Family Cases
- The Full Case Plan
- The Claiming Process.

## 2. The Background

### High Cost Case Contracts and Special Case Work

1. The Civil Legal Aid (Procedure) Regulations 2012 Part 6, "Special Case Work" includes extra conditions and controls for very high cost civil cases. Once referred to the Agency as high cost, there must be a Case Plan, either a standard Full Plan or a Care Case Fee Scheme (CCFS) Form. A standard Fully Planned case will have an individual contract based on the agreed case plan and the agreed price for each fully costed stage. The contract will allow progression of the case stage by stage, with an agreed price for each stage. The Full Case Plan is a single evolving document, which will change and expand as the case develops; in the early stages of a case future developments may be more difficult to predict and contain fewer details. As the case progresses more detail will be added to the plan and amendments will be made in the light of Court Directions, unforeseen developments and new evidence. The Agency will authorise work in stages and authority will be given only for fully detailed and costed stages. A Care Case Fee Scheme Form will usually agree costs for the whole of the case, though amendments can be made should the agreed number of events or costs change.
2. Details of what must be included in a Full Case Plan, and how they should be used, are set out later in the pack. Criteria for funding very high cost cases are set out in Part 6 of The Civil Legal Aid (Procedure) Regulations 2012.
3. The Legal Aid Agency has established the High Cost Civil Team to manage these cases, based in the London office. There is also the High Cost Family Team in our South Tyneside office. For details of where to send correspondence and Case Plans please see Annex 1.

4. Full Case Planning is applied to those cases that are exceptional in nature and where CCFS does not properly remunerate the costs of the case.

### **What are these cases?**

5. The Referral Criteria are set out in regulation 54 under Part 6 of The Civil Legal Aid (Procedure) Regulations 2012. Put simply, any case where the costs are anticipated to, or actually do, exceed £25,000 (including all profit costs with enhancement, disbursements and any counsel's fees but excluding VAT) will be referred as Special Case Work. In family cases these will typically be public law Children Act cases with over 10 hearing days, or cases with multiple parties, or cases with a proliferation of experts and assessments. Very few private law cases or ancillary relief cases become high cost but a few do. Certificates with first instance proceedings that go on to an appeal are likely to meet the criteria as it is the whole costs of the 'closely connected' matter that are relevant. The Director of Legal Aid Casework has a discretion to treat more than one set of proceedings or certificates as a 'single case' if they appear to the Director to be closely connected or proceeding together through the Court.

### **When should I report these cases?**

6. Unless you are sure that your case will not exceed £25,000, it is strongly advised that you start discussions with the VHCC team about whether your case is going to become a very high cost case, when you seek to extend your cost limit above £12,500. You should also consider at this point whether the case is exceptional in its nature rather than length of hearing justifying a full case plan.
7. You should notify the LAA when the circumstances set out above are met. The LAA will acknowledge that the case is VHCC within 5 working days.
8. If your case arises from family proceedings other than Section 31 care and supervision proceedings it will be funded under a Full Case Plan unless you request the CCFS scheme. See the CCFS Pack for details.
9. If you consider that your Section 31 care and supervision case is exceptional and therefore that the costs set out in the VHCC Care Case Fee Scheme and FAS scheme will not reasonably remunerate the costs of the case, you should make an application for the case to be funded on a Full Case Plan. This is done by email when registering a case as high cost, by setting out the circumstances to show how the case is exceptional in nature. It is also a requirement that the profit costs of the case (including enhancement) will exceed the CCFS model by 30% (those cases were excluded from the original analysis and calculation of the CCFS scheme) If the LAA confirms that you can proceed with a full case plan, when completing your Full Case Plan you should include the CCFS equivalent costs as a comparator and

include it in your case plan for the profit costs or the combined profit cost/advocates fees if you are undertaking in-house advocacy.

10. When notifying us that a case is likely to be high cost, and you wish to be funded outside the CCFS scheme, you should provide your exceptional reasons with your notification. That should be achievable at the time of notification given the typical reasons arise from nature of the case. If there is urgent and unplanned case activity, the exceptional reasons should be provided within 2 weeks of notification.
11. When applying for funding under a full case plan, you should set out the circumstances that are leading to the exceptional costs. The following are the circumstances where this may arise, although it is stressed that this list is not exhaustive:
  - Where there is an issue of law that is new or unclear due to conflicting decisions and/or statutory requirements, or issues of public policy, requiring exceptional preparation and legal research. Of course, approval of this work would be subject to the merits test.
  - The factual matrix which raises highly unusual issues or a multiplicity of issues going significantly beyond that commonly experienced in similar cases.
  - A clear and significant dispute between experts on the same key novel issue(s), the resolution of which is likely to result in very different outcomes (adoption or return home) and an understanding of the relevant research materials is necessary. An example would be the Al Alas Wray type dispute with novel legal determination of Vitamin D deficiency as the cause of rickets.
  - A significant dispute between parties to the proceedings which goes beyond that ordinarily encountered in similar cases the resolution of which is likely to result in very different outcomes for the children, and which involves extensive numbers of witnesses and other materials (such as DVDs, audio tapes) to consider. This would take the form of extending the number of court bundle payments that may be claimed beyond those allowed under FAS.
  - Where the case requires a level of client contact, preparation and on-going work during the proceedings which goes significantly beyond that which would ordinarily be expected in cases of a similar type – e.g. a client with severe mental illness, communication or learning difficulties who require extra conferences/extraordinary level of client care. This would take the form of extending the number of client attendances, or conferences that may be claimed beyond those allowed under FAS.
  - There has been a late change representation, which will require exceptional levels of preparation by the litigator.
  - Where the number of hearings and advocates meetings are unusually low for the amount of work that has been undertaken in the case as a result of the application of the Public Law Outline structure.

12. The LAA will inform you whether or not we consider the case exceptionally justifies funding under a full case plan within 5 working days. This will avoid you expending time and effort creating a full case plan where it is not appropriate.
13. If the LAA agree that the case is exceptional, you must submit a Full Case Plan within 4 weeks of notification by the LAA that a full case plan is agreed.
14. The LAA will consider an extension of a further 4 weeks in submission of a Full Case Plan where there are exceptional circumstances, such as:
  - a. The case unexpectedly extends at fact finding or disposal hearing.
  - b. An appeal is to be pursued within restricted timescales.
  - c. Recent transfer of representation to new solicitors.
  - d. Exceptional and as yet unapproved by prior authority of experts fees outside the hourly rates or hours set out 'Guidelines on Experts Fees'.

NB. When the case is set to conclude within 4 weeks of the registration date no Full Case Plan will be required. In which case CIVCLAIM1s should be sent within 4 weeks of the conclusion date. .
15. The LAA will inform you within 5 working days whether or not an extension of time is agreed.
16. Cases under the Trusts of Land and Appointment of Trustees Act 1996 and the Inheritance (Provision for Family and Dependants) Act 1975 are not treated as a family case. Please see the guidance in respect of Civil Non-Family cases.

### **What if I act for more than one party under several certificates?**

17. Cases where you are acting for more than one party (several children, both parents etc.) we will treat as one matter or case for the purposes of the referral criteria so that it is £25,000 in the case and not £25,000 per certificate which is relevant. You will however only have to produce one Case Plan for the whole case. If you have more than one party and the combined costs limitations are more than £25,000 then the LAA will restrict payment to £25,000 unless the case has been notified as a VHCC.

### **Will you increase the costs limit to £25,000 and I'll send the Case Plan then?**

18. The short answer is "generally no". If the costs in the case are likely to exceed the threshold, the future costs of the case must be resolved.

You must send the Full Case Plan in accordance with the timescales set out in Paragraphs 10 to 15 above. There will be no further increases in the costs limitation pending agreement of the Case Plan.

The need for a Case Plan arises when you become aware that the costs in the case will or are likely to exceed the threshold and not when the costs limit on the certificate has reached £25,000. Far more problems arise through late submission of a Case Plan than early submission. We won't pay in excess of the cost limit, so it is in your interests to register early and submit the case plan timely. If you do not provide the case plan in accordance with Paragraphs 9 to 14 above, the Director of Legal Aid Casework will not approve the costs incurred above the costs limitation for the period until a case plan is submitted. In the event that the costs limitation is greater than £25,000, for example where multiple certificates are held, the Director will not approve any costs in excess of £25,000 for the period until a case plan is submitted. You may also be subject to contractual sanctions for not complying with the timely submission of application to the LAA.

### **When does the contract start?**

19. The contract starts when the certificate is first limited to the work set out in the fully costed stage of the Case Plan. It stays in force while the certificate is in force. Once the contract has started, the case will be managed through a series of fully costed stages until it ends. Each fully costed stage will state the cost of the stage broken down into profit costs, disbursements and counsel's fees.
20. The contract start date will be the date of amendment to the certificate (i.e. the amendment limiting the work to that specified in the Case Plan). However, your staged costs – as set out in your Case Plan - will be resolved with effect from the date of submission of your case plan or the date when you notify us that the case is high cost provided that you then comply with time limits for submission of the case plan – see paragraph 9 to 14 above.

### **How do I deal with Experts Fees in Full Case Plans?**

21. The High Cost Family Team will deal with the case plan. The High Cost Family Team will not deal with prior authorities, which will be dealt with by the specialist prior authority team.
22. You may include estimates for experts' fees in your detailed case plan.
23. If you are seeking hourly rates in excess of the codified rates you must apply for a Prior Authority. If you are seeking expert hours in excess of those published in the LAA's "Guidance on the Remuneration of Experts Witnesses", you may apply for a Prior Authority. Applications should be made on form CIVAPP8A to our specialist Prior Authorities team. The guidance is set out at link:

<https://www.gov.uk/expert-witnesses-in-legal-aid-cases>.

The email address is:

[CivilPriorAuthorityRequests@legalaid.gsi.gov.uk](mailto:CivilPriorAuthorityRequests@legalaid.gsi.gov.uk)

On billing all disbursements and experts fees will be subject to assessment and any pre-existing grant of prior authority will be taken into account.

### **Where do I send my Full Case Plan?**

24. **The High Cost Family (HCF) Team** in South Tyneside deals with all high cost family case plans for England and Wales.  
This includes the management of single counsel case plans, and cases those where authority for King's and Junior Counsel, or two Junior Counsel/Advocates, has been granted.  
The team is also responsible for high cost Child Abduction Act cases, all high costs Trusts of Land and Appointment of Trustee Act cases, and all Inheritance Act cases.
25. **The Exceptional and Complex Cases Team (ECCT)** is responsible for granting authority for the instruction of King's and Junior Counsel, or two Junior Counsel/Advocates, for all family cases in England and Wales.  
Once authority has been granted for these cases, day-to-day case management is undertaken by the HCF Team in South Tyneside.
26. The contact details of these teams are set out in Annex 1 at the end of this document. Contact should be made through CCMS wherever possible.

### **How long does it take the Legal Aid Agency to process Full Case Plans?**

27. We aim to make the first substantive response within 4 weeks of receipt of a Full Case Plan. Sometimes this may mean being able to agree the Case Plan and send you a contract or we may have substantive queries to raise. A Full Case Plan often requires many letters to agree. The LAA will respond to subsequent submissions within 4 weeks. The LAA have found that it can take 6 to 12 months to agree a case plan. This is why it is so important that as early as possible a case is identified as high cost, approval is obtained to treat the case as exceptional and that the Full Case Plan containing all necessary information is submitted to the relevant team.
28. If you do not provide the case plan in accordance with Paragraphs 9 to 14 above, the Director of Legal Aid Casework will not approve the costs incurred above the costs limitation for the period until a case plan is submitted. In the event that the

costs limitation is greater than £25,000, for example where multiple certificates are held, the Director will not approve any costs in excess of £25,000 for the period until a case plan is submitted. Late submission of a Full Case Plan may result in the case transferring over to the CCFS. You may also be subject to contractual sanctions for not complying with the timely submission of your application to the Legal Aid Agency.

### **What happens if I need an urgent amendment to the scope of funding or prior authority for disbursements?**

29. If there is the need for an urgent amendment to the scope of the certificate it is preferable that you submit a CIVAPP8 with the Case Plan (or without the Case Plan if the urgency so dictates) as this helps us identify that an urgent amendment is required. Where necessary we may deal with the urgent step as a preliminary issue and deal with the costs later. Otherwise you should clearly indicate in the covering letter with the Case Plan if there is the need for a scope amendment preferably in a bold heading with any key dates/ events highlighted so that we can prioritise the case accordingly. If there is an urgent Prior Authority this should be dealt with in accordance with Paragraph 23 above.
30. If the urgent step arises after the Case Plan has been submitted you should send a CIVAPP8 to whichever unit is managing the Case Plan, clearly marking the form as urgent.

### **How can I continue to work if I have reached my costs limit and the Case Plan has not yet been agreed?**

31. If exceptionally you seek funding under a Full Case Plan this is likely to happen in a number of cases. It is important to ensure that you have the scope (that is, the certificate accurately describes the proceedings that you are representing the client in and the extent of the work that you are undertaking) and any prior authorities necessary to run the case but on occasion the costs in the Case Plan may not be agreed until after the work has been undertaken. Whatever agreement is reached as to costs will have retrospective effect provided that you have notified us that the case is likely to be high cost and you have complied with the time limits for submission of a case plan.
32. The starting point is the point at which you notified us that you needed costs in excess of the existing limitation. This may well be when you first submit the Case Plan or when you apply for costs in excess of the referral limits on form CIVAPP8. At that point your costs to that point will be limited to the existing costs limit and all subsequent costs will be subject to negotiation and agreement in the Case Plan. In the Case Plan the "Costs to Date" section will be up to the date you notified us of the need for further costs and stage 1 of the future costs will be from that date.

33. In those circumstances the Legal Aid Agency does not accept that practitioners can refuse to continue to act in the case whilst the costs in the Case Plan are being negotiated. This would be a disservice to both the client and the court process. Consideration of the Case Plan will take time to deal with and will often necessitate the costs position being resolved with retrospective effect. Provided the scope of the certificate covers the proceedings and the work being done, the costs position will be resolved retrospectively to the date the matter was notified as VHCC, provided the Case Plan is provided in the required timescales (in accordance with Paragraphs 9 to 14 above).
34. Costs will be at risk if work is undertaken beyond the existing costs limitation before the Legal Aid Agency is notified of the need for further costs and/or work is undertaken before a necessary scope change.
35. The date at which the “Costs to Date” ends and the Stage One costs commence is fixed and will not change. If it becomes necessary, for whatever reason, to amend the Case Plan before agreement of the first Stage or Stages of the Case Plan there will be no change to this date. If a revised Case Plan is submitted the Costs to Date period does not change to accommodate costs up to the point of the submission of the revised/ amended Case Plan – the relevant date remains the date at which the LAA was notified that the case met the referral threshold .

## What happens regarding the pre-contract costs (Costs to Date)?

36. It will usually be the case that at the time a contract is entered into work has been undertaken under the certificate. In the Case Plan these are known as the “Costs-to Date” or pre-contract costs. Either after approval of your contract or when submitting your Case Plan you will need to submit your claim for the pre-contract work for assessment by the relevant unit. This claim will be on a fully completed CIVCLAIM1 and potentially CIVCLAIM5A. If you are dissatisfied with the assessment of your bill there will be a right of appeal. The costs, once agreed, will be paid by the Legal Aid Agency within the published service standard, providing submission includes all Counsel fee notes and disbursement vouchers over £20. The rates you will use are those you would expect to get on assessment. That approach will continue throughout the life of the case in family cases.

There are two circumstances in relation to the timing of submitting pre-contract bills:

- You must provide a pre-contract bill with your case plan if you are seeking exceptionally to operate under a Full Case Plan in a Section 31 care case as set out in Paragraph 22.
- You may provide your pre-contract bill with your case plan in a non-Section 31 case. Of course, you will need to provide this bill in order to be paid those costs.

## 3. The Full Case Plan

### Use of a Standard Family Case Plan

37. As soon as a case has been identified as meeting the referral criteria the most important action is to produce an acceptable Case Plan. The Director of Legal Aid Casework will consider your assessment of the case, the legal and factual issues to be investigated and resolved, the objectives you wish to achieve, the favourable and unfavourable factors in pursuit of those objectives, the team personnel including counsel and experts and their experience and expertise.

38. A standard Case Plan format is attached to this pack which is designed to assist you in producing a plan as simply as possible and contains all of the information we need to be able to assess the case properly. It sets out a description of the case, your assessment of its prospects, the legal and factual issues to be investigated and resolved, details of costs to date, and the selection of counsel and experts to be used on the case. There is also an example of a completed Public Law childcare Case Plan. Care cases represent the majority of high cost family cases. An electronic copy of the Case Plan in Excel format, which calculates each stage for you, can be sent if you contact the relevant unit managing your case and provide your e-mail address.

## How is the case information used?

39. The **Summary of Case** should be a detailed history of the case to date and should include within the body of the text or as a separate schedule details of all hearing dates to date. The Summary of Case is the primary source from which we will make funding and costs decisions so it is vital that this is comprehensive. It will provide the information to justify both merits decisions and also to support the costs in terms of how the case is managed, the level of costs claimed, and the levels of enhancement to be applied. The **Objectives** will explain what is in issue and what outcome is likely to be achieved. The **Case Analysis, Funding Assessment** and **Case Theory** will have greater relevance for private law proceedings than Public Law and will succinctly justify why funding should continue.

## What if the Client has a financial interest in the costs?

40. If the client has a financial interest in the costs paid out because of either contribution payments or the potential impact of the statutory charge, they should be sent copies of Case Plans and costed stages and given an explanation of how they might be affected. This is similar to the obligations in respect of bills for detailed assessment.

## How much detail do you need in respect of the pre-contract costs “Costs to Date”?

41. The example Case Plan in the appendix shows how this should be laid out - also see below. We need basic information to show that the correct prescribed rates have been applied and how you have applied enhancement. We need to know the total hours so far incurred for each area of work i.e. preparation, attendance on counsel, travel, advocacy etc. We will also need a global figure for counsel’s fees to date and other disbursements incurred to date.

### CASE ACTIVITIES AND COSTS INFORMATION:

Part 1 - Costs To-Date (pre contract costs) –						
1. Has the client been represented by a previous firm in these proceedings? No						
2. If yes, are the costs of the previous firm included below? N/A						
3. If a previous firm has had conduct did they obtain a high cost contract? N/A						
WORK	COSTS (all figures exclusive of VAT)					
<i>Provide Justification here for ANY enhancement applied: -</i>	Profit Costs					
35% uplift applied to all items of non-routine preparation and attendance to reflect the exceptional factors arising in this case including the learning disabilities of our client, the multiple parties (inc. Grandparents) involved, the Grandfathers criminal history, consideration of a child with disability, the importance to the client and the skill and expediency employed by the fee earner.  50% is claimed for attendance in advocacy without recourse to counsel due to the additional responsibility taken.  15% claimed on routine correspondence, travel and waiting and attendance with counsel as conducting fee earner is a panel member.	Activity	Number of hours/items	Prescribed Rate Applied	Enhancement Applied	Total cost	
	Preparation/Attendances	105:54	£61.38	35%	£8,775.19	
	Routine Telephone Calls	110	£3.69	15%	£466.79	
	Routine Letters Written	107	£3.69	15%	£454.05	
	Routine Letters Received	211	£1.85	15%	£448.90	
	Conf/Hearings with Counsel	27:30	£32.67	15%	£1,033.19	
	Travel Waiting	14:54	£29.21	15%	£500.51	
	Advocacy	11:30	£61.38	50%	£1,058.81	
	Have you submitted a CLAIM 1 for pre-contract costs?  YES / NO					TOTAL PROFIT COSTS
						£12,737.44
					COUNSEL’S FEES	
					£4,446.40	
					DISBURSEMENTS	
					£1,113.75	
					TOTAL COSTS TO DATE	
					£18,297.59	

42. Whilst these costs will be subject to detailed assessment, this basic level of information is required with the Case Plan so that we can be assured that the costs for this period have been appropriately calculated and that there are no difficulties with the costs incurred against the existing costs limitation. We will not be able to agree the Case Plan without this information.

## What Stages will normally be applied?

43. The stages must reflect the type of case and the case management requirements of the courts and should enable the assessment of merits and the continuation of funding to be adequately considered. Detailed costings should normally be provided for the current listed timetable.

44. In an ancillary relief case if the current listing is to FDR then detailed costings need only be provided to that stage, but as costs benefit and alternative funding is a

consideration limited details should be given of your estimate of costs to final contested hearing. The latter stage can be fleshed out when the final hearing has been listed.

45. In other family cases, such as child abduction, where the timetable is more fluid, it may be more suitable for stages to run from hearing to hearing until a more stable timetable to final hearing is set. Whilst there is no hard and fast rule in those cases as to how long a stage should be or how many stages there should be, a stage should run to the first hearing and thereafter from one hearing to the next unless the timings of a hearing make that impractical. If that is the case a stage should be limited to no more than 3 months.

### **How are experts' fees and other disbursements dealt with?**

46. Experts' reports and other disbursements will be assessed as to the reasonableness to incur the disbursement and as to a reasonable amount (having regard to both hourly rates and the global figure). It is recommended that separate prior authority is sought for disbursements of an unusual nature or amount. Information about disbursements to be incurred must be provided in the Case Plan. You should submit a breakdown of the anticipated cost showing the expert's hourly rates and an estimate of the time to be taken for the work. If you have not obtained this information from the expert before you submit a Case Plan you will need to put in your best estimates of the costs. These will be incorporated into the overall agreed price for the stage. We may agree the Contract with this information and you may then apply to amend the contract price if the costs as estimated by the expert are greater than previously estimated or we may agree that the disbursements will be subject to assessment at the conclusion of the stage on the information then available and you will need to make the expert aware that this is so. Hopefully this may encourage experts to provide appropriate details of their fees in a timely manner. Work that is excluded from public funding cannot be authorised or covered in any event.

47. You may ask us to consider and agree the disbursement in respect of costs that you need to incur pending the approval of a costed stage of the Case Plan. See Paragraphs for 21 to 23 for details.

### **What rates are applied?**

48. Solicitors are remunerated at hourly rates under the family fee schemes. These are set out in the Civil Legal Aid (Remuneration) Regulations. The High Cost Care Case Fee Scheme rates are set out in the separate CCFS packs on the website. Solicitors are not remunerated at Family Advocacy Scheme rates under High Cost contracts.
49. You should be careful to apply the right rate to the right activity. Common errors include applying the preparation rate to time spent in conference with counsel or

applying the preparation rate to time spent dealing with routine letters and calls. Each of these activities has its own rate. In the case of routine letters and calls these can be charged at the prescribed rate per item or an equivalent hourly rate which is ten times the item rate as routine items are considered as six minute units. 15% enhancement can be applied to routine correspondence undertaken by a Panel member.

### **How is enhancement considered?**

50. In considering enhancement the Director of Legal Aid Casework will have in mind the relevant rules and regulations and precedent case law and in particular the guidance contained in the Legal Aid Agency's Civil Costs Assessment Guidance.
51. You will need to propose and justify the enhancement to be applied by ensuring that the case information includes sufficient detail to explain the full facts and circumstances of the case that would have a bearing on enhancement. You will also ensure the "Team Personnel" details a fee earners membership of any relevant panels and you will specify what level of enhancement you have applied against each type of activity.
52. Enhancement rates can be applied to the whole case, to classes of work or to individual items. In general, one of the latter two approaches will be preferable. It would be less usual to allow enhancement on routine letters or telephone calls or travel and waiting. However, one exception would be where the enhancement is being awarded owing to speed, for example securing an out of hours injunction, where it may be inappropriate to differentiate between time drafting and attending and making urgent telephone calls or sending urgent letters when applying the enhancement.
53. Other issues which may have a bearing include:
- The extent to which the solicitor has relied on Counsel to manage the case.
  - Exceptional expedition as may be found in fast moving Child Abduction Act.
  - If a non-panel member is the principle fee earner on the case they will still be entitled to enhancement if the case is exceptionally complex or they have shown exceptional competence or expedition.
54. This is of course a non-exhaustive list and all of the facts and circumstances of each individual case must be considered which is why it is so important that the case information in a Case Plan is comprehensive.

### **How are my estimated future costs laid out in the Case Plan?**

55. You must show each anticipated activity in chronological order with known dates or estimated time frames, the estimated time for each activity, the prescribed rate applied and the suggested enhancement again for each activity and the total cost for

that activity. Counsel's fees and disbursements should be included in the Case Plan chronologically with the solicitor's costs. Where counsel's fees have been calculated on the basis of the Family Advocacy Scheme the detail to support their fees should be included in the Case Plan. Where their fees escape these schemes the detail of how their fees have been estimated should be included in the Case Plan, including estimated time and hourly rate. At the end of the Case Plan there will be a detailed cost summary. Please see the example Case Plan on our website, as sampled below:

KEY EVENTS & DATES	WORK	TIME ESTIMATE IN HOURS		SOLICITOR COSTS				
		SOLICITOR	COUNSEL	DISBURSEMENTS	Rates Applied			
STAGE ONE (Cont..)						Rates	Enh (%)	Total
23-26 July 2012	Counsel's attendance at 4 day finding-of-fact hearing.		£3,514.00 (FAS)					
23-26 July 2012	Panel member attendance with counsel at 4 day fact-finding hearing at 6 hours per day.	24.00				£32.67	15%	£901.69
23-26 July 2012	Solicitors travel at 1 hour per day.	4.00				£29.21	15%	£134.37

### Part 3 Costs Summary

	<u>Profit Costs</u>	<u>Counsel's Fees</u>	<u>Disbursements</u>	<u>Total</u>
Pre-contract costs	£12,737.44	£4,446.40	£1,113.75	<b>£18,297.59</b>
Stage One costs	£4,193.06	£3,992.00	£56.25	<b>£8,241.31</b>
Stage Two costs	£2,996.74	£4,422.75	£599.25	<b>£8,018.74</b>
Stage Three costs	£0.00	£0.00	£0.00	<b>£0.00</b>
Stage Four costs	£0.00	£0.00	£0.00	<b>£0.00</b>
<b>TOTAL</b>	<b>£20,092.97</b>	<b>£12,861.15</b>	<b>£1,769.25</b>	<b>£34,723.37</b>

### CASE MANAGEMENT INFORMATION

#### I. Team Personnel (including Solicitors Employees, Experts and Counsel and/or Solicitor Advocate)

Lead Solicitor – A. Anybody (panel member)  
 Junior Counsel – B. Smith (pre-contract only)  
 Junior Counsel – C. Jones (throughout)  
 Psychologist – Dr. Wayne  
 Psychiatrist – Dr. Kent  
 Social Worker – B. Banner

I confirm that a copy of this case plan has been sent to the client/Guardian ad Litem

.....  
 Please complete Appendix 1 to show the hourly rates of all experts and counsel instructed.

## **Can I include my time spent preparing the Case Plan?**

56. Yes. We will always allow a reasonable amount of time for preparing the Case Plan and if necessary for subsequently amending the Case Plan. This is claimed as preparation time and can include enhancement. In a moderate case, as a rule of thumb, we would expect to see 2 to 4 hours preparation time. In a more complex case 4 to 6 and for the most complex cases 6 to 8. Of course the particular circumstances of the case may be relevant as will the quality of the Case Plan.

## **How are Counsels fees agreed in the Case Plan?**

57. Counsel must provide the solicitor with details of their proposed fees and full justification for them. These are then included in the Case Plan.

Counsel's fees will be remunerated in accordance with the Civil Legal Aid (Remuneration) Regulations. If the number of main hearing days, as listed, is ten or less then under contract the Agency would agree costs on the basis of the Family Advocacy Scheme unless there were exceptional circumstances. If the number of main hearing dates exceeds ten, counsel may opt for payment under the High Cost Care Case Fee Scheme.

58. If the number of main hearing days, as listed, is ten or less and there are two counsel instructed simultaneously, then counsel's fees will be agreed on the basis of the Family Graduated Fee Scheme unless there were exceptional circumstances. Counsel should provide their instructing solicitor with their anticipated function fees and a draft CIVCLAIM5 showing how they have calculated their fees. If the number of main hearing days, as listed, exceeds ten then the objective is to agree fees that counsel would achieve on detailed ex post facto assessment. Counsel should therefore provide proposed brief and refresher fees and full justification for them including proposed hourly rates and details of work and hours to be undertaken.

## **How do you calculate the length of the main hearing?**

59. The "main hearing" means the hearing at which the substantive issues are listed to be determined and are considered by the court. In care proceedings this means both the threshold/fact-finding hearing and the welfare/disposal hearing. It does not include the PHR, issues resolution hearing or review hearings.

## **Can the agreed stage price be increased?**

60. We will amend the certificate to increase the agreed price for a fully costed stage only where additional work could not reasonably have been foreseen when the Case Plan was agreed and only if the cost of the extra work will exceed 5% of the agreed price for the stage. Minor increases in work will not result in an increase in the stage price, for example, writing some additional letters. Hence the 5% tolerance has been applied. You will have to justify any increase over the original stage price

demonstrating that any proposed work was unforeseeable at the time the Case Plan was agreed. By way of example:

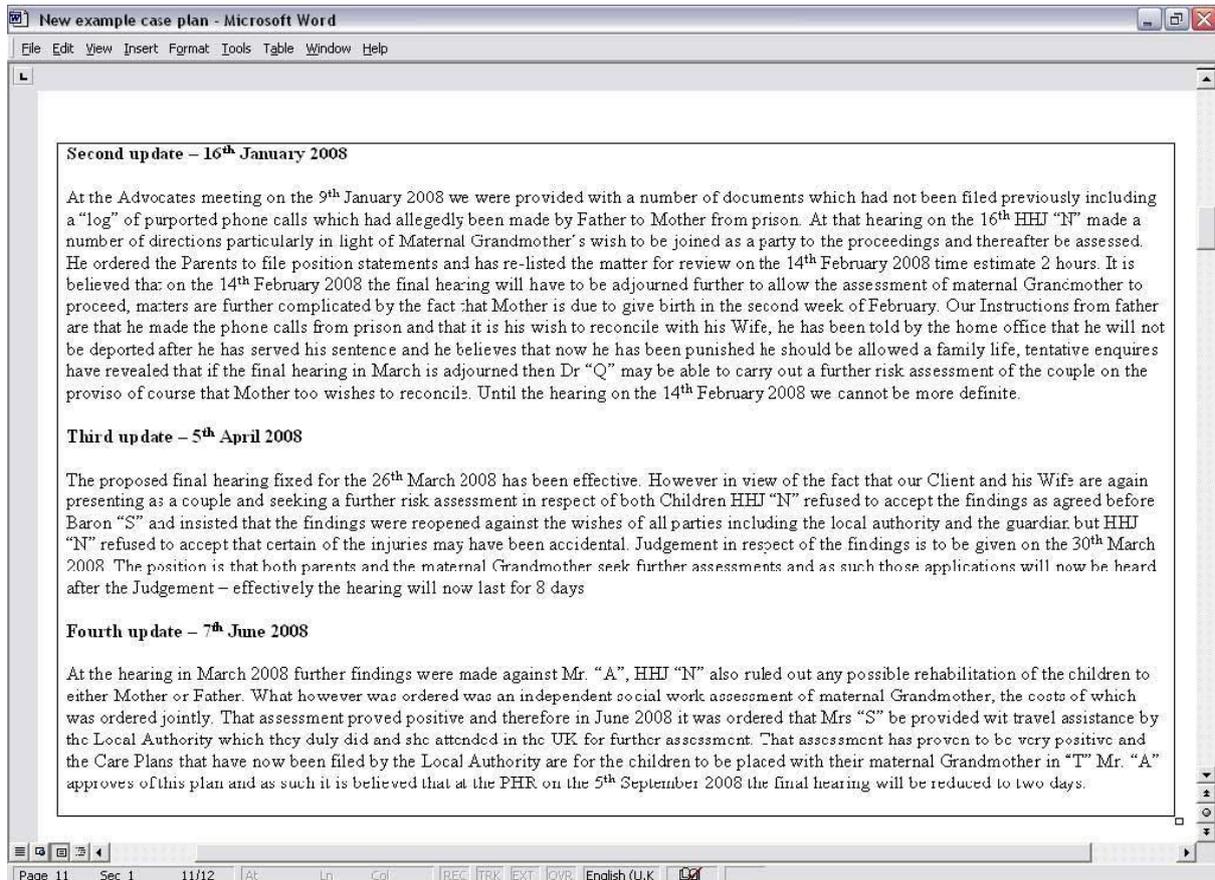
- i. If an additional party is unforeseeably joined in proceedings then the work in reviewing that party's arguments will not be in the Case Plan at all. The decision on authorising additional work should be straightforward, as the work was clearly not included in the stage price
- ii. If a solicitor applies for an increase due to writing a large number of letters to the opponents it is unlikely that they will be able to demonstrate the work was not foreseeable and not included in the original stage price. This will most likely not result in an increase in price.
- iii. If an additional hearing is listed that would clearly be unforeseeable and we would agree to amend the Case Plan to include the reasonable costs associated with that.
- iv. If a main hearing overruns that would also clearly be unforeseeable and we would agree to the additional costs on a pro rata basis with the costs already agreed.

61. In any case where additional work arises that you would seek to be included in the Case Plan it is important that an amended Case Plan is sent at the first opportunity. We will not agree to amend a Case Plan retrospectively except where emergency work arose and it was not possible to contact us before the work was carried out but you did so immediately thereafter. If emergency work is necessary, you should provide a revised case plan within 4 weeks of the work taking place. Finally, it is not intended that minor increases be aggregated across several activities within a stage to achieve the required 5% minimum increase. It is expected that applications will be made separately for increases in different activities within a stage in the case as they arise. The agreed case plan replaces the costs limitation on a certificate. Just as you must apply to increase a costs limitation on a non-high cost case before the limit is exceeded you must also ordinarily apply to amend a costed stage for extra work before the work needs to be undertaken. It is unlikely that we will agree to amend a costed stage when you submit your claim for costs at the conclusion of a case.

### **What happens if I need to amend the Case Plan?**

62. Once a Case Plan has been agreed there are a number of circumstances when additional work needs to be authorised either because of an unforeseen change to the timetable or because the case had not previously been listed for final hearing. It is intended that the Case Plan be a single evolving document. Each time you need further work authorised you should amend the existing agreed document by updating the case information (the new information either in bold or italics or clearly headed). If the additional work is part of an agreed stage then amend that stage to include the new work (again in bold or italics or some other way of differentiating it from the previously agreed work) and update the stage totals and the costs summary.

63. If the new work represents a further stage (e.g. disposal following threshold) then again ensure the case information is updated and insert a new numbered stage with all the further anticipated work for the new stage and update the costs summary. The “Costs to-Date” details will always remain the same. If you need to submit an amended Case Plan before the existing one is agreed then please make clear in the covering letter that the one you are submitting replaces the earlier one and confirm when the earlier one was submitted. Please see below for example;



### What if I need an urgent change to the agreed Case Plan?

64. If urgent work not covered by the Case Plan or certificate is needed a change can be authorised by the Director of Legal Aid Casework by an exchange of e-mails or by completing an CIVAPP8 or CIVAPP8A request for amendment form, although the Case Plan will need to be amended and submitted as soon as possible thereafter and in any event no later than 4 weeks thereafter.

### What about the effect of the possible variation in hearing length on the price of a full hearing stage?

65. The Case Plan must be agreed on the basis of the case as timetabled. If subsequently additional hearings are listed these will of course be considered unforeseeable and the Case Plan must be amended to include the associated additional costs for agreement. If a main hearing overruns again this will be considered unforeseeable and the additional costs will be agreed on a pro-rata basis with the costs already agreed. This can be done via an amended Case Plan if the case is continuing or by prior agreement on submission of the final claim for costs following a final hearing.

### **What happens if the case stops part way through a stage?**

66. It is possible that the case may be stopped. The client may become financially ineligible for funding or information may become available that shows the client has not made full disclosure about the case. This could lead to discharge or revocation of the client's certificate, which would lead to automatic termination of the contract. In such circumstances the solicitor will be paid their costs for the proportion of work undertaken in the stage plan.

### **What happens if a Case Plan and fully costed stage cannot be agreed?**

67. If an agreement between us cannot be reached as to the price for a fully costed stage, there is a right under the contract for the case to be reviewed by an Independent Funding Adjudicator. However, there is no right of review if the Director of Legal Aid Casework rejects a fully costed stage because it does not contain the required information.

### **What happens if there is a change of solicitor?**

68. If the Director of Legal Aid Casework agrees to a change of solicitor during the lifetime of a contract then the incoming firm will have to sign their own contract and either agree to adopt the Case Plan already agreed or complete their own Case Plan for agreement. The outgoing firm will be able to submit a claim for assessment of their costs actually incurred up to determination of their retainer. Assessment will be in accordance with the last agreed Case Plan. If there is a change of solicitor during the initial contract negotiations then both firms will still have to agree their costs and sign High Cost Case Contracts. Where there has been a previous solicitor at the time the first case plan is submitted their costs will form part of the "Costs-to-Date" period and, where they have not already been assessed will be subject to assessment by the Director of Legal Aid Casework as part of the pre-contract costs.

### **What happens if we have been acting for more than one client under a contract/case plan and they subsequently need separate representation?**

69. In those circumstances your costs up to transfer will be apportioned equally between the relevant certificates but subsequently just in respect of the remaining certificate/s.

The incoming firm will have to sign their own High Cost Case Contract and agree their own Case Plan for their costs under their certificate/s.

### **What if the case has finished before the Case Plan has been agreed?**

70. We will continue to negotiate and agree the case plan if the case concludes before a Case Plan has been agreed. You will still need to sign the high cost case contract before final payment can be made.

Separate CIVCLAIM1s are required to distinguish costs pre- and post- notification as VHCC. Once the costs in the CIVCLAIM1s have been agreed again you would still have to sign the high cost case contract before final payment could be made. This approach may also be appropriate if the need for a Case Plan only becomes apparent immediately before final hearing and there is not a reasonable opportunity to complete and submit a Case Plan. However this will only arise in exceptional circumstances and you should contact the unit who would manage the funding for permission to follow this route. We will not consider payments of costs where neither, a case plan or CIVCLAIM1 have been received within the four week time frame. Providers can appeal against this to costs assessors

## **4. Payment Under the Contract**

### **When are the payment points?**

71. You can submit a claim for full payment of solicitor's costs and counsel's fees (CIVCLAIM1) or payment on account (CIVPOA1) for pre-contract costs as soon as the contract is in place and thereafter at the end of each completed stage. If a stage lasts more than six months you may make a claim for a payment on account after each six-month period. You may make a claim for a payment on account of disbursements at any time. If, because of the circumstances of the case, you are unable to submit a CIVCLAIM1 for the pre-contract period when the contract is agreed you may in the alternative submit a request for a payment on account on form CIVPOA1. Any claim for payment should be submitted to the South Tyneside office unless the claim, exceptionally, exceeds the agreed stage or contract price, in these circumstances you should submit the claim to your case manager and ask them to consider the additional costs in advance of payment by the South Tyneside team. Full details of the justification for the request must be provided. All claims should include Counsel's fee notes and disbursement vouchers for any payment over £20. A CIVCLAIM1 must be submitted for each individual stage.

### **What about counsel?**

72. Where counsel's fees have been agreed in accordance with the Family Graduated Fee Scheme, or Family Advocacy Scheme, final payment can be made directly to counsel on receipt of a CIVCLAIM5 or CIVCLAIM5A. In such cases solicitor must still ensure full details of the fees paid to counsel are included in their CIVCLAIM1. For

cases where counsel's fees have been agreed outside of these schemes, final payment to counsel is made via the solicitor on a CIVCLAIM1 in accordance with the above payment points. Counsel can apply direct to whichever unit is managing the Case Plan/Contract for a payment on account on form CIVPOA1.

### **How and where do I claim for payments on account?**

73. Payments on account are made on form CIVPOA1. These should be sent to the South Tyneside team clearly marked "**High Cost Family Case**", including for **Exceptional & Complex cases**. Requests for disbursements in excess of £100 can be sent at any time and will be paid in full if there is sufficient cover in the current costs limitation or agreed Case Plan. In respect of profit costs and Counsels fees these can be claimed in accordance with the above payment points and are paid up to 75% of the costs incurred to date again assuming there is enough cover in the current cost limitation or agreed case plan.

### **What if the case plan has not yet been agreed, Can I still make a claim?**

74. We will only make payments up to the level of the current costs limitation or Case Plan. If payments have been made up to the costs limit and the case plan is still being negotiated no payment will be made. Where urgent disbursements require paying this must be discussed with the case manager or team dealing with your case plan, where consideration will be given and payments made on those disbursements not in dispute. Please note that it is your responsibility to stress the urgency of the payment sought in order to justify these payments.

### **Can I send you a bill of costs as for detailed assessment?**

75. Because all costs under a High Cost Case Contract are assessed by the Director of Legal Aid Casework we discourage costs draftsmen's fees for drawing up Bills of Costs and will not agree these unless we have specifically asked for such a bill. In the majority of cases a CIVCLAIM1 should be completed with full details of the costs claimed on multiple page 4s and 7s. Some firms may choose at their own expense to have detailed bills prepared and we will accept these with a CIVCLAIM1.

### **Can we send you our time recording sheets?**

76. It has been our experience over recent years that in family cases more often than not a firm's time recording sheets are not suitable as a replacement for the detailed information contained in a CIVCLAIM1. Invariably there have been problems with not being able to identify how rates and enhancement has been applied and the layout is often confused. If you would like us to consider accepting time recording data in lieu of a full completed CIVCLAIM1 then please contact us in advance with examples of the data you can produce so that we can agree this in advance. Otherwise we now insist on a fully completed CIVCLAIM1.

## **What should I send with the CIVCLAIM1?**

77. You should note that claims are processed by a different team to that dealing with case plans, therefore to minimise any delays in the processing of your payment you should send all the required documents with the CIVCLAIM1 to justify payment: counsel's fee sheets and disbursement vouchers for items over £20. You should also send a copy of the final agreed Case Plan. You need not send the file of papers initially but we reserve the right to call for this if we deem it necessary. NB. You can either submit one single claim with multiple page 4s and 7s identifying stages, or you can submit separate claims for each stage.

## **What if there is an order for costs against the other side?**

78. This is less likely to be relevant in public law cases but does arise in private law cases. If the client has a financial interest in the costs order because of the operation of the statutory charge then you can consider applying for the scope of the certificate to be amended to include enforcement proceedings subject to the appropriate funding criteria and if granted the Case Plan would be amended to include this further stage of costs. If the client has no financial interest or the client decides not to pursue the costs order themselves then you report the costs order to the Legal Aid Agency. Usually this is done by completing the relevant section in a CIVCLAIM1 and attaching a copy of the order. The Legal Aid Agency will then deal with recovery of these costs.

79. Only the court can determine the amount in a costs order so a bill of costs will have to be drawn up for that part of the proceedings covered by the costs order.

80. If the client has no financial interest in the costs order the Legal Aid Agency will decide whether to pursue the order and if we do successfully recover costs at market rates the instructed solicitor will be paid the difference between the costs agreed in the Case Plan and the recovered costs at market rates.

## Annexes

### Annex A - High Cost Case Contact Details

#### **High Cost Family Team - South Tyneside**

Legal Aid Agency

Northern Regional Office & Business Delivery Centre

Berkley Way

Viking Business Park

Jarrow NE31 1SF

DX 742350 Jarrow 2

**Enquiry line: 0300 200 2020**

**E-mail: [HighCostFamily@justice.gov.uk](mailto:HighCostFamily@justice.gov.uk)**

#### **Exceptional and Complex Cases Team - London**

Legal Aid Agency

Postal Point 8.51, 8<sup>th</sup> Floor,

102 Petty France

London SW1H 9AJ

DX 161440 Westminster 8

**E-mail: [ContactECC@justice.gov.uk](mailto:ContactECC@justice.gov.uk)**

Providers are encouraged to use CCMS where possible for cases managed through the system.