



Legal Aid  
Agency

# **High Cost Family**

## **– Family Cases Information Pack**

### **For Cases Registered from**

### **01 October 2015**

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## **Version History**

<b>Version:</b>	<b>Date</b>	<b>Reason</b>
3.1	27/07/2012	Consultation and review
4.0	01/04/2013	Legal Aid Reform and transition to Legal Aid Agency
5.0	01/04/2014	Changes to LAA team structure and scheme rebranding
6.0	01/10/2015	Scheme changes effective from 01 Oct 15
7.0	08/06/2022	Changes to reflect team branding and contact details

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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 High Cost Family cases. 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.
- An outline of the Care Case Fee Scheme (CCFS) & Full Case Plan.

## **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 CCFS Form or exceptionally a Full Case Plan submitted.
2. The Legal Aid Agency have focused on simplifying the High Cost scheme by creating a Care Case Fee Scheme. This will support the speeding up of family cases intended by the Family Justice Reforms. This scheme supports finalising the costs for solicitors who accept this graduated fee scheme after the cases are concluded. The scheme has now been proved to the extent that it will now be applied to Section 31 public law care and supervision application cases unless the LAA considers the case is exceptional and the scheme does not properly reflect the costs necessary to complete the case.
3. Details of what must be included in a CCFS Form or Full Case Plan, and how they should be used, are set out in separate packs. Criteria for funding very high cost cases are set out in Part 6 of The Civil Legal Aid (Procedure) Regulations 2012.
4. The Legal Aid Agency has established the High Cost Family Team in our South Tyneside office to handle family cases where only one advocate is instructed. The remainder, where two advocates are instructed, are also managed by the High Cost Family Team, but with oversight from our London office. For details of

where to send correspondence and Case Plans please see paragraph 27 below and Annex A.

### **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.
6. 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.

## **3. The Case Plan**

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

7. Unless you are sure that your case will not exceed £25,000, it is strongly advised that you start discussions with the High Cost Family Team about whether your case is going to become a 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. A case will not be registered as high cost after the case has concluded.
8. You should notify the LAA when the circumstances set out above are met. The LAA will respond within 5 working days.
9. We will usually fund the case under the simplified Care Case Fee Scheme. You will be able to provide the simple documents with your notification. See the new Care Case Fee Scheme (CCFS) Form, which is a combined Case Plan/Claim Form on our website. We will not insist you submit the CCFS Form at the notification stage, however you may choose to submit this to the LAA for your own assurance. You will need to submit the CCFS Form in order for the costs limit to be increased if you are intending to make an application for a POA. Submission of the CCFS Form can be at any stage after notification.

10. 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. 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.
11. If you consider that your Section 31 care and supervision case is exceptional and therefore that the costs set out in the 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. 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.
12. Cases under the Trusts of Land and Appointment of Trustees Act 1996 and the Inheritance (Provision for Family and Dependents) Act 1975 are not treated as a family case. Please see the guidance in respect of Civil Non Family cases. These cases should be sent to the Exceptional and Complex Cases Team in London.

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

13. 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 CCFS Form or Full 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 High Cost.

### **What is the High Cost Family Care Case Fee Scheme?**

14. This is a pricing model devised from historic analysis of bills subject to court assessment. Formerly known as the 'Events Model', it has been used by High Cost Civil Team since 2003 in very high cost complex public law cases involving King's and Junior Counsel or two counsel cases where the number of main hearing days exceeds ten. From 2011 it has been adopted for single counsel cases managed by the South Tyneside Unit.

15. This scheme does not replace any of the relevant costs rules, regulations and provisions but builds on them to achieve the same level of costs that would be paid on assessment. It assists solicitors by avoiding the need for very detailed case planning, and therefore quicker certainty of fees and consequent payment. It assists the Legal Aid Agency fixing costs consistently and quickly.
16. Full details of the operation of the KC or 2 Counsel CCFS model can be found in the Information Packs available from the website.
17. The CCFS scheme has been extended to handle in-house solicitor advocate cases. This scheme remunerates the advocacy in addition to the litigator work.
18. Full details of the operation of the CCFS scheme can be found in the CCFS Information Pack available from the website.

### **How long does it take the Legal Aid Agency to process CCFS cases?**

19. We aim to agree Care Case Fee Scheme applications within 2 weeks. We will not ask you to provide a CCFS Form until the end of the case when you submit your claim on the CCFS Form (the case plan being included within this form), however you may choose to and submit this to the LAA for your own assurance. Once agreed, we will ask you to sign the contract. However, you should note that we will only increase the financial limit on agreement of a submitted CCFS Form. The same form is used for final payment.

### **What is the High Cost Family Full Case Planning Scheme?**

20. This deals with exceptional cases where the CCFS scheme does not reasonably remunerate the costs of the care and supervision application case, or the case arises from family law proceedings not arising from Section 31 care and supervision proceeding.
21. Solicitors must produce a complete plan of the case activities and the hours that will be required to complete the case. The advocacy fees must be set out. The disbursements must be estimated, unless precise details are known, in which case they can be included.
22. When applying for funding in Section 31 care and supervision proceedings 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 is not an exhaustive list:
  - 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 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 conduct, 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 in 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.

23. Full details of the operation of the Full Case Planning scheme can be found in the Information Packs available from the website.

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

24. 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.

25. If you do not provide the case plan in accordance with Paragraphs 10, 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 your application to the Legal Aid Agency. The firm's compliance with contractual requirements will also be referred to your Contract Manager.

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

26. 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 either opt for the Care Case Fee Scheme or apply for the case to be funded exceptionally on a Full Case Plan. There will be no further increases in the costs limitation pending LAA approval of the case as exceptional and/or agreement of the Case Plan/CCFS Form.

Only once the contract is signed will the additional costs be approved and the certificate amended to reflect the contract and its costs.

### **Where do I send my CCFS Form or Full Case Plan?**

27. **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.

28. **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.

29. 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.

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

30. If there is the need for an urgent amendment or authority you should submit a CIVAPP8 or CIVAPP8A with the CCFS Form or Full Case Plan (or without the Case Plan if the urgency so dictates) as this helps us identify that an urgent amendment is required. This would cover additional proceedings or exceptional expert's fees.
31. 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.

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

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

32. 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 on time (in accordance with Paragraphs 10).
33. If your section 31 case is funded under the CCFS/FAS this will not be an issue once you have notified the LAA. You will be paid in accordance with the CCFS and FAS schemes, although you will be unable to obtain any POA that exceed the costs limit..
34. However, if you are funded under a Full Case Plan this is likely to happen in a number of cases. It is therefore important that you submit your case plan (and precontract bill in section 31 cases not funded under the CCFS) at the time of notifying the case to the LAA. Until the full case plan is agreed the cost limit will not be increased. You will not receive any payments on account in excess of the pre-VHCC cost limit.
35. For Full Case Plans, 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. For ongoing cases, additional stages should be submitted via the Full Case Plan in advance of carrying out the work.

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

36. If you submit a Full Case Plan for a Section 31 case you must submit a pre-contract bill for assessment with your Full Case Plan, in other cases funded by a Full Case Plan this can be submitted later on. These costs will also be included in the Full Case Plan these are known as the “Costs-to-Date” or pre-contract costs. This claim will be on a fully completed CIVCLAIM1 and potentially CIVCLAIM5A.

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 after 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.

37. When the case is funded under CCFS & FAS you will be paid under those schemes.

So you do not need to provide a figure for ‘Costs to Date’ or a pre-contract bill. Interim payments are made by POA’s at 100% for CCFS.

## **What happens regarding multiple solicitor firms involved with a case?**

38. Where a solicitor registers a case as high cost and there was a previous solicitor originally instructed on the case, the first firm’s costs should be included within the Full Case Plan.

There can be difficulties in respect of agreeing case plans and paying bills where there has been a change of instructed solicitor. The following circumstances typically occur and the LAA will act as set out:

- a. If the case was already a VHCC at the time of transfer to a new firm, then the newly instructed solicitor will provide a CCFS Form or Full Case Plan for their work. The previous solicitor will be responsible for agreeing their CCFS Form or Full Case Plan. Payments can be paid independently of each other. The newly instructed solicitor is not required to provide any costs information from the previous solicitor.
- b. If the case became a VHCC after the transfer and the newly instructed solicitor uses CCFS, they can obtain and include the costs from the previous solicitor within the CCFS Form. However, the newly instructed solicitor does not have to obtain the costs information from the previous solicitor or include any of their costs in the CCFS Form. If the newly instructed solicitor is not including the previous solicitor’s costs then this must be communicated to the

- previous solicitor. The previous solicitor can either use CCFS or claim under the usual non-VHCC provisions (fixed fee/hourly rate) for their work undertaken.
- c. If the case becomes a VHCC after transfer and the newly instructed solicitor seeks to use the Full Case Plan method, then they must use their best endeavours to obtain relevant costs information from the previous solicitor up to the date of transfer. If that information is not reasonably provided to the newly instructed solicitor then that previous solicitor's costs will be limited to the costs limitation on the certificate at the time of transfer. If the newly instructed solicitor does not seek to use any of the costs within the costs limitation at the time of transfer for the pre-contract costs, then the newly instructed solicitor can proceed to have their case plan approved in the absence of a response from the previous solicitor and the LAA will deal with each solicitor's costs separately.
  - d. If the circumstances set out in (c) above apply but the newly instructed solicitor seeks to use some of the costs within the costs limitation of the certificate at the time of transfer then it will be necessary for both solicitor's claims to be prepared before a final case plan can be approved and assessment and payment can be made.

## 5. Electronic Working

### Client and Cost Management System (CCMS)

39. Cases that are started on the LAA CCMS will continue to be managed through CCMS. Quick guides for managing high cost family cases in CCMS can be found on the GOV.UK website at:

<http://ccmstraining.justice.gov.uk/Quickguides/Quickguides>

Topics covered include:

- How to create and submit a 100% POA, previously under the Events model.
- How to convert a new or existing certificate into a high cost case. The guide will also explain some of the screens you will see when you submit your bill.
- How to submit a case plan in a high cost case and how to bill.

### Non-CCMS Cases

40. You may scan and submit original documents (signed contracts/CCFS Forms/case plans/claims/disbursement vouchers/documentary evidence) to us electronically. If you choose to do so, you accept and acknowledge that any electronic copy will be deemed to have been certified by you to be a true copy of the original.

41. Further, you accept and certify that you will retain all original documentation (signed contracts/CCFS Forms/case plans/claims/disbursement vouchers/documentary evidence) as required under Section 8 Standard Civil Contract Terms (2010 and 2013) and, you will provide this documentation for the purposes of audit as per Clause 9.1 of the Standard Civil Contract Terms (2010 and 2013), which are also binding on your Individual Case Contract under Paragraph 1.1 of the 2013 Individual Case Contract (High Cost Case) Specification

End

## 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

Email: [HighCostFamily@justice.gov.uk](mailto:HighCostFamily@justice.gov.uk)

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

Legal Aid Agency

Postal Point 8.51, 8th Floor

102 Petty France

London SW1H 9AJ

DX 161440 Westminster 8

Email: [ContactECC@justice.gov.uk](mailto>ContactECC@justice.gov.uk)

CCMS should be used as the primary contact method for all cases managed by it.