



Preventing Audit Issues

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Contents

Content	Page
Overview	3
Various forms of audit	4
Multi-category audit trends	5
Subject matters	
Financial eligibility: common errors Controlled Work	6
Means1 assessments: Certificated Work	8
Means2 assessments: Certificated Work	9
Submitting on CCMS: general tips	10
Family Level 1 & 2	11
Special Children Act cases: paper billing tips	12
Special Children Act cases: CCMS billing tips	13
Mediation: common errors	14
Mental health: claiming errors	17
Immigration: disbursement reporting errors	22
Common taxed billing errors	24
Crime appeal cases – key steps to take	26
Crime lower errors – common causes	29
Annex A: LAA audit activity	34

1. Overview

To help you comply with contractual requirements and associated guidance, the LAA produced a series of documents – collated in this document – on common errors.

Please taking time to review this document and share it with category supervisors and fee-earners. This could help avoid nil-assessments and reductions in costs following LAA audits and assessments.

If you have any feedback on this document, please contact your Contract Manager.

2. Various forms of audit

This next few sections outline different LAA audit and assurance activities. It's updated periodically and we endeavour to cover planned activities.

The list is not exhaustive but covers activities that will impact most providers. Activities also take place outside of those detailed, e.g.

- SQM certification provided by our external delivery partner and
- activity relating to the award of new contracts.

Where exercises are scheduled in addition to those listed, we will notify you as soon as we can.

LAA Controlled Work audit and assurance activities

- Annex A or
- <https://www.gov.uk/guidance/legal-aid-agency-audits>

3. Multi-category audit trends

To be paid in full for your Controlled Work, the LAA requires you to:

- follow contractual regulations in relation to costs claimed
- hold appropriate documentation on file and
- make it available to us on audit.

To this end, we have identified some common areas where you may not comply with the contract and associated guidance, resulting in nil-assessments and reductions in costs on LAA audits/assessments.

Controlled Work - audit trends

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314301/control-led-work-audit-trends.pdf

4. Financial eligibility assessment: common errors Controlled Work

Satisfactory evidence needs to be provided, specifically evidence showing client eligibility during the computation period.

1. Providers must correctly calculate the client's **gross income** from the evidence provided and convert to calendar month if necessary. All state benefits except Universal Credit are paid weekly, fortnightly or four-weekly.
2. **Income and deductions** in the computation period (a month prior to forms signed) should be assessed, unless the client starts new employment within a month of the file being opened.
3. **Passported Benefits** – JSA and ESA – can only be evidenced by Jobcentre Plus letters clearly showing income related element or by telephoning DWP directly. Income Support (IS) can be evidenced by bank statements.
4. **Employment income** can only be verified in a wage slip, not a bank statement by itself as this only shows net income. However, where new employment is secured and due to start within a month of the file being opened, you must assess the new earnings based on the employment offer - amount of hours and rate.
5. **Maintenance** received must be assessed, even if it is a subject of the dispute but continues in payment.
6. **Employment expenses** should not be deducted when the client is self-employed or receiving a bursary.
7. **Pension contributions or union fees** are not allowable deductions from earnings. Tax and NI are only allowed.
8. **Evidence of rent** must be obtained if it's more than one third of gross income.
9. **Evidence of childcare** must be obtained if it's £600 per month or more.
10. **Dependant Childs allowance** is only given for children actually residing with client.
11. Payments to **salary sacrifice schemes** are not an allowable deduction.

12. We advise that you provide a **breakdown of figures assessed**; and double-check the figures on more complex calculations and where there are several sources of income.
13. The **Capital** section of the CW1 must be completed in full in all circumstances. The changes to capital assessment in April 2013 mean that you have to confirm if the client has any capital, even if the client receives a passported benefit.
14. **Assessment of properties** should be carried out in line with the guidance on the CW1 form, e.g. maximum mortgage allowance of £100,000 or SMOD applied to main dwelling first.
15. Ensure the **partner's financial details** are included in the assessment where you record that the client has a partner. If it is not reasonable to assess the partner, i.e. due to conflict of interest, this should be clearly justified on the file.
16. **Re-assessment of client's financial eligibility** should be considered if a change is reported to your firm/organisation, especially if it is recorded during the first attendance, e.g. the client applied for Tax Credits in sole name since the break-up of their relationship. If a decision is made not to re-assess, you should provide a justification.
17. **Figures originally entered on CW1 form should not be amended directly** on the form as it is a legal document signed by the client. If re-assessment is necessary, it should be done on a separate sheet or fresh CW1 form.

5. Means1 assessments: Certificated Work

Almost all of the points in section 3 are equally valid to assessments for certificated work. In particular, remember that benefits except Universal Credit are paid either weekly, fortnightly or four-weekly. Only Universal Credit is paid monthly. Also check whether wages are paid monthly or four-weekly.

1. **All income and all deductions** must be evidenced. Where income or deductions are paid by cash, evidence can be in the form of receipts or letters from the other party.
2. Pay-slips must be submitted, must be consecutive and must be the most recent ones:
 - Client is paid four-weekly or monthly, three payslips are required or
 - Client is paid weekly or fortnightly, six payslips are required.
3. **Financial support** and/or money received from friends and family is treated as income and must be included. This also includes a friend or family member paying for something on the client's behalf, e.g. paying their car insurance or their phone bill.
4. **Rent** is assessed net of housing benefit and excludes any amount paid for service charges or other bills. Where the client is renting a room in a house, ask if the rent is inclusive of some/all bills and obtain a breakdown.
5. Payment of – as opposed to liability for – **childcare deductions** must be evidenced. Invoices are only accepted if they:
 - are receipted or
 - include a schedule of the account showing payments received since the last invoice.Childcare schedules showing hours and cost of childcare are not acceptable evidence for payment.
6. Checking bank statements for **unexplained credits or transfers** to other accounts and getting the client to note an explanation can prevent information requests from the LAA at a later stage.
7. **Bank accounts** must be declared and statements provided even if the account is dormant or unused. If a bank will not provide a recent statement, ask for a letter confirming the current balance and the date of the last transaction.
8. Three months of consecutive **bank statements** are required, and the period of the statements must run to within a month of the date of application or date of delegated functions.
9. If your client is a **servicing prisoner**, complete a Means1P and provide a copy of their prison accounts for the last three months (sometimes called Prisoner Income and Expenditure Statements or PIES). If your client had accounts outside prison that haven't been closed, statements are required for those accounts as well.

6. Means2 assessments: Certificated Work

If your client is passported on income, a full capital assessment is still required.

- In most cases, your client will need to provide their **most recent month's bank statement** for all accounts. This should cover a period that runs to within a month of the date of application or date of delegated functions.
- In cases where your client declares **more than £2,000 in capital, the client needs to provide three months' of statements.**
- We may also ask for **three months of statements in a limited range of other cases,** based on case-specific, high-risk factors.

7. Submitting on CCMS: general tips

- **When uploading documents**, ensure the document request task is changed to **Documents Sent** once the upload is complete. Otherwise, the caseworker will not be notified of the upload.
- **Don't include disregarded benefits as benefit income** as CCMS won't automatically disregard them. Including these can lead to a client being assessed as ineligible or with contributions that are not due.
- If the **DWP passport check result is 'yes'**, you do not need to upload proof of the passported benefit as this has already been verified.
- Encourage clients to bring with them **proof of passported benefit to the interview**. If the passport check result is:
 - 'no', you will be asked the question: Does the client have a letter confirming benefit? You will need to complete the questions for a full assessment as there:
 - has been a negative passport check and
 - is no evidence of passported benefit.
 - 'yes', you will need to upload the letter.

8. Family: Level 1 and 2

Appendix 1, Cost Assessment Guidance, for use with the 2013, 2014 and 2015 Standard Civil Contracts, sets out the criteria for when Family Level 1 and Level 2 can be claimed

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481752/legal-aid-costs-assessment-guidance-2013-2014-2015.pdf

9. Special Children Act cases: paper billing tips

1. Joined parties and changing status

If a client obtains parental responsibility, they can attract the higher Parent Fee (the client's funding status also changes to 'non-means, non-merits' which is often overlooked). This only applies during the case. If at the end, this provision does not apply.

Page 23, Section 4.1, Electronic Handbook, 'Joined Party' guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433164/legal-aid-electronic-handbook.pdf

2. Apportioning disbursements

Ensure this is done correctly and reported on the Claim1(A) with a detailed invoice.

Page 53, Section 10.4, Electronic Handbook, 'Apportioning Disbursements'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433164/legal-aid-electronic-handbook.pdf

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

3. Change of solicitor

The successor firm ensures the costs are adequate and should remember that we expect the initial firm/organisation to bill first.

Page 76, Section 13.2 Electronic Handbook, 'Rights of Assessment'

Page 26; Section 4.3 Electronic Handbook, 'Change of Solicitor' guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433164/legal-aid-electronic-handbook.pdf

4. High costs

Considering costs and reporting a case as a high cost case if it is likely to exceed the 'high cost threshold'.

Page 104, Section 20, Electronic Handbook, 'High Cost Cases'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433164/legal-aid-electronic-handbook.pdf

5. Understanding FAS counsel fees before billing

Page 80, Section 13.5, Electronic Handbook, 'Counsel Fees and the Solicitors Bill'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433164/legal-aid-electronic-handbook.pdf

Counsel Fee Matrix

<https://www.gov.uk/government/publications/counsel-matrix-details-of-counsel-claims-paid-to-date>

10. Special Children Act cases: CCMS billing tips

1. **Cases need to be linked** in CCMS with one case designated the 'lead' for billing purposes at the application stage.

Quick guide to 'Special Children Act Applications'

2. **If the 'lead' case is transferred to a new provider**, one of the other cases must be allocated the new 'lead'.

Quick guide to 'Linking Cases' on CCMS

3. **All bills and 'payments on account' requests** should be submitted on the 'lead' case.

Quick guide to 'Submitting Payments on Account'

Quick Guide on Guide on 'Assessed Bill's on CCMS

4. **Outcomes and nil bills** need to be submitted at the conclusion of proceedings to close down the non-lead linked cases.

Quick Guide to 'Recording Outcomes'

Quick Guide on Submitting 'Nil Bills'

Visit the CCMS training website for the quick guides

<http://ccmstraining.justice.gov.uk/training-resources>

11. Mediation common errors

By being aware of key mediation claiming issues can help ensure you are able to submit accurate claims. These common error areas will be specifically scrutinised by the LAA during its visits and audits.

This document briefly summarises some of these issues but isn't formal guidance. Where you have specific concerns or queries on these issues, on a case-by-case basis, we encourage you to refer to the following documents:

2010 Standard Civil Contract Family Mediation Specification 2014

<https://www.gov.uk/government/publications/standard-civil-contract-2010>

Family Mediation Guidance Manual

<https://www.gov.uk/legal-aid-family-mediation>

Guidance for Reporting Family Mediation Work:

<https://www.gov.uk/government/publications/family-mediation-claim-forms>

Common errors

1. Financial eligibility

- Satisfactory evidence needs to be provided, specifically evidence showing the client's eligibility during the computation period. Employment income can only be verified in a wage slip, not a bank statement by itself as this only shows net income.
- Providers need to correctly calculate the client's gross/disposable income from the evidence provided.
- We advise you to double-check the figures on more complex calculations, where there are several sources of income.
- It is also important to ensure that the 'Capital' section of the MEANS7 is completed in all circumstances.
- You must also ensure the partner's financial details are included in the assessment where you record that the client lives with a partner.

2. Records of mediation sessions and assessment meeting

- These should be retained on file.
- There have been instances where mediation sessions have taken place but the only evidence on file were letters confirming the discussions.
- You should have a documented record of the session to show the full nature and content of the discussion.

3. Agreed proposal fee

- This fee should only be claimed where there is clear agreement evidenced on file on the majority of issues in dispute.
- A written mediation summary should be produced reflecting this agreement at the end of the mediation.
- In children cases a summary detailing the issues agreed, such as contact dates and times, would be acceptable. A letter would also be satisfactory if it is sufficiently detailed so that all parties are clear about what the arrangements are for the children, e.g. bullet points clarifying the proposals.
- In cases where financial issues are in dispute, a full agreement or Memorandum of Understanding is required.
- A summary that only details the issues discussed in mediation, without showing that genuine areas of agreement were reached, is not acceptable.

4. Co- mediation

- Any decision to use a co-mediator will only be justified in exceptional circumstances. Reasons will need to be recorded on the file.
- Co-mediation claims will be reduced to sole mediation claims in file reviews unless the use of two mediators is justified on the file.
- Examples of appropriate reasons are provided in the Family Mediation specification. One client being upset or angry is not sufficient in itself as these are emotions common to clients attending mediation.

5. All issues cases

- These are cases where issues relating to both children and finances are in dispute.
- An 'all issues fee' must involve a significant legal dispute relating to children and a significant legal dispute relating to finance.
- The file should evidence clear legal disputes on both elements involved in the case.

6. Re-referrals to mediation

- Under Clause 4.10 of the Family Mediation Specification, if a mediation case is closed and the clients return within three months, the service needs to reopen the case if it relates to the same matter.
- At the conclusion of the further mediation, an amended 'Consolidated Work Report Form' should be submitted if the previously reported details change, e.g. increase to multi-session or change to outcome.
- If the client returns three months after the last visit, you can start a new matter.
 - The term 'return' means the date the parties contact the mediation service, not the date of the subsequent mediation session.
 - The 'last visit' is interpreted as the last contact with the clients.

7. 3 November 2014 eligibility changes

- The LAA will pay for the first mediation session for a non-financially eligible party in a mediation where the:
 - other party is financially eligible for legal aid and
 - first mediation session after the MIAM takes place on/after 3 November 2014.
- There are no changes to the way mediation cases are reported - you should continue to report the mediation as a single matter regardless of the fee payable in respect of each party.

8. Direct consultation with children

- Any mediator who undertakes this work must have:
 - attended a recognised training course by a member organisation of the FMC and
 - obtained the consent of both parties before commencing this work.
- Where 'direct consultation with children' is used, please add the code DCC on the end of the reference number for the mediation to:
 - allow the LAA to identify cases where direct consultation is used and
 - monitor the profile and outcomes achieved.

12. Mental health: common claiming errors

1. Incorrect 'stage reached' coding

The correct 'stage reached' code must be recorded as these determine the fixed fee(s) paid. Of particular note are:

- 'Stage Reached/Level' – MHL01-MHL09 and
- 'Meetings Attended' – MTGA01-MTGA24

Whilst the MTGA code does not affect the fee(s), it does indicate the meetings where representation took place.

Further information:

Guidance for reporting Controlled Work & Controlled Work Matters, V16, Annex K (p114-115)

2. Failure to conduct a means assessment for a non-MHT matter

A means assessment must be completed where:

- no advice has been given on the Tribunal process or
- the advice given was not necessary, e.g. the client
 - was seeking advice on the Mental Health Capacity Act or
 - advised that they weren't seeking advice on the MHT.

Further information:

2014 Standard Civil Contract Mental Health Specification, 7.14-7.15
Section 2 of the Mental Health Guidance

3. Failure to evidence means in a non-MHT matter

As a fee-earner, you must undertake reasonable steps to check the financial position of a client if they are in detention in respect of a non-MHT matter. You should check whether the ward manager, social workers, family members, etc. can confirm the client's financial position.

Further information:

2014 Standard Civil Contract Specification, 3.22-3.28

You need to consider whether it is impracticable to obtain the evidence of means which will be dependent upon the individual circumstances of the case/client.

- If it is practicable to obtain evidence of means, the *Guide to Determining Financial Eligibility for Controlled Work and Family Mediation (12.2.1-12.2.9)* must be followed.
- If it is impracticable to obtain evidence of means, *the guidance in the above (12.2.10-12.2.11)* must be followed.

In particular, you should note the reason why it was impracticable to obtain evidence on the file. You should also continue to attempt to obtain evidence from the ward manager or social worker where practicable.

Reasonable steps include, for example, requesting sight of the latest monthly pay-slip (if the client is paid weekly, it is best practice to obtain the latest four week's of pay-slips) to verify information provided by the client.

Further information:

Guide to Determining Financial Eligibility for Controlled Work and Family Mediation April 2014 1 Point 2.1(5)

Instead of written evidence, you may contact the relevant agency, e.g. DWP or HM Revenue and Customs, while the client is in attendance to confirm: details, amount of benefit or tax credit and current entitlement.

A note of that conversation including: relevant details, the person spoken to and a unique reference number will be acceptable evidence on audit.

Further information:

Section 4, Mental Health Guidance (Includes Point of Principle 55)

4. Claiming separate non-MHT matters when they should have been 'rolled up'

You shouldn't open a separate non-MHT matter start and claim a separate non-MHT fee when it should have been 'rolled-up' into a concurrent MHT fee.

If a non-MHT matter is opened before the client applies to the MHT, in most circumstances, the non-MHT matter should form part of a single MHT claim.

Further information:

2014 Standard Civil Contract Mental Health Specification 7.20-7.22 & 7.56-7.62

5. Failure to understand nearest relative (NR) rules

Make sure you are clear on the matter start rules where the client is the Nearest Relative (NR) with regard to both MHT and non-MHT matters.

Further information:

*2014 Standard Civil Contract Mental Health Specification 7.19-7.22 & 7.33
Section 6, Mental Health Guidance*

6. Claiming an MHT fee for stand-alone non-MHT work

You shouldn't claim the MHT fee for stand-alone non-MHT work, such as attending Hospital Managers Meeting/Review or an s117 meeting.

Further information:

2014 Standard Civil Contract Mental Health Specification 7.56-7.62

7. Claiming MHT Level 3 when an effective MHT has not taken place

You mustn't claim an MHT Level 3 fee where an effective MHT has not taken place or you have not carried out any representation.

However, there is a scenario in which the Level 3 fee can be claimed in substitution for an Adjourned Hearing Fee.

Further information:

2014 Standard Civil Contract Mental Health Specification, 7.69 & 7.72

8. Claiming Level 2 before MHT application submitted

You must not claim the MHT Level 2 fee:

- before an MHT application has been submitted or
- where neither 30 minutes work has been done nor negotiations with a third party have been carried out.

Further information:

2014 Standard Civil Contract Mental Health Specification, 7.65 & 7.68

9. Section 2 applications

Where the client is detained under Section 2, the Section 2 application must be received by the tribunal within 14 days (or the next working day when this is on a date when the tribunal is closed).

It is clear that the criteria for legal representation cannot be met if the provider makes the application too late for it to be considered by the tribunal, therefore, only the MHT Level 1 should be claimed.

Further information:

2014 Standard Civil Contract Mental Health Specification, 7.63 & 7.64

10. Failure to open a new NMS when an informal patient is detained

A new NMS should be opened in circumstances where an informal patient is detained under section.

If a non-MHT Escape Fee Case includes MHT work the claim would need to be submitted as two separate bills, under paragraph 4.13 of the 2014 Specification.

Further information:

2014 Standard Civil Contract Mental Health Specification 7.21 & 7.23

11. Claiming a separate fee in relation to a renewal hearing

Any work relating to a renewal hearing should be rolled back into the MHT claim for the period of eligibility to which the Responsible Clinician's decision relates. This is regardless of when the work is undertaken, i.e. within a fresh period of eligibility.

If there is not a MHT claim for the eligibility period the renewal hearing relates to, this is a non-MHT matter as a Hospital Managers Hearing would be convened.

Further information:

*2014 Standard Civil Contract Mental Health Specification, 7.56 & 7.62
Section 5 Mental Health Guidance*

12. Remote travel claims

There are currently no hospitals designated as remote.

Further information:

2014 Standard Civil Contract Mental Health Specification, 7.73-7.78

13. Excessive travel cost claims

The Cost Assessment Guidance (2.42-2.46) indicates a limit of five hours unless reasonable justification is evidenced on file.

14. Excessive disbursement claims

This includes claiming:

- counsel fees (which should be paid out of the fees claimed except where prior authority has been granted to incur a higher rate) and
- multiple independent expert reports (where they are not justified by the case).

Further information:

*2014 Standard Civil Contract Mental Health Specification, 7.41
2014 Standard Civil Contract Specification, 4.21*

15. Necessary attendance

Consideration must be given to whether attendance at HMH, s117 or CPA meetings is necessary and/or appropriate. Factors to take into account include the nature of the issues to be discussed at the meeting and whether legal advice and/or representation will be required.

Tackling poor quality

The LAA has worked hard to carry out coordinated action to tackle isolated poor quality work with a range of stakeholders, notably:

- joint communications with The Law Society and the MHLA
- supporting the production of complaints guidance by The Law Society
- supporting complaints made by the NHS to the SRA/Legal Ombudsman
- investigating quality issues with providers
- introducing higher quality standards in the 2014 contract and
- facilitating better communications between key stakeholders.

Minimum quality standards are viewed as improving as a consequence. However, our Contract Managers will continue to be aware of the particular vulnerabilities of mental health clients and look for any warning signs on files. Potential issues include:

- touting for business on wards when there is no client to visit, including unsubstantiated reports of bribery or coercion
- poaching clients from their existing providers (balanced against client choice)
- failing to make appointments with wards
- applying to the MHT without client instructions or even against client instructions not to apply
- failing to manage client expectations by promising particular outcomes
- having contact with/meeting the client only at the outset of the case to sign them up to legal aid and then at the MHT
- failing to prepare for the MHT and
- failing to provide adequate aftercare.

Links to documents

2014 Standard Civil Contract Standard Terms & Specifications

<https://www.gov.uk/government/publications/standard-civil-contract-2014>

Eligibility guidance

http://civil-eligibility-calculator.justice.gov.uk/ecalc_lar/guidance.asp#2C003

Costs assessment and remuneration

<https://www.gov.uk/funding-and-costs-assessment-for-civil-and-crime-matters>

Guidance for reporting Controlled Work & Controlled Work matters

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/347977/guidance-for-reporting-controlled-work-matters.pdf

Mental Health guidance 6

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342667/laa-guidance-mental-health-august-2014.pdf

13. Immigration disbursement reporting errors

1. No disbursement vouchers/invoices on file to support the claim being made

A note of all disbursements incurred and claimed on a matter must be recorded on file. Where the costs of any one disbursement exceed £20, a copy of the voucher / invoice must also be retained.

Paragraphs 3.1 and 3.17 of the Costs Assessment Guidance 2013 identify the limited circumstances in which exceptions to these rules might apply:

“Invoices or receipts should be provided in respect of any disbursement of £20 (including VAT) or more. However, where the nature of the disbursement, such as court fees and mileage, means that no invoice or receipt is available, a note should be left on file to this effect.” [Paragraph 3.1]

“Invoices/receipts should always be produced in support of claims for travel expenses. Claims for up to £20 will not normally require substantiation by provision of a receipt or disbursement voucher, but should be justified on file.” [Paragraph 3.17]

If your file does not meet these requirements, you should not claim a disbursement. When justifying a travel claim for which a receipt is not required your note on file should state why the travel was necessary and give details of the travel time and mileage involved.

2. Failure to retain details in relation to interpreter claims

Where use of an interpreter is needed:

- The costs claimed for the service provided must be itemised to show a breakdown of the costs in relation to each activity involved: travel and waiting time, travel costs and attendance time.
- Local interpreters should be used, wherever possible, to minimise cost.
- Claims for travel can be to/from the interpreter’s place of work or home address and your office. The home address or place of work (as relevant) should be clearly noted on the invoice. As a minimum requirement, the postcode should be noted if it is the interpreter’s home address.
- You should ensure that all disbursements claimed for interpretation services can be assessed, are reasonable, and can be validated through audit.

Where claims are not supported by information sufficient to enable us to conduct a proper assessment, we will reduce the costs of the claims involved and recover any monies paid out in error as a result.

3. Claims for interpreter travel time/costs: excessive or standardised claims made

At audit, we are finding instances where the travel time and/or the travel costs claimed are deemed to be unreasonable. Claims of this type generally fall into one of two categories:

- **Claims where the interpreter's travel time and costs are standard across all matters.**
These are claims where a standardised claim is made for travel time and travel costs without regard to which interpreter is used and where they have travelled from.
- **Claims where the travel time and costs claimed from LAA are not supported by the invoice from the interpreter or interpretation agency.**
These are claims in which the invoice has within it insufficient detail to support the claim made or more appears to have been claimed from us than appears to have been charged by the interpreter.

4. Notes

You should not claim a disbursement for any interpretation costs unless you are:

- satisfied that the invoice meets our evidential requirements and
- provides an accurate account of the time spent and travel time/costs incurred.

The costs incurred must be reasonable, necessary and justifiable. You should use local knowledge and any other means available to satisfy yourself that the costs meet these criteria.

If you buy services from an interpretation agency which operates under a formal agreement through which it charges fixed fees or a minimum fee per attendance, a written copy of that agreement must be available for inspection on request.

You should also be prepared to demonstrate that any such agreement is cost-effective and provides value-for-money relative to the costs charged by other available service providers.

The 2013 Standard Civil Contract, Specification, Paragraph 6.55:

"You may only Claim for work that has been actually and reasonably done and disbursements actually and reasonably incurred in accordance with the provisions of the Contract and that is supported by appropriate evidence on the file at the time of the Claim and Assessment..."

We will only pay for disbursements actually and reasonably incurred.

All claims for interpreter's travel time must be supported by evidence to justify the claim. The 'less than £20.00' only applies to the actual travel cost incurred and not the travel time claimed.

14. Civil taxed bills: common errors

Stop payment delays and money being recovered by avoiding the most common errors when submitting claims. Here are some of the most common errors that the LAA identified which are validated by the National Audit Office.

1. Work claimed not covered by the certificate

Check your certificates cover work being claimed for and also that emergency certificates don't expire before substantive certificates start.

If a legal aid funding certificate is not in place, work should not be carried out or claimed for.

Further information: Costs Assessment Guidance 2013, Section 10

2. Courier fees not justified

Include justification for courier fees with your bill. Otherwise, courier fees cannot be claimed as disbursements.

Further information: Costs Assessment Guidance 2013, Section 2.2

3. Work not evidenced on file

Documentary evidence needs to be provided when requested. Claims are often made for letters and telephone calls for which there is no evidence.

Further information: Costs Assessment Guidance 2013, Section 1.26

4. Work claimed while 'show cause' notice in place

'Show cause' before LASPO

Applications pre-April 2013, and the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), would have been for Community Legal Service funding certificates. These were issued under the Access to Justice Act 1999 – subject to the Funding Code.

Work should not be claimed for when a "show cause" notice is in place, even if it is later removed. A "show cause" notice puts an embargo on legal aid certificates until clients are able to "show cause" why it should not be revoked or discharged.

Further information: Funding code procedures, C55.3

'Show cause' under LASPO

Intention to withdraw a determination

For LASPO Certificates, applied for from April 2013 and issued under LASPO 2012, the provisions differ slightly:

- If show cause is removed, funding will be continuous as though show cause was never placed on the certificate.
- If the certificate is withdrawn, i.e. discharged/revoked, no work can be claimed from the date the show cause was placed on the certificate.

Providers can undertake work ‘at risk’

Further information: Regulation 42 (3) of the Civil Legal Aid (Procedures) Regulations 2012

5. Administrative work claimed incorrectly

As a general rule you can only claim for the direct provision of client services. Maintaining cost records is not recoverable. Time may be claimed, for example, for:

- the completion of applications to seek amendments to licensed work certificates and
- payments on account.

Further information: Costs Assessment Guidance 2013, Section 2.1 – 2.3 & 2.60

6. Travel time and associated costs not fully justified

Travel expense claims should be based on journeys from the fee-earner’s office.

- Claims exceeding the expected amount need to be justified on file and this will be considered on assessment.
- Claims from home will only be accepted if the travel was shorter or less expensive than from the office.

Further information: Costs Assessment Guidance 2013, Section 2.42 – 2.51

7. Disbursement vouchers not provided for expenses over £20

Receipts or invoices need to be kept on file for disbursements of £20 or more (including VAT).

An explanatory note is needed on file if the nature of the disbursement, such as court fees and mileage, mean vouchers are not available.

Further information: Costs Assessment Guidance 2013, Section 3.1

Legal aid guidance

Costs assessment guidance 2013

Legal aid electronic handbook (see 1.4 Show Cause, p13)

15. Crime appeal cases - key steps to take

To avoid issues the following are some key steps to take:

Before agreeing to take on the case

Does the case have merits?

The advising solicitor needs to consider, before funding starts, whether an enquiry appears initially to have merit. It is accepted that such a view can only be provisional at this stage but there must be as a minimum “at least an inkling” of what legal point needs to be considered.

It is not essential, before funding starts, for the advising solicitor to contact the client’s trial solicitor or advocate (they will have given advice on the prospects of success in an appeal).

Clause 11.5 of the Standard Crime Contract Specification states:

“If the Client has received an adverse opinion on appeal and wishes to obtain a further opinion, you must consider how long it was since the first opinion was given. If recent, and it appears that all issues have been considered, no further work may be undertaken.”

If the trial solicitor or advocate gave negative advice on an appeal, on the face of it, there is not sufficient benefit in opening the case. Therefore, you will need to:

1. Identify what is different now

There needs to be information that the client is giving you at the outset which tells you that there may be grounds for an appeal which are worth pursuing despite the negative advice given by the trial solicitor or advocate.

The client needs to tell you clearly what circumstances have changed; or you must have a view on why the advice given may have been flawed.

2. Sentence

Is the sentence manifestly excessive, i.e.

- Is it outside what the court was allowed to give, not simply at the high end of what is allowed or more than the client thinks is justified?
- If so, you need to say why at the outset referring to the sentencing guidelines.

3. Conviction

Is the conviction unsafe, i.e. is there new evidence, or some possible defect in the proceedings or in the advice which the client has identified. If so, you need to be able to say specifically what it is. If you cannot answer these questions clearly, the sufficient benefit test has not been met and you should not sign the client up to advice and assistance.

When seeking prior authority to exceed the initial limit, check that there is still benefit in continuing with the advice

If there was good reason for commencing the advice and assistance, and you are considering applying for prior authority to exceed the initial limit, you need to ask the same questions that you asked at the outset to satisfy yourself that there is still sufficient benefit in the case.

In addition you need to be able to say what specific work needs to be undertaken and how it will progress the client's case.

It is agreed that:

- LAA auditors could consider different approaches to a firm that is able to demonstrate that only selected initial enquiries are progressed compared to one that is unable to demonstrate effective 'screening'
- a client's vulnerability can be taken into account. However, this doesn't mean, for example, that every enquiry from a youth will meet SBT.

The LAA is not looking for a substantial document addressing SBT but does need clarity on the file on how SBT is achieved before funding can start.

Clauses in the Specification

Section 11, Standard Crime Contract Specification, Appeals and Reviews

16. Common causes of Crime Lower errors

Class of work	Errors identified
<p>Prison Law:</p> <p>2010 Standard Crime Contract Specification Section 12</p> <p>Criminal Bills Assessment Manual (2013) section 12</p>	<p>Multiple claiming of Advice & Assistance cases – 2010 SCC Rules 12.10, 12.33 to 12.36.</p> <p>Parole Board and Disciplinary cases</p> <p>a) Whether they are in-scope – 2010 SCC Rules 12.108 and 12.123</p> <p>b) Whether the correct fee (Fixed or Standard) has been claimed – 2010 SCC Rules 12.118, 12.121, 12.122, 12.130, 12.133 & 12.134.</p> <p>We consider the profile of claims, particularly where a high proportion of claims were found prior to 2 December 2013 LAT changes, as we would forecast a decrease in claiming in this area following the scope changes.</p> <p>There needs to be evidence on file that the Parole Board has the power to release (post LAT) – 2010 SCC Rule 12.123</p> <p>The client's financial eligibility is not always clear and was not always undertaken in accordance with the 2010 SCC Rules 12.14, 12.15, 4.23, 3.5 to 3.9 and <i>The Criminal Legal Aid Regulations (Financial Resources) 2013</i>.</p> <p>Whether the matter should have been conducted under Prison Law rather than Associated CLA (and vice versa) – 2010 SCC Rules 12.98, 12.108, 12.123 for Prison Law and 2010 SCC Rules 13.1 et seq for Associated CLA.</p>
Class of work:	Errors Identified
<p>Proceedings:</p> <p>2010 Standard Crime Contract Specification Section 10</p> <p>Criminal Bills Assessment Manual (Jan 2016) Section 6.6</p>	<p>Claiming multiple standard fees where the Series of Offences tests are not met - 2010 SCC Rules 10.68 - 10.72</p> <p>Criminal Legal Aid Remuneration Regulations:</p> <p>http://www.legislation.gov.uk/ukxi/2013/435/schedule/4/made</p>

Class of work:	Errors Identified
<p>Proceedings:</p> <p>Criminal Remuneration Regulations 2016 (as amended)</p> <p>Criminal Bills Assessment Manual (Jan 2016) Section 3.7</p>	<p>Category 2 Standard fee claimed for cracked trials with insufficient evidence of preparation for trial - SCC Part B, Rule 10.90 & 10.91</p> <p>See CRIMLA 41 Magistrates' Court Standard Fees: Cracked trials, time of discontinuance and guilty pleas: Category of Case in the Points of Principle Manual</p> <p>http://www.justice.gov.uk/legal-aid/funding/points-of-principle</p>
Class of work:	Errors Identified
<p>Proceedings & Investigations:</p> <p>2010 Standard Crime Contract Specification Section 4 & 12</p>	<p>Increased travel costs as a result of using an agent - SCC Rules 4.12 (Part A) and 12.50 (Part B).</p> <p>You may instruct a solicitor or representative working as an agent to carry out work on your behalf, provided that the use of such an agent does not increase the costs payable.</p> <p>Where you instruct an agent or counsel, you claim payment for the work as if you had carried it out yourself.</p>
Class of work	Errors Identified
<p>Investigations:</p> <p>2010 Standard Crime Contract Specification Section 9</p> <p>Criminal Bills Assessment Manual (2013) section 5</p>	<p>Claiming multiple INVC's for the same client – <i>2010 SCC Rules 4.45, 4.46, 4.53, 4.54, 9.2, 9.83 to 9.85, 9.90, and 9.93.</i></p> <p>Claiming INVA + INVC for the same matter – <i>2010 SCC Rule 9.139.</i></p> <p>Claiming INVB + INVC for the same matter – <i>2010 SCC Rule 9.80.</i></p>
Class of work	Errors identified
<p>Appeals & Reviews:</p> <p>2010 Standard Crime Contract Specification Section 11</p> <p>Criminal Bills Assessment Manual (2013) section 11</p>	<p>The work was not always in scope – <i>2010 SCC Rules 11.1 to 11.7.</i></p> <p>We consider whether there has been any unusual claiming activity since the LAT fee reductions.</p> <p>The client's financial eligibility was not always clear and not always undertaken in accordance with the 2010 SCC Rules <i>11.9, 4.23, 3.5 to 3.9 and The Criminal Legal Aid Regulations (Financial Resources) 2013.</i></p> <p>The sufficient benefit test has not always been met – <i>2010 SCC Rule 11.8</i></p> <p>The justification for the travel claimed was not always supported.</p> <p>Sometimes there was insufficient evidence on file to justify the costs claimed – <i>2010 SCC Rules 5.8 and 8.40 to 8.43. CBAM 3.1 to 3.10.</i></p>

Class of work	Errors identified
Court Duty (Claims Analysis)	<p>Travel and disbursements claimed on business days.</p> <p>Old rates were claimed when new rates should have been used.</p> <p><i>New rates with effect from April 2016:</i> http://www.legislation.gov.uk/ukxi/2016/313/schedule/3/paragraph/4/made</p>
Class of work	Errors Identified
Proceedings Virtual Court Claims	<p>Claiming incorrectly for work conducted at a Virtual Court Hearing.</p> <p>A claim for a Virtual Court fee can be made if the criteria outlined at Part B, 10.27 (a) to (d), of the SCC Specification are satisfied.</p> <p>If these criteria are not satisfied:</p> <ul style="list-style-type: none"> • no separate Virtual Court fee is payable; and • work undertaken at the Virtual Court hearing can be included in the calculation of the core hours to determine the final value of the Standard Fee. <p>Criminal Bills Assessment Manual paragraph 6.20.</p>

Working examples of issues outlined above:

Example 1: Prison law and client financial eligibility

The LAA see instances where the initial means assessment provided states ‘zero – client is a serving prisoner’. This, in isolation, does not bypass the need for a means assessment as both income and capital are tested.

A serving prisoner can have capital: property and bank accounts. Another consideration would be if they have a spouse, their means would also need to be considered.

A means assessment must take place to ascertain an accurate picture of the client’s eligibility taking into account the above.

Prison wages can be accepted (without evidence from the prison) if the client’s capital has passed the assessment and they have no partner, as they can never in this instance exceed the income limits.

Example 2: appeals and reviews – travel justification

This has been picked up as an issue in this area of work but applies unilaterally across claiming for crime cases.

When travelling to see a client, it is deemed unusual to claim for more than one hour, one-way. This is defined in the 2010 Standard Crime Contract Guidance (for Specification), issued 28 January 2011.

It is appreciated that there are exceptions to this but, for these to be accepted, justification must be provided on file.

An example of such a justification would be that a particular provider has conducted of the matter throughout the case but their client has been moved to a different prison. For continuity and to save preparation costs, it is economically justifiable to travel the further distance.

To assist with accurate claiming, please find a breakdown of general guidance for claiming travel in Crime Lower matters (below).

General rules for Travel on Crime Lower exercises

1. Generic justification of travel time/disbursements incurred

The 2010 Standard Crime Contract (SCC) Guidance (for Specification), issued in January 2011, details what time is considered reasonable and what exceptions exist for longer travel time. Please refer to:

- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/309082/LAA-2010-crime-contract-specification-jan-2011.pdf
- Criminal Bills Assessment Manual (2013) – section 3.9.4 to 3.9.22
- The Reasonableness test – SCC Rule 8.40

Where travel is not paid separately but we consider the travel incurred is excessive, we will reduce the disbursements proportionately. As a starting point, we will generally use an internet-based route planner to validate the mileage claims and there should be sufficient information on file to enable us to validate the claim, particularly if the travel does not involve travelling to/from the office.

2. Investigations Class

Police Station work (INVC) - Travel time is included in the Police Station Attendance Fixed Fee. Disbursements, e.g. mileage, must be justified (as above).

Free Standing Advice & Assistance (INVA) – You will need to justify travel and disbursements as outlined above.

Warrant of further detention (INVE/INVF) - You will need to justify travel and disbursements as outlined above.

When using agents during working hours, the claimable travel is only permissible up to a maximum of the travel what would have been incurred from the office, irrespective of where the agent has travelled from and potentially claimed from the firm.

SCC Part A Use of Agents, Counsel and Approved Third Parties 4.12

“Where you instruct an Agent or Counsel you may Claim payment for the work as if you had carried it out directly in accordance with the terms of this Specification. Where you instruct an Agent or Counsel to carry out services which are covered by a Fixed, Standard or Graduated Fee, any fees or costs related to your use of the Agent or Counsel will be included in the Fixed, Standard or Graduated Fee and may not be claimed separately. This Paragraph does not apply to Assigned Counsel.”

SCC Part B Instructing agents 12.50

You may instruct a Solicitor or a Representative working as an Agent to carry out work on your behalf, provided that:

(d) the use of such an Agent does not increase the costs payable by us.

3. Proceedings Class:

Court Duty (PROD) – travel is not paid separately on a business day unless the solicitor is recalled back to Court. This is a difficult area as the only reference to travel rates and fees are contained in the Crime Regulations, which states the same principles;

‘Travelling hourly rates are only payable where the Duty Solicitor is called out (including being called to return) to the Court from the Office or attends on a day that is not a Business Day. Reasonable travel expenses may also be claimed where relevant.’ There is no SCC rule to cover travel.’

Designated Magistrates Court (PROK/PROL/PROJ/PROM) - travel is not paid separately in these instances. You will need to justify disbursements (as outlined above).

Non-Designated Magistrates Court (PROE/PROF/PROJ/PROG) - You will need to justify travel and disbursements (as outlined above).

4. Prison Law Class:

Advice & Assistance (PRIA) - travel is not paid separately. You will need to justify disbursements as outlined above.

Advocacy Assistance (PRIB/PRIC) - travel is not paid separately. You will need to justify disbursements (as outlined above).

5. Appeals & Reviews Class:

Advice & Assistance (APPA/APPB/APPC) – You will need to justify travel and disbursements (as outlined above).

Annex A: LAA audit activities

LAA audit activities				
Activity	LAA Department	Why	How	Potential Outcomes
CM Visit	Contract Management	Regular visit from Contract Manager to ensure compliance against various contractual requirements.	Conducted on provider premises usually taking 2-3 hours. This comprises of a review of files and processes undertaken.	<ul style="list-style-type: none"> Compliance established - no further action. Referral for further assurance activity such as on-site audit or further audit of files. Recoveries of monies on erroneous claims and/or Contract Notices or sanctions. A provider can be asked to self-review their files. This can be used in addition to issuing a Contract Notice but also as a stand-alone activity to give greater assurance that a Contract Notice or further assurance activity is not necessary.
On-Site Audit (formerly known as Control Audit)	Operational Assurance	Detailed audit to measure compliance against set contractual requirements. Can be triggered by referral from Contract Manager.	On-site audit is conducted on provider premises and will usually take two days to complete but may be longer.	<ul style="list-style-type: none"> Compliance established - no further action. Some compliance issues - Refer for further file audit or on-site audit. Recoveries of monies and/or Contract Notices or sanctions. Termination of contract in extreme circumstances.
Peer Review	Operational Assurance	Audit examines quality of the legal advice provided to client. May be requested by Contract Manager or Operational Assurance. Also triggered by an existing rating of 4 or 5.	Sample of files assessed by qualified Peer Reviewer. Focus is assessment of quality of legal advice.	<ul style="list-style-type: none"> Satisfactory rating of 1, 2 or 3 – no further action. Rating of 4 results in re-review in 6 months' time and Contract Notice. A second rating of 4 will most likely result in Contract termination. Rating of 5 results in immediate re-review and Contract Notice. A second rating of 5 will most likely result in Contract termination.
Contract Compliance Audit	Operational Assurance	CCA's examine all areas of billing to determine total	Random representative sample of 30-50 files selected for LAA assessment	<ul style="list-style-type: none"> Right to appeal as per the contract to both the LAA and an ICA if required.

(CCA)		claimable work value across a sample period. Is usually triggered by other activity (e.g. requested by Contract Manager) or re-audits of firms scoring above 10% reduction on previous review.	across last 12 months of claims.	<ul style="list-style-type: none"> • Compliance established – results below 10% reduction, claims within sample subject to amendment on LAA systems. No further action. • Compliance issues identified - results above 10% reduction can be extrapolated across total claims in the period and a recoupment made. • Contract Notices issued for breaches identified on results above 10%, potential Termination Notices for two consecutive results above 20%. • Follow up audit may be carried out after 6 months to check improvements highlighted have been made.
Targeted File Review (TFR)	Operational Assurance	Where an individual provider's Civil or Crime Controlled Work claims data suggests the potential for mis-billing on an issue this could lead to files being individually assessed. The TFR would focus on the specific issues identified. These reviews are usually triggered by request from Contract Manager/On-site auditor or as a result of claims analysis-data validation.	Individual files selected for validation using claim submission data (there is no limit to the number of files selected in a sample) taking into account combinations of claim/matter type/outcome codes and actual profit cost data, which could indicate inappropriate fees claimed.	<ul style="list-style-type: none"> • No issues identified – no provider contact. • Issues – LAA assessment to be conducted. • Potential provider self-review of additional files. • Right to appeal as per the contract to both the LAA and an ICA if required. • Errors identified are subject to claim amendment on LAA systems. • Contract Notices may be issued.
Core Testing - Fund Risk File Review (FRFR)	Operational Assurance	Mandatory testing across all areas/categories of Controlled Work fund. Results used to determine identify main areas of incorrect claiming so that other audit activities can be better targeted. This exercise also gives an indication of the likely error rate for the accounts and is also reviewed by the NAO in their	Monthly rolling programme of review with randomly selected files called in for testing. Usual impact on providers is to request additional information or supporting evidence.	<ul style="list-style-type: none"> • No errors or missing evidence – no action or contact with providers. • Errors or missing evidence – Providers contacted to provide extra information necessary. • Right to appeal as per the contract to both the LAA and an ICA if required. • Errors identified are subject to claim amendment on LAA systems and potential follow up by Contract Managers.

Contract Notice Verification Process	Contract Management	Accounts Audit. Verification of Contract Notices undertaken within three to six months of issue to measure improvement in behaviour.	Review of files to ascertain whether the issues resulting in the issuing of the Contract Notice have now been addressed by the provider,	<ul style="list-style-type: none"> • Issued addressed – no further action required. • Issue still in evidence – repeat Contract Notice issued which may result in Termination.
Escape Fee Case Assessments (formally known as Exceptional Case Assessments)	Case Management	Controlled Work claims are usually paid by way of a fixed fee. However, if the costs reach the 'exceptional threshold' Providers may claim to be paid at hourly rates instead. The threshold is simply a figure exactly or greater than three times the value of the fixed fee when paid at hourly rates, minus Disbursements and/or Additional Payments (the calculation is different in the Immigration category where the hourly rate is used instead of the fixed fee).	If wishing to claim an exceptional case fee at the end of the case upon billing the matter the Provider completes an Exceptional Claim form and submits this to the LAA, together with the relevant file, for assessment.	<ul style="list-style-type: none"> • If the matter is identified as exceptional, upon assessment it will be remunerated at hourly rates. • If the matter is assessed as not exceptional only the Standard Fee including any Additional Payments and Disbursements will be paid. • Exceptional cases are also assessed in accordance with the Contract and contractual principles of reasonableness. Providers have the right to appeal as per the contract to both the LAA and an ICA if required. • Errors identified are subject to claim amendment on LAA systems.
Immigration Upper Tribunal/Review and Reconsideration Assessments (RARA)	Operational Assurance	Upper Tribunal/RARA Claims represent those Immigration and Asylum Cases in the onward appeal process. The work is carried out under CLR (Controlled Legal Representation) and falls under reasonable costs so is not subject to a cost limit.	A file sample for individual providers is called for assessment by the LAA. Dependant on results further assessments may also be undertaken on other claims.	<ul style="list-style-type: none"> • Right to appeal as per the contract to both the LAA and an ICA if required. • Specific errors identified are subject to claim amendment on LAA systems.

