



Legal Aid  
Agency

## VHCC – Family Cases Information Pack April 2014 v5

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5	01/04/2014	01/04/2014	VHCC Family Unit

## Version History

Version:	Date	Reason
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

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## 1. Overview

This Information Pack provides information and assistance on the Legal Aid Agency's procedures for individual very 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 Very High Cost Cases
- The VHCC Care Case Fee Scheme (CCFS) & Traditional 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 case plan. 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 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 Plan 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 standard Case Plan or CCFS 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 VHCC Family Unit in our South Tyneside offices. For details of where to send correspondence and Case Plans please see paragraph 17 below.

### What are these cases?

4. 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.

5. The high cost case procedures should be started once you or the Legal Aid Agency are clear that the projected costs in the case are more likely than not to exceed £25,000. In family cases this is typically when the judge determines the nature of the main hearing and therefore its length, or the incurred costs reach £20,000 and it is likely that the case costs will go above £25,000.
6. You should notify the LAA when the circumstances set out above are met and provide a case plan within 4 weeks of your notification. The LAA will acknowledge that the case is VHCC within 3 working days. The Director of Legal Aid Casework will not normally require a case plan when the final hearing is due to begin within the 4 weeks of LAA being notified that the case is a VHCC. In exceptional circumstances this period can be extended by contacting the VHCC team direct on [vhcc.queries@legalaid.gsi.gov.uk](mailto:vhcc.queries@legalaid.gsi.gov.uk). You should receive confirmation of time extension agreed within 3 working days, but please note this is the exception and clear justified reasons must be provided.
7. 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. These cases should be sent to the High Cost Civil Team in London.

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

8. 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?**

9. The short answer is "generally no". If the costs in the case are likely to exceed the threshold, the Case Plan should be completed and sent within 4 weeks. 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 paragraph 6, 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?**

10. 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.
11. 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 6 above. See also paragraphs 23, 26, 27 & 32 and your “Costs to Date” period will end at this point.

### **You now have two options**

12. As soon as a case has been identified as meeting the referral criteria as set out above the most important action is to produce either a traditional case plan or a simpler new Care Case Fee Scheme Plan.

### **What is the VHCC Care Case Fee Scheme?**

13. 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 2010 in very high cost complex public law cases involving Queen’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.
14. This scheme does not replace any of the relevant costs rules, regulations and provisions but is simply a tool to assist the Legal Aid Agency in ensuring that the costs agreed in Case Plans represents the same level of costs that would be achieved on court assessment.
15. Full details of the operation of the QC or 2 Counsel CCFS model can be found in the Information Packs available from the website.
16. An open pilot of CCFS pricing is being undertaken for single counsel cases and solicitor advocacy cases managed by the South Tyneside Unit. As this process is

simpler, the Legal Aid Agency is able to deal with these Case Plans within 4 weeks. Suppliers interested in undertaking work on the CCFS basis should contact South Tyneside directly at [CCFS@legalaid.gsi.gov.uk](mailto:CCFS@legalaid.gsi.gov.uk).

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

17. **The London High Cost Civil Team** deals with high cost family cases from the whole of England & Wales where authority to instruct Queen's and Junior Counsel or two junior counsel/advocates has been granted. They also deal with all high costs Child Abduction Act cases and all high costs Trusts of Land and Appointment of Trustee Act and all Inheritance Act cases. The South Tyneside VHCC Family Unit manages all other high costs family cases for England.
18. **The South Tyneside VHCC Family Unit** deals with all high cost family cases for England and Wales except Child Abduction Act and Trusts of Land and appointment of Trustees Act and Inheritance Act cases which are dealt with by the London/Cardiff High Cost Civil Teams. South Tyneside also do not deal with high cost family cases where authority for Queen's Counsel or two junior counsel is sought and is then granted.
19. The contact details of these teams are set out at the end of this document. When you contact the teams please do include your email and telephone number on the front page of the case plan – so we can contact you with any simple queries.

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

20. We aim to make the first substantive response within 8 weeks of receipt of the 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. On average a contract should be issued within 8 to 12 weeks of receipt of the Case Plan, assuming that the case plan requires negotiation. This is why it is so important that a case is identified as high cost as early as possible and that a Case Plan containing all necessary information is submitted forthwith or within four weeks of first contacting the high cost or High Cost Civil Team. If you do not provide the case plan in accordance with Para 6, 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.

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

21. If there is the need for an urgent amendment or authority it is preferable that you submit a CIVAPP8 or CIVAPP8A 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 or prior authority

preferably in a bold heading with any key dates/ events highlighted so that we can prioritise the case accordingly.

22. 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?**

23. 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.
24. 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.
25. 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 within 4 weeks of this date (in accordance with Para 6).
26. 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.
27. 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 – see paragraph 6 above.

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

28. 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. We are keen to simplify payment for this work and avoid the need for a costs draftsman to prepare a detailed bill. 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.

## 3. The Case Plan

### Use of a Standard Family Case Plan

29. 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.

30. 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?

31. 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?

32. 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”?

33. 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					
<b>TOTAL PROFIT COSTS</b>					<b>£12,737.44</b>	
<b>COUNSEL'S FEES</b>					<b>£4,446.40</b>	
<b>DISBURSEMENTS</b>					<b>£1,113.75</b>	
<b>TOTAL COSTS TO DATE</b>					<b>£18,297.59</b>	

34. Whilst these costs will be subject to detailed assessment by us 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?**

35. 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. If, in a Care case, there is a listing up to final hearing then detailed costed stages should be provided up to then. If the timetable is only up to the threshold/fact-finding with disposal/welfare to be listed later then detailed costings need only be provided up to the listed hearing.
36. Similarly in an ancillary relief case if the current listing is only 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.
37. There is no hard and fast rule as to how long a stage should be or how many stages there should be. On the one hand it is an advantage to agree stages as far into the case as possible to avoid having to come back with amended Case Plans for new stages but on the other such Case Plans are then susceptible to amendment as unforeseen activities arise. We would suggest that having fewer and longer stages generally leads to less need for further amendments particularly in public law cases (but only where future work can be anticipated with sufficient certainty).

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

38. 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.
39. 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. You can do this by using a CIVAPP8 or CIVAPP8A prior authority application request form or by fax or e-mail. For cases commenced after 3rd October 2011 the codified expert rates apply.

## **What rates are applied?**

40. Solicitors are remunerated at hourly rates under the family fee schemes. These are set out in the Civil Legal Aid (Remuneration) Regulations. The VHCC Care Case Fee Scheme rates are set out in the separate VHCC packs on the website. Solicitors are not remunerated at Family Advocacy Scheme rates under VHCC contracts.
41. 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?**

42. 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.
43. 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.
44. 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.
45. 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.
46. 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?

47. 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 Graduated Fee Scheme or Family Advocacy Scheme the detail to support their fees should be in a draft CIVCLAIM5 or CIVCLAIM5A attached to 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..)							
23-26 July 2012	Counsel's attendance at 4 day finding-of-fact hearing.		£3,514.00 (FAS)		Rates	Enh (%)	Total
23-26 July 2012	Panel member attendance with counsel at 4 day fact-finding hearing at 6 hours per day.	24.00			Rates	Enh (%)	Total
					£32.67	15%	£901.69
23-26 July 2012	Solicitors travel at 1 hour per day.	4.00			Rates	Enh (%)	Total
					£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?**

48. 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?**

49. 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 VHCC Care Case Fee Scheme.

50. 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?**

51. 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?**

52. 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:

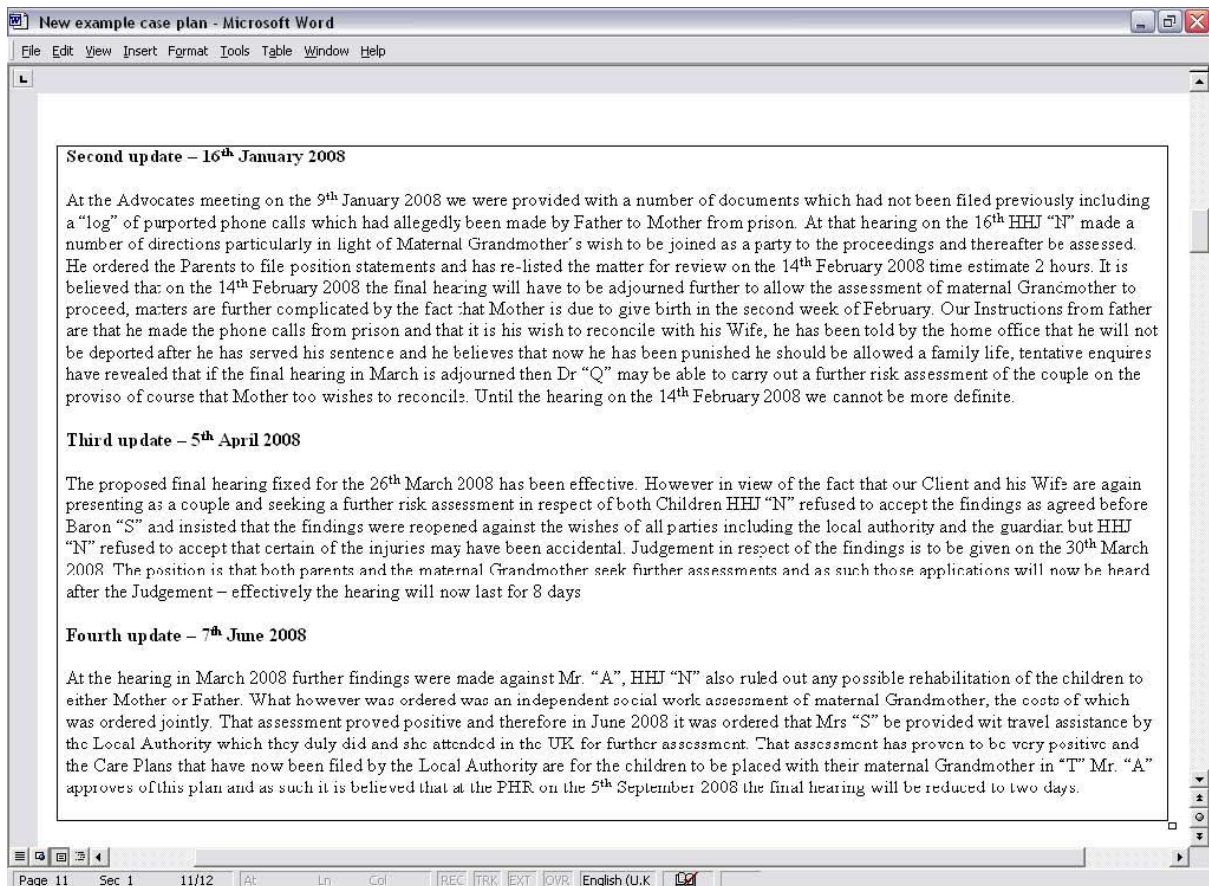
- i. If an additional party is unforeseeably joined in proceedings then the work in reviewing that party's arguments will not be in the Case Plan at all. The decision on authorising additional work should be straightforward, as the work was clearly not included in the stage price
- ii. If a solicitor 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.

53. 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?**

54. 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.

55. 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?

56. 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 faxes or e-mails 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?

57. 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?

58. 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?**

59. 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?**

60. 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?**

61. 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?**

62. The time limit for submission of a Case Plan is 4 weeks unless the final hearing starts within 4 weeks of notification or Director of Legal Aid Casework has exceptionally agreed to a delayed submission (See Para 6). Else, 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. Where the Director of Legal Aid Casework agrees under Para 6 that a case plan is not required we will require that you complete two CIVCLAIM1s as for final payment and that we agree the costs in the CIVCLAIM1s in lieu of a case plan, with the CIVCLAIM1s submitted within 4 weeks of the conclusion of the final hearing. If for exceptional reasons you seek an extension to the 4 weeks you should seek an extension of time using procedures set out in Para 6. Two 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?

63. 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.

### What about counsel?

64. 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?

65. Payments on account are made on form CIVPOA1. These should be sent to the South Tyneside team clearly marked "**Family VHCC Case**", including for **High Cost Civil Team 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?**

66. 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?**

67. 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?**

68. 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?**

69. With the CIVCLAIM1 you should send all the required documents 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.

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

70. 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.

71. 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.
72. 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 1 - High Cost Case Contact Details

#### **South Tyneside Family VHCC Family Unit**

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: [vhcc.queries@legalaid.gsi.gov.uk](mailto:vhcc.queries@legalaid.gsi.gov.uk)**

#### **London High Cost Civil Team**

Legal Aid Agency

102 Petty France

London SW1H 9AJ

DX 161440 Westminster 8

**Email: [highcostcivil@legalaid.gsi.gov.uk](mailto:highcostcivil@legalaid.gsi.gov.uk)**