



Legal Aid
Agency

VHCC – Care Case Fee Scheme Information Pack - 1 Counsel (South Tyneside) April 2014 v3

Version:	Issue date:	Last review date:	Owned by:
3	01/04/2014	01/04/2013	VHCC (Family) Team

Version History

Version:	Date	Reason
1	01/04/2013	First release - Legal Aid Reform and transition to Legal Aid Agency
2	16/04/2013	Clarifications in response to frequently encountered issues/questions. Amendments in counsel's fees following consultation with the BAR.
3	01/04/2014	Changes to LAA team structure and scheme rebranding

Contents

1. Overview
2. When is the scheme used?
3. How does it work and how much do I get paid?
4. What events trigger a fee?
5. High Court and County Court rates
6. What happens if the agreed number of events changes?
7. How are solicitor advocates treated?
8. What about pre-contract costs for solicitors?
9. Are all the fees for all counsel involved in the case converted to the fee scheme?
10. How is case planning simpler?
11. Disbursements and Expert fees
12. How is billing simpler?
13. Interim payments
14. What about exceptional cases?
15. Are all cases managed this way?
16. Contact information

Annex 1 - Contact information

1. Overview

This is a pricing scheme developed by the High Cost Civil Team based on analysis of bills subject to assessment by the South Tyneside Very High Cost Case (Family) Team. It is a simplified method of predicting counsel's fees and solicitor's profit costs. We have prepared detailed guidance as to how the scheme works and developed a new model case plan that is also used for billing purposes, therefore avoiding the current complex detailed case plan and complex and detailed bills.

2. When is the scheme used?

It is used in complex care proceedings where the actual or projected future costs at prescribed rates exceed a total value of £25,000 (excluding VAT) and junior counsel only has been instructed. These cases are managed by the VHCC Family Team based in the South Tyneside office. This model differs from that employed by the London and Cardiff based High Cost Civil Teams, who manage cases where authority has been given to instruct both Queen's and junior counsel. This scheme is also not applied to non-care cases, such as private family law and ancillary relief cases, which follow distinctly different processes. However, the large majority of cases managed by the High Cost Case (Family) Team are complex care cases with junior counsel instructed.

It is the decision of each individual supplier whether or not to adopt the VHCC Care Case Fee Scheme. Counsel may proceed under the scheme even where the conducting solicitor does not, and vice-versa. If a supplier opts out of the scheme they will be remunerated by FAS (for counsel) or at hourly rates (for solicitor).

3. How does it work and how much do I get paid?

Put at its simplest a fixed amount is applied to all relevant trigger 'events' that occur throughout the lifetime of the case, to achieve a cumulative price for all work undertaken.

The event prices for solicitors and barrister in the County Court and High Court are set out below. They are based on historic payments for typical cases that proceeded under the Family Graduated Fee (FGF) scheme. They are split between the level of court attended and whether the case would escape the FGF scheme for counsel by virtue of the main hearing exceeding a duration of 10 days.

These figures were calculated taking into account the average hours spent in preparation, attendance, client correspondence, conferences and all other chargeable activities, as well as the rates and enhancements allowed on

assessment. These cases were all complex high cost care cases involving instructed junior counsel. All figures exclude VAT.

The prices as calculated reflect the fact that in cases which proceeded past a 10-day 'main hearing', a distinct split in workload is evident, with instructed counsel undertaking additional work where the solicitor's work load decreases.

A reduction in family fees was introduced in February 2012 and the initial payment offered were based on the pre-reduction rates. In order to reflect this change, on certificates issued from 1st February 2012 all fees will also be subject to a reduction of 10%. In this guidance, pre-February 2012 fees are shown in brackets. The rates used will be determined by the date the Legal Aid Agency was notified the VHCC Care Case Fee Scheme would be used for the case: -

STANDARD EVENT	Solicitor Events	Barrister Events	Total Events
County/FPC <= 10 days 'main hearing'	£774 / (£860)	FAS / (£550)	£774 + counsel's FAS / (£1,410)
County/FPC > 10 days 'main hearing'	£531 / (£590)	£981 / (£1,090)	£1,512 / (£1,680)
High Court <= 10 days 'main hearing'	£1,053 / (£1,170)	FAS / (£690)	£1,053 + counsel's FAS / (£1,860)
High Court >10 days 'main hearing'	£801 / (£890)	£1,026 / (£1,140)	£1,827 / (£2,030)

A 'main hearing' is defined as a hearing listed for and proceeding as a substantive finding of fact, final hearing or judgement date, excluding an IRH or pre-hearing review.

4. What events trigger a fee?

The following events trigger a payment under the scheme: -

For solicitor – An event is any hearing day (be it a five minute directions hearing or day 14 of a fact-finding hearing) and advocates meetings.

For counsel – An event is any hearing day, advocates meetings and a limited number of substantive conferences; no more than two without specific authorisation.

Experts meetings – These do not attract an event fee but are again covered by the cumulative price arising from other agreed events. The LAA will not pay a separate event for a solicitor chairing an experts meeting, because this was not included in the analysis. We will be reviewing this in future file studies.

Substantive client conferences – This covers substantive conferences with the client, usually half a day with solicitor and counsel. Again it is envisaged that these

would normally occur in the run up to substantive hearings. It does not cover conferences in the absence of the client, telephone conferences or conferences between solicitors. Again, it is likely that there would normally be no more than two of such conferences.

Why do conferences not attract an event fee for solicitor? – When the scheme was devised it was considered that hearings alone represented the most consistent measure for solicitor’s costs. The ‘average’ costs were therefore divided by the ‘average’ number of hearings. The event fee itself covers the average levels of preparation involved in a case including conferences and experts meetings. If we had decided to include conferences as events for solicitors as well then the same average costs would have been divided by a greater number of events, resulting in a lower ‘per event’ cost but giving rise to the same level of costs per average case.

Preparation – All solicitor and counsel preparation is included in the cumulative price arising from agreed events. No single item of preparation attracts an event fee.

Written Submissions – These occur in the majority of cases and are not exceptional. No individual act of preparation, including preparing written submissions, attracts an event fee as all preparation is tied into the event fees arising from hearings etc. If, however, during a lengthy hearing (in excess of ten days) the judge sets aside a day of court time for written submissions to be prepared, that day will continue to attract an event fee.

Judge’s reading days – Where a case is listed for a lengthy hearing (in excess of ten days) but some days are set aside as Judge’s reading days, we will treat these as overrun days on the basis that the legal team is not required to attend court.

Only one event per day – Where two events occur on the same day, such as a conference on the same day as a hearing, we will only allow a claim for one event per day.

5. High Court and County Court rates

The distinction between event rates is based on the level of court in which a matter concludes. If a matter is heard in the County Court and is then referred up to the High Court, both the solicitor and counsel should revisit their previous fees and claim the High Court event rate.

The exception to this is where a matter is temporarily escalated (i.e. for an appeal hearing). In these instances the hearing in question will be considered outside of the VHCC Care Case Fee Scheme pricing model and remunerated through the appropriate hourly rates.

Example 1 – *The solicitor through the lifetime of a certificate undertakes nine interim hearings, two advocates meetings, one PHR, a 10 day fact-finding/threshold hearing*

and a five day disposal/welfare hearing. The matter is heard in the County Court throughout and the main hearing is in excess of 10 days. Their total is 27 events at £531 per event making £14,337 for all work done under the certificate.

Junior counsel in the same case undertakes six interim hearings, one advocates meeting, one PHR, the ten day fact-finding/threshold hearing, the five day disposal/welfare hearing and two substantive client conferences. Their total is 25 events at £981 per event making £26,487 for all work done under the certificate.

Example 2 – As above, the solicitor through the lifetime of a certificate undertakes nine interim hearings, two advocates meetings, one PHR, a 10 day fact-finding/threshold hearing and a five day disposal/welfare hearing. The matter is heard in the County Court to start but the disposal/welfare hearing is heard in the High Court. As the case concluded in the High Court it is this event payment rate that is used. The main hearing is in excess of 10 days. Their total is therefore 27 events at £801 per event making £21,627 for all work done under the certificate.

Junior counsel in the same case undertakes six interim hearings, one advocates meeting, one PHR, the ten day fact-finding/threshold hearing, the five day disposal/welfare hearing and two substantive client conferences. Their total is 25 events at £1,026 per event making £25,650 for all work done under the certificate.

6. What happens if the agreed number of events changes?

A case plan is agreed on the basis of the current known listing. If this changes, the case plan and the agreed costs are simply adjusted up or down accordingly. In respect of the main hearings it needs to be recognised that preparation is front loaded and therefore if a main hearing under or overruns the agreed price is adjusted to the following: -

OVERRUN EVENT	Solicitor Events	Barrister Events	Total Events
County/FPC <= 10 days 'main hearing'	£310.50 / (£345)	FAS / (£330)	£310.50 + counsel's FAS (£675)
County/FPC > 10 days 'main hearing'	£211.50 / (£235)	£589.50 / (£655)	£801 (£890)
High Court <= 10 days 'main hearing'	£423 / (£470)	FAS / (£415)	£423 + counsel's FAS / (£885)
High Court >10 days 'main hearing'	£319.50 / (£355)	£616.50 / (£685)	£936 (£1,040)

UNDER-RUN	Solicitor Events	Barrister Events	Total Events
-----------	------------------	------------------	--------------

EVENT			
County/FPC <= 10 days 'main hearing'	£463.50 / (£515)	None / (£220)	£463.50 / (£735)
County/FPC > 10 days 'main hearing'	£319.50 / (£355)	£391.50 / (£435)	£711 / (£790)
High Court <= 10 days 'main hearing'	£630 / (£700)	None / (£275)	£630 / (£975)
High Court >10 days 'main hearing'	£481.50 / (£535)	£409.50 / (£455)	£891 / (£990)

These refresher rates are set to reflect the costs of attending based on historic proportions: 60% of the barrister's fee and 40% of solicitor's profit costs.

Example 3 – The event fees for a fact-finding/threshold hearing listed for five days in the County Court where the total 'main hearing' is not listed over 10 days would be £3,870 (£774x5) for solicitors and counsel would be paid through the FAS model.

If the hearing were to overrun by 2 days solicitors would instead receive a total of £4,491 (£774x5 plus £310.50x2) and counsel would receive the usual FAS payment for the additional two days.

Example 4 – The event fees for a fact-finding/threshold hearing listed for five days in the County Court where the total 'main hearing' is not listed over 10 days would be £3,870 (£774x5) for solicitors and counsel would be paid through the FAS model.

If the hearing were to under-run for 2 days solicitors would instead receive a total of £3,249 (£774x3 plus £463.50x2) and counsel would receive the usual FAS payment for the days attended.

7. What happens if the main hearing under-runs or overruns and passes the 10 day threshold?

It is recognised that the level of preparation undertaken by solicitors and counsel is proportionate to the projected number of hearing days. For this reason we will not automatically apply a change in the pricing model for a case where the 'main hearing' exceeds 10 days, or falls below 10 days, solely due to an under-run or overrun at the final hearing stage.

If the last substantive hearing in a case under-runs or overruns from the listed duration, causing the total number of 'main hearing' dates to exceed or fall under the 10 day threshold unexpectedly, we will remunerate both solicitor and counsel at rates based on the listing time (with the appropriate under- and overruns). For clarification, the 'last substantive hearing' in this context will exclude a one-off listing for judgement or review.

8. How are solicitor advocates treated

The VHCC Care Case Fee Scheme was designed primarily to cover cases in which counsel is expected to undertake the majority of advocacy.

However, a separate pricing model has now been developed and is currently being trialled to cover solicitor advocates. Information on this scheme can be found on our website at: - <http://www.justice.gov.uk/legal-aid/areas-of-work/civil/high-cost-cases>

The solicitor advocates model is currently in an open pilot stage, and any firm may elect to progress under this scheme on a case-by-case basis.

9. What about pre-contract costs for solicitors?

Adopting the VHCC Care Case Fee Scheme will have a retrospective effect on a solicitor's costs-to-date and work will be re-calculated and remunerated with reference to trigger events rather than hourly rates. In order to show the pre-contract costs limitation has not been breached solicitors must show estimated pre-contract costs in the appropriate section of the case plan (Section A).

Any costs incurred by a previously instructed firm should be reported based on the actual costs incurred in the appropriate section of the case plan (Form L). Costs should be based on the fees scheme under which work was undertaken – whether fixed fee or hourly rate - or the firm may elect to recalculate the fees under the VHCC Care Case Fee Scheme.

10. Are the fees for all counsel involved in the case converted?

If the projected length of the 'main hearing' exceeds 10 days, counsel may choose to either adopt the VHCC Care Case Fee Scheme or continue to claim through the usual FAS procedures and regulations. This choice must be made at the outset prior to submission of the case plan.

Example 5 – *The solicitor through the lifetime of a certificate undertakes nine interim hearings and a five day final hearing. The matter is heard in the High Court throughout. Total for solicitor is 14 events at £1,053 per event making £14,742 for all work done under the certificate. Junior counsel in the same case elects to remain within the FAS and submits claims with an actual cost of £9,356. The total contract value is £24,098 (£14,742 + £9,356), plus disbursements and experts fees.*

Where counsel's fees were within the FAS model and counsel has elected to use the VHCC Care Case Fee Scheme on the basis of a 'main hearing' listed to exceed 10 days, they may choose to revisit the previous costs at their discretion. Counsel's

costs-to-date can be converted using the number of trigger events, or counsel may elect to leave previous costs as claimed and only use trigger events moving forward.

Quite often a counsel is instructed early on for one or two hearings and is then no longer involved or a replacement counsel is instructed for one hearing the main counsel cannot do. Often they would already have claimed and received payment through the FAS model. In those circumstances it will not be appropriate to simply convert their one or two payments to event fees and they would stay as already paid.

Counsel's claims under the FAS model should be reported separately from counsel's event-based claims in the appropriate section of case plan document (Form K).

11. How is case planning simpler?

With this guidance you should have a copy of the newly designed case plan. This still requires information about the circumstances and the current state of the case but the costs section is reduced to a single table with a chronological list of all trigger events and who attended or is anticipated to attend. The costs summary is then simply the number of events times the event fee.

The case plan is based on the existing timetable and will only need updating if the number of listed events changes, or additional costs are required. These additions should be reported to the Legal Aid Agency before these costs are incurred, as agreement will not operate retrospectively. It is not envisaged that minor changes would need a full amendment and we would encourage updating via written correspondence or email.

Once the case plan is agreed it will still be necessary to sign a High Cost Case Contract and Barrister's Acceptance Form which will enable the High Cost Case (Family) Team to assess the costs at conclusion of the case.

12. Disbursements and Experts Fees

These should be included on an additional page in the case plan with the actual costs if known and best estimates where actual amounts are not yet known. In respect of unusual disbursements (either by type or amount), including substantial experts fees, additional information should be provided as to how the fees have been calculated including total preparation time, appearance fees etc. similar to an application for prior authority.

Payment on account of disbursements can be claimed as and when.

13. How is billing simpler?

It is still necessary to complete pages one, two, six and seven of a CLAIM 1 and to provide counsel's fee notes and disbursement vouchers.

The agreed case plan becomes the schedule to the CLAIM 1 and must be submitted alongside the bill with the declaration at the end of the case plan being signed to confirm the events actually took place. There is no need for a bill of costs and no need for multiple page 4s and 5s in the CLAIM 1 in most cases. If an element of the claim relates to hourly rates, then pages 4 and 5 must be completed for this aspect only (e.g. previous solicitor costs, temporarily escalated interim appeal work).

One single CIV CLAIM 1 should be submitted at the conclusion of the case and interim payments will be made on payments on account (see below). We anticipate all steps in the case planning and billing process to be easily undertaken by the solicitor alone.

14. Interim Payments

Interim payments can be made on request for all costs and counsel's fees to date on agreement of the case plan and High Cost Case Contract. Further payments can be claimed either when six months have elapsed or six events have occurred since the last payment was made, whichever is earlier. Payments will be made by way of 100% payment on account of the number of events to date. Claims should be made on form CIV POA1.

15. What about exceptional cases?

It must be remembered that the cases that informed this model were all high cost cases, which by their very nature are all exceptional to some degree. Whilst every case has its own unique set of facts and circumstances they all amount to exceptional and we would not expect to deviate from this model in the majority of such cases.

16. Are all cases managed way?

The VHCC Care Case Fee Scheme is based on costings in complex high cost care proceedings in cases where junior counsel only is instructed. It is not appropriate to manage cases that follow a distinctly different timetable and process using the fees in this model, for example ancillary relief or most private family law proceedings. For those cases where it is not appropriate to apply this model then a fully costed case plan and detailed billing process required.

Annexes

- Annex 1 – Contact Information

VHCC Family Unit (CCFS)

LAA South Tyneside

North Regional Office & Business Delivery Centre

Berkley Way

Viking Business Park

NE31 1SF

DX: 742350 Jarrow 2

CCFS@legalaid.gsi.gov.uk

Suppliers are encouraged to contact the team by email wherever possible.

End of Document