

## Annex 3 Payments and Disbursements

### Payment

1. For the purpose of this Annex:

"Closed Cases" has the meaning given to it in Paragraph 2 of this Annex;

"Contract Analyst" means a person responsible for supporting a Contract Manager;

"Financial Regulations" has the meaning given to the term in the Specification;

2. Subject to Annex 2 Cases, Fixed and Hourly Rates (Controlled Work), we will pay you for Cases correctly reported as "Closed" on your Monthly Case Report, ("**Closed Cases**") each month and we will reimburse your Disbursements, in each case in accordance with this Annex.
3. Except as otherwise agreed by us in writing, you must not charge a fee to the Client or any person for Contract Work provided under this Contract or seek reimbursement from the Client or any other person for any Disbursements incurred as part of the provision of such Contract Work.
4. You must submit Claims for payment in accordance with the Standard Terms, the Specification, Contract Guidance issued by the LAA and this Annex. Your Claims must be true, accurate and reasonable.
5. You must submit Claims to us within the time period specified by us in this Annex. Failure to submit accurate Claims within the time periods specified will be a breach of the Contract and may lead to the issue of Sanctions under Clause 24 and/or termination under Clause 25 of the Standard Terms.
6. You must submit your Claim for payment in accordance with the provisions of this Annex to us within three months of the Case ending or, in the event of a Determination, within one month of the Determination being made.
7. You will send us a monthly invoice (as well as a Monthly Case Report pursuant to Clause 8.12 of the Standard Terms) on or prior to 5pm on the 10<sup>th</sup> day of the following month. Invoices must be sent to [cla.reporting@legalaid.gsi.gov.uk](mailto:cla.reporting@legalaid.gsi.gov.uk) (or such other email address as we may notify you from time to time). The invoice must be in the format of the relevant template invoice which we provide to you (in Microsoft Excel format) and include all the information referred to in such template invoice (including Disbursements). Monthly Case Reports must be uploaded as CSV files to <https://portal.specialistadvice.net> (or such other URL as we may notify you from time to time).
8. Once uploaded your Monthly Case Report CSV file will be validated by the LAA to ensure the submission meets the reporting requirements set out in Contract Guidance. If your submission contains any errors it will be returned to you with these highlighted. For avoidance of doubt, the contractual requirements relating to reporting Contract Work will only be met once an error free submission has been

received by the LAA.

9. Invoices will cover:

- (a) Cases which were Closed;
- (b) Disbursements which were incurred;
- (c) amounts due pursuant to Annex 2 (Cases, Fixed Fee and Hourly Rates (Controlled Work) Annex where the relevant activities were undertaken,

during the relevant month to which the invoice relates.

10. We will pay you by BACS no later than 28 days after the later of the date of receipt of both your invoice and the Monthly Case Report.

### **Disbursements**

11. We will reimburse your Disbursements in accordance with Paragraphs 11 to 26 below.

12. We will not reimburse any Disbursement which exceeds the Single Disbursement Limit (defined below) unless you have obtained our written consent (from the Contract Analyst) prior to incurring any such Disbursements, or unless it is clear from the Case File that you have properly and reasonably exercised your delegated functions in accordance with Paragraph 24 below.

13. Your Single Disbursement Limit is £250.00 (excluding VAT).

14. You may apply for an increase in your Single Disbursement Limit in respect of a particular Disbursement for us to consider but, you should note that we have finite resources and so may not be able to agree to an increase. Any increase will be entirely at our discretion and subject to available funds. Any request for an increase in such limit must be submitted by email to the Contract Analyst (being such person we notify to you) using the Disbursements form (set out in the CLA Operations Manual). You may increase your Single Disbursement Limit in respect of a particular Disbursement by exercising your delegated functions by giving due consideration to Paragraph 24 below. It should be evident from the file that consideration has been properly given to all the criteria set out in Paragraph 20. This will be checked on assessment.

15. Where VAT is payable on a Disbursement you may Claim it from us provided that you provide us with a valid VAT receipt at the same time you submit your Claim for reimbursement of the relevant Disbursement. For those Disbursements where VAT is not payable, we will not pay VAT.

16. Any Claim for Disbursements incurred in the previous month must be included in your monthly invoice referred to in Paragraph 7 above. Copies of receipts in respect of Disbursements incurred must be retained at the front of the Case file, together with a copy of the relevant invoice. From time to time, in accordance with Clause 9

of the Standard Terms, we will audit you to ensure your receipts correspond with your Disbursement Claims.

17. We will only reimburse you for Disbursements you have incurred where:
  - (a) it is in the best interests of the Client to do so;
  - (b) it is reasonable and proper for you to incur the Disbursement for the purpose of providing Controlled Work to the Client;
  - (c) the amount of the Disbursement is reasonable (guidance on what is reasonable is set out in Paragraph 24 below); and
  - (d) incurring the Disbursement is not prohibited by this Annex or the Specification.
18. We may prescribe types of Disbursements that may or may not be incurred in the provision of Controlled Work.
19. The provisions for reimbursing and claiming for the costs of disbursements depend on the type of Controlled Work and the level of remuneration as set out in the Remuneration Regulations and/or Section 6 of the Specification.
20. Where you wish to incur a disbursement which:
  - (a) meets the requirement of Paragraph 17, and
  - (b) where the Remuneration Regulations do not specify the level of remuneration for the disbursement; and
  - (c) where there are multiple providers of the service to which the disbursement relates,

you must obtain and keep on file written quotations from at least three separate providers of the services to which the disbursements relate, and unless we agree that it is not appropriate for you to do so, you must select the provider which you reasonably believe (and can demonstrate) delivers best value for money taking into account the particular circumstances of the case (including but not limited to the need for speed and the competence/expertise of the provider in question). If circumstances arise which mean it is not reasonably possible for you to comply with the requirements of this Paragraph 20 then you must advise us accordingly and provide such further information as we may reasonably require in relation to the matter.

21. If you propose to incur a Disbursement which does not appear in the following list then you must consider whether the Disbursement is recoverable or not by reference to its purpose (i.e. is it for the purpose of providing Contract Work) and the provisions at paragraph 17 above.

For the purpose of this Contract, currently, a "**Disbursement**" excludes the following items

listed in the table below (which is a non exhaustive list). As at the Contract Start Date, these items may not be Claimed either as a Disbursement or as Contract Work:

Client's travelling and accommodation expenses save in the circumstances prescribed in the Costs Assessment Manuals and unless they relate to treatment, therapy, training or other interventions of an educative or rehabilitative nature or to the residential assessment of a Child.
Discharge of debts owed by the Client, for example, rent or mortgage arrears.
Fee payable on voluntary petitions in bankruptcy.
Mortgagees' or lessors' legal costs and disbursements.
Passport fees.
All fees, charges and costs of Child contact centres, including assessments and reports on supervised contact, and of other professional assessments of contact between Children and adults.
Court fees unless for a search/photocopies/bailiff service or as part of Controlled Legal Representation or otherwise permitted by Category Specific Rules.
Fees payable to implement a pension sharing order.
Fees payable to the Office of the Public Guardian
Immigration application fees.
Passport Fees
Probate Fees
In the Family Category of Law only, costs of or expenses in relation to the provision of Family Mediation, conciliation or any other dispute resolution including Family Group conferences.
In the Family Category of Law only, costs or expenses of risk assessments within section 16A Children Act 1989 (as amended) and undertaken by Cafcass officers or Welsh family proceedings officers, including assessments of the risk of harm to a Child in connection with domestic abuse to the Child or another person.
In the Family Category of Law only, costs of or expenses relating to any activity to promote contact with a Child directed by the court under Section 11A to 11G Children Act 1989 (as amended).
Time spent on purely administrative matters (such as opening and setting up files, the maintenance of time/costing records) or in meeting

	the administrative requirements of your Contract (such as the information return and making Claims).
	Time spent on legal research over and above brief checks on the law, unless the Case involves a novel, developing or unusually complex point of law, justifying either legal research by you or the obtaining of an opinion from Counsel/a solicitor with higher rights of audience. such as internal communications, typing, administration and equipment costs, stationary, postage and courier charges and the time and costs of photocopying, save as provided for in any Guidance.
	Any administration fee charged by an expert including, but not limited to, (i) a fee in respect of office space or provision of a consultation room, (ii) a fee in respect of administrative support services, such as typing services, (iii) a fee in respect of courier services and (iv) a subsistence fee.
	Any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.
	Any fees charged for witness intermediary services provided in court, reports in advance of the provision of such services and other work in preparation for or ancillary to court proceedings.

- 22 Rates for instructing experts are specified in the Remuneration Regulations. Where the rate for an expert is not set out in the Remuneration Regulations, you must comply with Paragraph 20.
23. You may not Claim any payment for Contract Work under the Contract where the only work to be undertaken by you is incurring the Disbursement and passing the service provided (for example, a report) to the Client without the Client receiving any oral or written legal advice in respect of that Case. Further, in these circumstances, we will not reimburse you for the Disbursement incurred.
24. In deciding whether the amount sought as a Disbursement is reasonable regard must be had to all the circumstances including the purpose of the Disbursement in the context of the particular Case (that is, having regard to the justification/need for it as against the value/importance of the Case), the particular service involved, the extent to which there is a choice of alternative service providers and whether all elements of the service are justified in the particular Case/at the particular time.
25. Not Used.

### **Counsel's fees**

26. It will not be usual to instruct Counsel as part of the provision of Contract Work.

However, where it is clear that there are issues which would justify steps, including proceedings, being taken on the Client's behalf but the reasonably competent solicitor cannot, based on his/her expertise, identify those steps, then it may be appropriate to allow Counsel's opinion to be obtained under Legal Help to identify the precise steps/proceedings. Prior to Counsel being instructed, Supervisors must consider whether it is reasonable in the circumstances to instruct Counsel as part of the provision of Contract Work and only approve any decision to do so where it is reasonable. Where you instruct Counsel in relation to Contract Work then, unless we agree otherwise in writing, it is for you to agree Counsel's fees and pay Counsel directly.

27. If you instruct Counsel, you must claim payment from us of Counsel's fees as if such fees were a Disbursement incurred by you and, without prejudice to the provisions of Paragraphs 11 to 25 above:
- (a) you must record the justification for the instruction of Counsel in terms of the complexity or other exceptional circumstances of the Case and the relevant expertise of Counsel;
  - (b) Counsel must set out details of the time spent in his/her invoice; and
  - (c) you must pay Counsel the full fee stated by the Counsel's invoice and claimed from us, irrespective of any reduction in respect of Counsel's fees on Assessment.

### **Experts' fees**

28. Maximum rates for experts' fees are specified in the Remuneration Regulations. Experts' fees incurred by you will not exceed these maximum rates, unless prior authority has been granted to exceed the limit in the particular case. Subject to any such limits, the amounts claimed for experts' fees must be justified on Assessment in accordance with this Contract.

### **Assessment (reviewing your Claims)**

29. Pursuant to Clause 14.6 of the Standard Terms, we may Assess your Claims in accordance with the following paragraphs of this Annex and as further provided in the Specification.
30. We will periodically (normally every three months) audit your Claims and the payments we make to you and for the foregoing purpose, the Contract Work provided by you. We may also do this if, for any reason, your Contract ends prior to the end of the Contract Period.
31. As part of our audit, we will look at your Monthly Case Report. Pursuant to Clause 9.2 of the Standard Terms, we may also audit your Claims at your premises.

32. Your Monthly Case Report shows the total Contract Hours performed in respect of open and Closed Cases cumulatively. For example, your July Monthly Case Report (which will be submitted on or prior to 10 August) will show the total Contract Hours worked cumulatively on each Case since the Case was opened.
33. We may in accordance with the Standard Terms, audit your invoices against payments we have made to you to check that your account balances.
34. If following an audit, there is any discrepancy, we will set this out in a financial summary and either pay you any balance owing with your next payment or deduct any balance owed from your next payment.
35. If, following the end of the Contract Period, the final review shows that you are in debit, we will send you a financial statement with this information and you will pay the amount due in cleared funds within 28 days, unless we agree a longer period with you. If you hold another contract with us we may set off such amount against any amount due from us under that contract in accordance with Clause 14.11 of the Standard Terms.

### **Basis of Assessment**

36. All Assessments of Contract Work are to be on the Standard Basis as defined by Civil Procedure Rule 44.4(2), subject to the other provisions of the Specification and any Contract Guide.
37. You must comply with the provisions on Claiming and Assessment in respect of Contract Work set out in the terms of this Contract, the Legal Aid Legislation and the Civil Procedure Rules.
38. If we Assess your Claims and you are dissatisfied with the outcome of the Assessment then you may appeal to an Independent Costs Assessor in accordance with the provisions of the Specification.

### **Operator Service Training**

39. Where you undertake Operator Service Training in accordance with Paragraph 2.51 of the Specification you will be remunerated at £53.57 per hour (applied pro rata for parts of the hour; £375 per 7 hour day; or £187.50 per 3.5 hours).