



Immigration and Asylum Common Errors Document

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The Legal Aid Agency (LAA) adopts a strict approach towards legal aid claiming errors in line with that of the National Audit Office. This is important to help manage financial risk and its potential impact on the wider legal aid fund.

Claiming errors also present both financial and resourcing risk to Providers, as costs claimed for work that is not compliant with the 2018 Standard Civil Contract will be recouped by the LAA and may result in further action being taken under the 2018 Contract.

This document has been produced to provide guidance on the most serious, numerous and costly claiming errors identified by the LAA in the financial year 2021/22. As well as serving as an aid memoire it provides links to more detailed reference documents at Annex A. Application of the advice within this document will help you to submit more bills that remain paid as claimed, avoiding recoups and Contract action such as Notices, Sanctions, and self-reviews.



Disbursements - General

Errors in evidencing disbursement costs are a common cause of financial loss to Providers in Immigration and Asylum claims. Accurate ledger recording and careful consideration of disbursement invoices before billing will help to reduce these reductions considerably.

- For all disbursements £20 and above, a copy of the paid invoice must be on file, (Costs Assessment Guidance (CAG) paragraph 3.1. For disbursements under £20, whilst an invoice is not required, evidence of what the disbursement relates to must be retained on file and the costs must be reasonable, (2018 Standard Civil Contract (SCC) Specification, Paragraph 4.24).
- Expert Reports and translations – as well as the invoice, a copy of the report or translation and prior authority application/agreement, (if relevant) must be retained on file (CAG paragraph 1.7).
- The maximum expert rates claimable are those set out in Civil Legal Aid (Remuneration) (Amendment) Regulations 2013 at Schedule 2.
- Where fee earner mileage is claimable, it should be claimed from the Provider's office unless the costs of claiming from the fee earner's private address is a more reasonable cost to the LAA (2018 SCC Specification Paragraph 4.24).
- All claims for travel by Providers, agents, counsel, and interpreters must describe whether public transport costs are incurred, (record the ticket cost and a copy of the ticket if in excess of £20) or mileage costs, (record the number of miles and claiming rate per mile). Any parking costs should also be clearly indicated and not combined with mileage costs or travel time. In all instances the start and end point of the journey should be indicated. Post codes can be provided for clarity.
- Any travel costs that are likely to exceed those deemed reasonable on a basic internet journey calculator search should be reasonable and clearly justified on file.
- Client travel costs solely for the purpose of attending your offices to give instructions can be remunerated as disbursements; (2018 SCC Specification, Paragraphs 8.50 to 8.52). However this is not an eligible disbursement in all circumstances so any claims for such costs should be specifically justified on file.
- Particularly useful published sources for detailed disbursements guidance include:
 - 2018 SCC Specification – Paragraphs 4.24 to 4.31
 - CAG – Part A, Chapter 3
 - Civil Finance Electronic Handbook – Chapter 10
 - Escaped Cases Handbook – Chapter 5

Disbursements - Interpreters

Errors identified on interpreter invoices were the most common cause of LAA Core Testing errors in financial year 2021/22, particularly in relation to missing information on invoices. As the contracted Provider you are responsible for the accuracy and validity of the funds claimed from the LAA for disbursement invoices. Mistakes are often found in the calculations so to avoid unnecessary Contract action and potentially time consuming disbursement self-reviews, ensuring you have a process for checking the invoices before payment can be time very well spent in the long run.

- Hourly rates and interpreting time incurred must be detailed on the invoice. This should match a Provider attendance note retained on the file with any discrepancies fully justified. In the absence of reasonable explanations the LAA will recoup any interpreter costs that exceed the timed attendance.
- Travel time incurred, mileage costs (including rates/mile) and parking costs should be clearly defined and separated on the invoice, including justification for time incurred in excess of reasonable estimates. (As per general disbursements guidance detailed above).
- The interpreter's journey start and end points must be clear, particularly when the start location is not the registered office on the invoice. In these circumstances, as a minimum the starting location postcode should be provided. It is assumed that the location where the service will be delivered is the Provider's contracted office, any alternative locations should be specifically justified. In the absence of this information the LAA will only remunerate costs from the invoice stated office location to the solicitor's contracted office, if reasonable.
- Where the interpreter is employed by a translation/interpreter agency, travel time and costs from a home address rather than the agency office indicated on the invoice can only be claimed where the travel time and costs would be cheaper than from the agency address (2018 SCC Specification, Paragraph 4.24, 6.54 2018 Contract).
- When travelling between appointments, the actual time taken for the interpreter to travel to attend upon a Client can be claimed. This is on the basis that an interpreter may travel directly from one Client to another throughout the course of the day, and may not return to their office in between attending upon Clients. The interpreter must clearly record the details of the journey undertaken. If specific details of the journey are not provided the LAA will allow only the reasonable time and costs to reach the Client's location from the interpreter's registered office. (Civil Finance Electronic Handbook 10.18).
- The maximum interpreter rates claimable are those set out in Civil Legal Aid (Remuneration) (Amendment) Regulations 2013 at Schedule 2. The maximum rates

for telephone attendance from 1st April 2017 are also restricted to these limits; £25/hour for London and £28/hour outside London. (Civil Finance Electronic Handbook 10.18).

- Telephone Interpreting – While the maximum hourly rate claimable is set out in the Civil Legal Aid (Remuneration) Regulations 2013, Paragraph 2 of Schedule 5 of the Remuneration Regulations sets out the ‘exceptional circumstances’ in which the rates may be increased. Under this provision you may claim telephone interpreter rates in excess of the maximum hourly rates where it is evidenced on file that you have been unable to find an interpreter that can deliver the telephone interpreting service at the prescribed rates.

Evidence can take the form of 3 alternative quotes or a current price list obtained within the previous 12 months. Providers are encouraged to note on file that they are aware they are incurring a disbursement that is in excess of the codified rate and that they are doing so on the basis that the exceptional criteria as set out at Paragraph 2 of Schedule 5 of the Remuneration Regulations is met.

- Cancellation fees for interpreters – If the cancellation fee is the result of a Provider error; for instance the Client has not been told to attend or given the wrong date, then any cancellation fees applied by the interpreter should not be billed as disbursements.

Cancellation fees may be reasonable as disbursements in some circumstances if the interpreter has attended in good faith and the session does not go ahead for reasons outside your control. However unless exceptional circumstances pertain, we would not expect cancellation fees to exceed one hour’s interpreting time plus actual travel time and disbursements.

- Interpreters applying a minimum charge to their time and the circumstances when this can be claimed is something that often results in assessment reductions. The LAA’s approach to assessment where minimum charges are applied is set out in the Civil Finance Electronic Handbook at 10.18 and is quoted here in full for reference:

“Where an interpreter is claiming a minimum charge we would expect these to be justified on submission of either the claim or the prior authority/CW3 application. In order for us to make an assessment as to whether these costs were reasonable the provider would need to demonstrate that there was a scarcity of resource and therefore it was necessary to instruct an interpreter who claimed for that minimum charge. This can be done by providing written evidence from at least three local service providers that they charge a 1hr minimum fee. Any justification or evidence provided must be dated within 12 months of the instruction of the interpreter. It is not sufficient for the provider to state that this is a standard charge that is claimed on all cases. Where no justification has been provided we will assess to the actual time taken.”

- Always carefully check interpreter invoice breakdowns as mistakes in totals/rates calculations are frequently identified and result in recoupmets and potentially time consuming Provider self-reviews.

- Particularly useful published sources for detailed interpreter guidance include:
 - 2018 SCC Specification – Paragraphs 2.47 to 2.51
 - Civil Finance Electronic Handbook – 10.18
 - Escaped Cases Handbook – 5.16
 - Civil Legal Aid Remuneration regulations 2013, Schedule 5

Rates of payment & cost limits

Immigration and Asylum claims are paid under the Standard Fee Scheme (SFS) unless one of the exceptions at Paragraph 8.76 of the 2018 SCC Specification applies. Incorrectly reporting SFS claims as hourly rates matters or failure to obtain prior authority from the LAA to exceed Immigration and Asylum Controlled Work costs limits are some of the most costly errors identified by the LAA.

- Immigration and Asylum cost limits are as follows:

Standard Fee Scheme (SFS)

Legal Help – Asylum – Standard fee plus £400 disbursements.

Legal Help – Immigration – Standard fee plus £400 disbursements.

Controlled Legal Representation (CLR) – Asylum – Standard fee plus £600 disbursements.

CLR – Immigration – Standard fee plus £600 disbursements.

Hourly rates cases

Legal Help – Asylum - £800 costs plus £400 disbursements.

Legal Help – Immigration - £500 costs plus £400 disbursements.

CLR – Asylum - £1,600 – Combined costs, (including counsel's fees) and disbursements.

CLR – Immigration - £1,200 - Combined costs, (including counsel's fees) and disbursements.

All the above are exclusive of VAT.

(2018 SCC Specification, Paragraphs 8.76 to 8.77 and 8.90 to 8.99).

- Should you expect to incur disbursements or profit costs above these limits you must apply to the LAA for prior authority and evidence the subsequent agreement on file. (2018 SCC Specification, Paragraphs 8.78 & 8.92 and Escape Cases Electronic Handbook chapter 14).

- Extensions to disbursement and cost limits must be applied for prior to incurring costs as extensions to the limits cannot be agreed retrospectively. (2018 SCC Specification, Paragraphs 8.78 & 8.92).
- All applications to exceed the prior authority limits must be submitted for approval to cw3@Justice.gov.uk using either the PDF or Excel version of the Form CW3.
- Reasonable costs (profit costs and disbursements) incurred in accompanying a Client to a substantive interview at the Home Office can be claimed in addition to the costs limits without requiring prior authority from the LAA. (2018 SCC Specification, Paragraphs 8.53 to 8.55). However such attendances are only allowed as claimable costs in specific limited circumstances:
 - i) Where the Client is a child (or deemed to be a child at the date of interview where age is unknown),
 - ii) where the Client is detained or
 - iii) where the Client lacks sufficient mental capacity.
 - iv) Attendance is also allowed where the age of the child is disputed.
See the regulations at: <https://www.legislation.gov.uk/ukxi/2012/2683/made>
- The Immigration and Asylum Legal Help hourly rates are set out at table 7d of Schedule 1 Part 2 of the Civil Legal Aid (Remuneration) Regulations 2013. Legal Help Escape Cases at table 7a.
- The Immigration and Asylum Controlled Legal Representation hourly rates are set out at table 8c of Schedule 1 Part 2 of the Civil Legal Aid (Remuneration) Regulations 2013. CLR Escape Cases at table 8a.
- When hourly rates are claimed, ensure that the correct rates as detailed in the Regulations are being applied.

Online Appeals Procedure claims

Online appeals procedure claims are a relatively new type of claim and have different claiming rules depending on the relevant dates so any billing of such cases requires particularly careful consideration.

- Online hourly rate claims must demonstrate on file that the case was lodged through or transferred to the Online Procedure. Different fees are claimable for Online Procedure cases depending on the date of grant of CLR. Full details are covered in the 2018 SCC at Paragraphs 8.62 to 8.67.
- Where the appeal has commenced on paper and HMCTS then asked that the case proceed using the online procedure, they have asked the Provider to stay the original paper based application and then notify them to use MyHMCTS to progress the claim online.

In practice, this has not always occurred and the Home Office are managing some appeals online (via email) without notifying Providers that the case falls under the online procedure. This has led to confusion about whether these cases can still be claimed under hourly rates.

As long as an appeal is being dealt with online (ie via email) then the claim can be submitted as an online hourly rate matter, regardless of whether the case has been managed formally via MyHMCTS. This includes the scenario where a matter starts off as a paper application but then moves online at the request of the Home Office or Tribunal.

- Paragraph 8.89 of the 2018 SCC covers the different way that advocate services are dealt with under the Online Appeals Procedure. The key points to remember are:
 - Advocacy fees are paid as fixed fees and associated advocacy costs are included within the relevant fixed fee and cannot be claimed through hourly rates.
 - Advocacy fees are inclusive of travel and waiting time.
 - Any other activities such as attending the Client or conferences are payable by hourly rates.

The fixed fees for Advocacy Services can be claimed by entering the number of each type of additional fee claimed in CWA e.g. 1x Adjourned hearing and Y in the Substantive Hearing field if two hearings are attended. No advocacy related costs, irrespective of who they are carried out by, should be reported in either the Profit Costs or Counsel Costs fields.

- The LAA has published a specific guidance document; “Changes to the 2018 Immigration Specification (October 2020)” which explains all the conditions around Online Appeal Procedure fees, on the LAA’s Legal Aid guidance page at: <https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters#civil>

Scope

The areas of Immigration and asylum work that remain in scope for Legal Aid funding remains limited so when considering any potential Client cases that might fall outside funding eligibility it is important to consider the 2018 SCC Specification at Paragraphs 8.7 and 8.8 and if necessary the further detail provided in the 2012 LASPO Act: <https://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

The largest single area of financial recoupment and biggest single financial risk to LAA and Provider funds are issues of scope resulting in voided files and disallowed hourly rate work.

- Matters and work out of scope

Advice in relation to an application for leave to enter/remain based on article 8 or any other ground under the ECHR (right to private/family life).

Immigration work such as applications for a right to enter/remain e.g. students, work visas, family reunion cases, family visit visas, nationality, and citizenship.

Some Judicial Review work will be out of scope and is subject to the exclusions in Paragraph 19 of Part 1 of Schedule 1 to the Act.

The 2018 SCC sets out in Paragraphs 8.7 and 8.8 the definitions of in scope work for both Asylum Matters and Immigration Matters.

- Fresh claims can be opened as a new matter start if new grounds for protection are identified or new evidence has emerged. They cannot however be a rearguing of grounds which have already been considered. The file should support the fresh claim with sufficient recorded evidence.
- The following should not result in new matter starts being opened - Associated or additional applications on human rights grounds, determining that the Client qualifies for civil legal services provided as Licensed Work, complying with any pre-action protocol, applications to enter or remain on more than one basis or switches in status will the first application remains pending. See 2018 SCC Specification Matter Start Rules at Paragraphs 8.25 to 8.35.

Eligibility

Please note that only s4 & s95 support can be treated as a passported benefit, otherwise a full capital & income assessment must be undertaken for every Client, (2018 SCC Specification, Paragraphs 3.22 to 3.27). The only exception being for DDA surgery and imprisoned client advice where 30 minutes of non-means and non-merits advice may be given. (See 2018 SCC Specification, Paragraphs 8.122 and 8.151).

For further details on potential eligibility errors, see *'Immigration and Asylum Common Errors document July 2019'*.

Unaccompanied Asylum Seeking Children (UASC)

Most errors and recoupments identified by the LAA in relation to UASC cases are concerned with the age of the child, the relevant stage of the case and whether hourly rates or fixed fees should be incurred.

- UASC cases are payable by hourly rates, the determining factor being whether the Client meets the definition of a UASC. Age disputed cases in which the Client's instructs they are under 18 and this is accepted by the Provider are payable at hourly rates.

- Be aware of the Client's changing status between the Legal Help and CLR stages of a case. If a UASC Client reaches 18 – or is established to be over 18 - before CLR is granted, then a fixed fee and not hourly rates will be payable under CLR, even if hourly rates have correctly been claimed for the Legal Help stage.
- Check given dates of birth when opening a matter start as a UASC case. The LAA has identified a large number of cases where the stated age on the opening of the case would make the case ineligible for hourly rates from the outset.
- All fee earners who act for children must have an enhanced Disclosure and Barring Service (DBS) check dated within the last 24 months of instruction (See 2018 SCC Specification at Paragraph 8.13c). Evidence of the check may be retained on the individual file or in a generic folder for the provider. Failure to maintain a satisfactory DBS check may give rise to contract action and will in all likelihood result in the claim being disallowed.

VAT

- VAT and Client status - In simple terms VAT is not claimable if the Client does not have any resident status in the UK, but there can be complicating factors making it difficult to confirm the position. The CAG paragraphs 4.28 to 4.34 explains in full detail how to approach Client VAT status, including difficult and unusual circumstances such as the Client not having any identifiable country of origin.
- Note that since the UK left the EU on 31st January 2020, EU nationals have not had automatic resident status and so it may be necessary to check whether a Client had resident status before the UK left the EU in order to determine the correct VAT position.

Supporting evidence

- Preparation Notes - In hourly rate claims preparation time claimed must be supported by notes that support the amount of time undertaken on the task. Deductions are often made as a result of insufficient preparation note evidence.
- Home Office interview attendances - If a Home Office interview attendance fee is reasonably claimed; (In the event that the Client is a child, detained or lacks mental capacity) always ensure that the file supports the attendance with notes of attendance and all travel & disbursement details.

Hearings

- Hearing fees - A substantive hearing fee should only be claimed if a hearing has been attended. Attended hearings that are adjourned will attract a 2b substantive hearing fee but paper adjournments will not.

Avoiding Escaped Fee claim rejects

Using the Escape Claim Checklist and submitting it with your claim is the best way of ensuring that Escaped Claim costs have been billed correctly. This helps the LAA pay claims more quickly, reducing the cost and time associated with rejects, claim amendments and resubmissions. Whilst the checklist does require an investment in time to complete, it can reduce more time consuming work responding to rejections and requests for further evidence.

- Paragraph 8.83 of the 2018 SCC gives details on escaped fee calculations and the Escape Case Electronic Handbook has detailed generalist advice on these cases as well as specific chapters dealing with Immigration and Asylum at chapters 13 and 14.

Common administrative errors

All of the following are simple administrative errors that can be easily avoided with careful billing and some double checking before submission but are responsible for a considerable proportion of recoupments and resultant Contract Notices.

- Billing expert invoices twice in error.
- Hourly rate claimable items billed twice in error.
- Administrative work claimed under profit costs such as transfer of/opening/closing files, costing, covering e-mails and other administrative overhead tasks. (2018 SCC Specification, Paragraph 6.59).
- Claiming disbursements on the wrong file.
- Invoices paid that have incorrectly calculated fees.
- Double claiming Interim payments for disbursements, (2018 SCC Specification, Paragraph 8.106).
- Rounding up mileage fees.

Appendix A

LAA published Guidance & Contracts

Standard Civil Contract (SCC) Standard Terms and Specification

<https://www.gov.uk/government/publications/standard-civil-contract-2018>

Costs Assessment Guidance (CAG) and Civil Finance Electronic Handbook

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

Escape Case Electronic Handbook

<https://www.gov.uk/government/publications/submit-an-escape-fee-case-claim>

Guidance for reporting Controlled Work & Controlled Work matters

<https://www.gov.uk/government/publications/cwa-codes-guidance>

Escaped Claim submission forms and Escaped Claim Checklist:

<https://www.gov.uk/government/publications/escape-fee-case-claim-forms>

Regulations

Civil Legal Aid Remuneration regulations 2013

[The Civil Legal Aid \(Remuneration\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1221/made)

[The Civil Legal Aid \(Remuneration\) \(Amendment\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1222/made)

The Civil Legal Aid (Immigration Interviews) (Exceptions) Regulations 2012

<https://www.legislation.gov.uk/uksi/2012/2683/made>

Part 1 of Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

<https://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>