



Legal Aid
Agency

Immigration and Asylum Common Errors Document 2024

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1.0	18/04/2024	02/04/2024	Contract Management & Assurance (CMA)	Core Testing and Service Development

The Legal Aid Agency (LAA) adopts a strict approach towards legal aid claiming errors in line with the assessment principles 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 Contract action, including Contract Notices and Contract Sanctions.

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 2023/24. 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.

For further information on these issues and other common areas of queried Immigration billing see the LAA's bank of Asylum & Immigration Keycards and previous iterations of the Common Errors Document.



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 (including VAT) and above, a copy of the paid invoice must be evidenced on file. 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.
- 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.
- 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 scheduled office unless the costs of claiming from the fee earner's private address is a more reasonable cost to the LAA.
- 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, including VAT) 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. If interpreters do not wish to give exact addresses, 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 explained and clearly justified on file.
- Client travel costs solely for the purpose of attending a Provider office to give instructions can be remunerated as disbursements. However, this is not an eligible disbursement in all circumstances so any claims for such costs should be specifically justified on file. **2018 SCC Specification, Para 8.64**
- Particularly useful published sources for detailed disbursements guidance include:
 - 2018 SCC Specification – Paragraphs 4.24 to 4.31
 - Costs Assessment Guidance – Part A, Chapter 3
 - Civil Finance Electronic Handbook – Chapter 10
 - Escaped Cases Handbook – Chapter 5

Disbursements - Interpreters

Errors identified on interpreter invoices are always one of the most common causes of LAA Core Testing errors, 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.

- 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.
- 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.
- 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 para 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.

- 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. You are encouraged to note on file that you are aware they are incurring a disbursement that is in excess of the codified rate and that you 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 recoups 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 **Para 8.101, 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 costliest 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 profit costs plus £400 disbursements.

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

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

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

All the above limits are exclusive of VAT.

2018 SCC Specification, Paras 8.101 to 8.102 & 8.106 to 8.115

- 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, Paras 8.108, 8.111 & 8.114 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.
- All applications to exceed the prior authority limits must be submitted for approval using either the PDF or Excel version of the Form CW3.

- Be sure to make the correct cost limit extension application;

The CLR **combined cost limit** should be extended for any CLR hourly rate case costs over and above the limits, including profit costs, disbursement costs and counsel's fees.

Disbursement only extensions should only be sought for cases with **disbursement only cost limits**, those for Legal Help cases and CLR standard fee cases.

- 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, Paras 8.67 to 8.69**. However, such attendances are only allowed as claimable costs in specific limited circumstances:
 - i) Where the Client is a child at the time of interview (ie, under the age of 18 or whose age is uncertain and who, at an immigration interview is being treated by the Secretary of State as being under the age of 18).
 - ii) Where the Client is detained or
 - iii) where the Client lacks sufficient mental capacity.

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.

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, Paras 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. **2018 SCC Specification, Para 8.157**

Bail

All bail work undertaken at either LH or CLR stages must be reported separately to any substantive matter under a New Matter start. Applications for bail are payable under Hourly Rates. **Para 8.101(d) 2018 SCC.**

All bail work should be claimed using an Immigration Matter Type 1 code, regardless of whether it was undertaken under an associated Asylum Matter Start, using Matter Type 2 code IBAI.

The Costs Limit for bail claims at hourly rates is £500.

For each bail application a separate claim should be submitted, which may result in more than 1 bail application per Client. Where Bail is obtained, this may need to be repeatedly renewed or its term varied. Any further Bail work (i.e., a renewal of bail) should be undertaken under a New Matter start.

If the substantive matter is still ongoing (LH or CLR) and you have given advice on bail where the Client has been detained, including representation at the bail hearing/s, a Completed Matter Claim can be submitted for the bail work once concluded.

These claims are reported as Completed Matter Claims using an appropriate MT1 hourly Rates Immigration Code, regardless of whether the case relates to asylum work and MT2 code IBAI.

In relation to CLR, if the Client received advice on a bail matter only, the cost limit of £500 applies. The higher CLR limits (£1,200 and £1,600), apply to the CLR matter as a whole.

The substantive appeal works plus any work undertaken in relation to bail.

Therefore, although any work carried out in relation to bail, (either after work undertaken on the substantive appeal matter, or where the matter commences as a bail only matter but is then extended to include substantive appeal work), is claimed under a separate Matter Start, the higher costs limits (£1,200 and £1,600), still apply to the entirety of the work. **Para 8.113 2018 SCC**

Early Billing & Stage Billing

Post-Interview (available from 7th October 2020) – Legal Help

Before 1st April 2023, the Legal Help stage and the Controlled Legal Representation (CLR) stage were treated as 2 separate stages of the same overall case.

From 7th October 2020, an early bill can be submitted when the Client has been interviewed and all submissions have been made to the Home Office UKVI and a decision is awaited.

Prior to 1 April 2023, this early bill was submitted as a Stage Claim.

From 1 April 2023, any such early bills should be submitted as Completed Claims using outcome code IY - Client Advised and Third-Party Action or Decision Awaited. **2018 Contract Specification Para 8.92(c)**

Where an early bill has been submitted, a supplemental claim may be made should further costs/time be incurred on the matter.

To make such a claim, a claim amendment request to the submitted early bill should be made, adding in any further profit costs and/or disbursements incurred. At that point, the outcome of the claim should also be updated. If the claim was previously submitted as a Stage Claim, then the Claim Type will need to be changed to 'Completed Claim'.

Providers are not entitled to submit a further claim for a Standard Fee under Legal Help.

Pre-Interview (available from 1st Sept 2022) – Legal Help

For Asylum Standard Fee Stage 1 Legal Help Claims **only**, a Completed Claim may be submitted before the matter has concluded if the following criteria applies:

- The Matter has been open for a period of 6 months and there has been no decision on the Client's Asylum Application and;
- profit costs claimable under the Stage 1 Standard Fee as calculated on the basis of Hourly Rates is equal to or exceeds the Stage 1 Standard Fee amount (£413).

Any further work required on the same matter, regardless of how long it has been since the previous advice was given, must be treated as part of the same matter.

The claim should be reported as a Completed Claim using outcome code IY.

Subject to the criteria above, you may submit a claim for matters opened prior to 1st Sept 2022. **2018 Contract Specification Para 8.75**

Should further costs/time be incurred on the matter, it is not permitted to submit a further claim for a Standard Fee under Legal Help.

Instead, a supplemental claim may be claimed by submitting a claim amendment request to the submitted early bill, adding any further profit costs and/or disbursements incurred. At that point, the outcome of the claim should also be updated.

Matters under the Streamlined Asylum Process (SAP) – Legal Help

A Stage Claim may be submitted once the Home Office questionnaire has been completed and either an interview has been conducted or it has been determined that an interview is unnecessary, irrespective of whether the costs calculated at hourly rates have reached the Standard Fee of £413.

If it is determined that an interview is unnecessary, this must be evidenced on the file to support a Stage Claim.

See Contract Specification Para's 8.92(c) & 8.93.

A supplemental claim may be made should further costs/time be incurred on the matter as above, with the outcome of the claim being updated at that point.

Summary

In all of the above scenarios you are not entitled to submit a further claim for a Standard Fee under Legal Help and should ensure that you maintain robust billing records to ensure that unintentional duplicate standard fee claims are avoided.

Interim payments for disbursements from 7th August 2020

Unpaid Disbursements (not including Counsel's fees) may be claimed for Controlled Work if:

- at least 3 months (6 months prior to 7th Aug 2020) have elapsed since the start of the matter and
- at least 3 months have elapsed since the previous claim or the entitlement to claim arose.

Essentially interim payments can be claimed for disbursements reasonably incurred every 3 months from 3 months after the matter started.

When submitting a claim for interim payment of a disbursement, the Claim Type "Stage Disbursement Claim" should be selected from the list of options in CWA and the same Matter Type 1 and 2 combinations used for the Completed Claim. The only outcome code available in CWA where a Stage Disbursement Claim Type is selected will be - - (double dash). **2018 Contract Specification Para 8.141**

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. The correct date of birth if known should be entered on CWA when claiming.
- 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, **2018 SCC Specification Para 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.

Home Office interview attendances

- Attendances are only allowed as claimable costs in specific limited circumstances:
 - i) Where the Client is a child at the time of interview (ie, under the age of 18 or whose age is uncertain and who, at an immigration interview is being treated by the Secretary of State as being under the age of 18).
 - ii) Where the Client is detained or
 - iii) Where the Client lacks sufficient mental capacity.
- Home Office interview attendances - If a Home Office interview attendance fee is reasonably claimed, always ensure that the file supports the attendance with notes of attendance and all travel & disbursement details.

- When allowed, 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 Paras 8.67 to 8.69

Avoiding Escape 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.

Paras 8.94 to 8.100 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 & 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 recouplements 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, Para 6.59**
- Claiming disbursements on the wrong file.
- Invoices paid that have incorrectly calculated fees.
- Double claiming Interim payments for disbursements. **2018 SCC Specification, Para 8.141**
- Rounding up mileage fees.
- Costs incurred as a result of a change in fee earner.
- Billing costs.

Appendix A

LAA published Guidance & Contracts

2018 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>

LAA Previous editions of the Common Errors Document:

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

Regulations

Civil Legal Aid Remuneration regulations 2013

[The Civil Legal Aid \(Remuneration\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1022/made)

[The Civil Legal Aid \(Remuneration\) \(Amendment\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1023/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>