

# CIVIL HOUSING COSTS MAXIMISATION

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# EFFICIENCY AND MAXIMIZING COSTS

- Public funding certificate- scope and limitations
- Claimable costs and time allowances in CCMS.
- IP Costs Recovery
- Enhancements specific to housing cases.
- Update as to LAA v Court assessments
- Q&A



# PUBLIC FUNDING CERTIFICATES

# PUBLIC FUNDING CERTIFICATES

## What is in scope?

- Possession claims- LASPO Sch 1 Part para 33
  - LAA has said that formal written notification that proceedings will be issued will be enough- Legal Help
  - A representation certificate will not be granted, until proceedings have been issued
- Merits Test
  - The standard criteria are met
  - The individual has a defence
  - Prospects of success

# PUBLIC FUNDING CERTIFICATES

## What is in scope?

- Possession cases involving rent arrears with issues of housing benefit or housing element of Universal Credit??
- Possession claims wholly or in part on allegations of anti-social behaviour –v- applications under Anti-Social Behaviour Crime and Police Act 2014
- Application to suspend a warrant of eviction
- Counterclaims in possession proceedings

# PUBLIC FUNDING CERTIFICATES

## What is in scope?

- Homelessness and allocations

S.202 HA 1996

Appeal to County Court/JR

- Freestanding disrepair and housing conditions claims

# PUBLIC FUNDING CERTIFICATES

## Scope and Costs Limitations

- Scope Limitations- Are you covered for all work you are undertaking?

- A counterclaim is treated as separate proceedings

Recover possession- tenant- Housing

Bring a counterclaim- Housing

- Costs Limitations- What does it cover? Have you got enough? Are you approaching £25K? Has there be a transfer of provider?
- Checking the certificate when received- you can also claim for doing so!



# CLAIMABLE COSTS AND ALLOWANCES FOR CCMS ACTIVITIES



# CLAIMABLE COSTS

## Profit Costs

- Are you claiming for all work that you have done? Are you claiming for all work that you are entitled to?
- Are you claiming for work that is considered non-claimable? Could it affect your KPI's or delay the claim getting paid?
- Main rules are set out in Section 2 of the Costs Assessment Guidance and the Civil Finance Electronic Handbook is useful.

# CLAIMABLE COSTS

## Attendance Notes

- A well maintain file should detail every item of work that is to be claimed
- The LAA require the evidence of work as part of the assessment process (if in excess of 3 hours) and as part of any audit
- Estimated time is unlikely to be allowed without supporting evidence.
- The file note must be sufficiently detailed to justify the work that was carried out.
- Attendances over 24 minutes should contain some detail showing the instructions taken or the advice given or how the case was progressed
- The longer the attendance, the more detail would be expected.

# CLAIMABLE COSTS

## Attendance Notes

### File Note

File:

**Fee Earner:**

Date of Typing: 03/08/2020

Date of Attendance : 30 June 2020

Type of Attendance :

Time Taken:

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Perusal of redacted police disclosure part 1

Crime report 22.1.18 – 5 pages – 2 units

Witness statement of Chanelle Johnson 24.10.18 - 1 page – 1 unit

ISR report for 22.1.18 – 11 pages – 4 units

- Caller is 13 years old, mother pinning sister onto the floor. Female was heard saying 'get off me, I can't breathe.' Also heard mother saying she is doing it to stop her hurting herself. Caller heard asking mother to stop and let go.

Crime report 6.2.20 – 4 pages – 2 units

ISR report 6.2.20 – 4 pages – 2 units

Crime report 12.2.20 – 7 pages – 3 units

- Redacted victim report M was constantly banging on the walls and shouting. At 6am, M stood by her open window and shouted at the victim 'you didn't get me out of my house this time.'

Written warning 11.3.20 – 2 pages – 1 unit

Crime report 2.4.20 – 6 pages – 2 units

ISR report 2.4.20 – 7 pages – 3 units

- M said someone called her a 'golly wog' and 'nig nog'. Also said someone threatened to throw a nail bomb into her house.

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Crime report 2.4.20 – 5 pages – 2 units

Handwritten statement – 2 pages – 1 unit

Crime report 16.4.2018 – 3 pages – 1 unit

ISR report 16.4.2018 – 7 pages – 3 units

- Caller did not know M but they had been talking for a week. M said people called her names like 'golliwog', made threats to petrol bomb her house.
- M named her neighbors making the comments.

Crime report 2.7.18 – 3 pages – 1 unit

ISR report 2.7.18 – 5 pages – 2 units

Crime report 5.6.18 – 4 pages – 2 units

Crime report 5.8.18 – 5 pages – 2 units

ISR report 6.6.18 – 4 pages – 2 units

ISR report 5.8.18 – 6 pages – 2 units

Crime report 13.8.17 – 5 pages – 2 units

ISR report 13.8.17 – 6 pages – 2 units

Crime report 8.9.17 – 4 pages – 2 units

ISR report 8.9.17 – 5 pages – 2 units

Crime report 29.8.19 – 3 pages – 1 unit

Crime report 29.8.19 – 3 pages – 1 unit

ISR report 29.8.19 – 7 pages – 3 units

- M reporting that her ex-partner was harassing her because he was seeing children. He had been outside the house shouting 'give me back my child maintenance money' and bringing friends with him to back him up

Handwritten statement – 1 page – 1 unit

Crime report 21.10.17 – 5 pages – 2 units

ISR report 22.10.17 – 5 pages – 2 units

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Crime report 9.12.18 – 5 pages – 2 units

ISR report 9.12.18 – 10 pages – 4 units

- M said her **neighbours** will throw a nail bomb into her house

Crime report 26.12.18 – 2 pages – 1 unit

ISR report 26.12.18 – 9 pages – 3 units

- M reported **neighbours**, friends of **neighbours** and her ex were trying to enter her house.

Crime report 29.12.19 – 5 pages – 2 units

ISR report 29.12.19 – 4 pages – 2 units

Police email 21.2.20 – 1 page – 1 unit

Crime report 27.5.19 – 4 pages – 2 units

Crime report 27.5.19 – 3 pages – 1 unit

Crime report 27.5.19 – 3 pages – 1 unit

Total = 75 units

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# CLAIMABLE COSTS

## Profit Costs

- 6-12 minutes per page of A4 for preparing documents, but the LAA can allow more when justified
- 2 minutes per page of A4 for considering documents, but the LAA can allow more when justified
- CAG 1.32- Attendances can be reduced to 24 minutes if no detail of attendance

# CLAIMABLE COSTS

## Claimable items that can be claimed

- Preparing and updating Master Court Bundles- identifying documents and drafting index
- Sending Text or WhatsApp messages
- File Reviews- only if there has been a gap of one month between work
- Drafting long or complex letters- claimable as timed rather than a routine letter out
- CCMS Means
- Travelling to attend the Client in exceptional circumstances
- Preparing detailed file notes
- Checking the application of established law or procedural rules
- Legal research if it related to an unusual, developing or novel area of law

# CLAIMABLE COSTS

## Allowances for CCMS tasks

- Non-Merits Tested Application- 36 minutes
- Merits Tested Application – 48 minutes
- Completing the Means Information- 30 minutes
- Allocation of Costs to Counsel- 12-18 minutes
- All other amendments- 24 minutes
- Payments of Account- 12 minutes per POA
- Reporting outcomes with no costs or stat charge- 12 minutes (per aspect on the certificate)
- Reporting outcomes with costs or statutory charge- 24 minutes

# CLAIMABLE COSTS

## Allowances for CCMS tasks

- CCMS notifications- Claim as a letter in/out or on a time spent basis
- Preparation of your exceptional claim- LAA will allow 24-30 minutes per 10 items, but claim on a time spent basis
- Considering PFC's and discharged PFC- 6 minutes
- Preparing Notice of Discharge- 6 minutes
- Time for checking the exceptional claim once prepared?
- Time for uploading the claim and dealing with CCMS notifications- 24 minutes

# INTER PARTES COSTS ORDERS



# INTER PARTES COSTS ORDERS

## Why are IP Costs important for legal aid providers?

- Far higher recoverable hourly rates (e.g 300% to 400%)
- It is a win/win for the provider
  - Can you claim your legal aid only costs?

Contact work not covered by a costs order

Completing forms or communicating with the LAA

Costs not allowed on IP detailed assessment or the paying party had reasonable refused to pay

# INTER PARTES COSTS ORDERS

## How to obtain a costs order?

- Just ask the court under CPR 44.2
- The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party
- What factors will the court have regard to?? CPR42.2 (4)
- CPR44.2 (8) subject to detailed assessment the court will order a payment on account of costs, unless there is good reason not to do so.
- Orders silent as to costs or no order for costs??

# ENHANCEMENTS

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## What is an enhanced claim?

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An enhanced claim is one where it may be argued that due to the exceptional nature of the case, a higher payment is warranted.

## Maximum Cap on Enhancements

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100%- Court of Appeal and High Court

50%- County Court

# DISCRETIONARY ENHANCEMENTS

## Two Stage Test

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### 1. Threshold

- Is it an enhanced claim?

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### 2. Criteria

- How much can be claimed

# DISCRETIONARY ENHANCEMENTS

## The Threshold Test

- At least one of the three factors must be met:
  - (a) The work was done with exceptional competence, skill or expertise;
  - (b) The work was done with exceptional speed; or
  - (c) The case involved exceptional circumstances or complexity

# DISCRETIONARY ENHANCEMENTS

## The Criteria Test

- There are seven factors, grouped under three areas, to determine the amount to be claimed:
  - (a) Degree of responsibility accepted by the fee earner
  - (b) Care, speed and efficiency with which the fee earner prepared the case; and
  - (c) Novelty, weight and complexity of the case (exceptional circumstances)

# DISCRETIONARY ENHANCEMENTS

## How to Calculate the Amount

- Two Issues
  - Number of factors present
  - Strength of those factors
- A single factor can account for the whole enhancement
- Every case is fact specific- consider previous enhancements allowed



# DISCRETIONARY ENHANCEMENTS

## Specific Housing Examples

- Importance of the matter to the Client- possession and disrepair
- Did the Client have any medical or mental health issues?
- Urgency- Suspend Warrant for Possession
- Complexity
- Experience of the fee earner
- Limited or no recourse to Counsel
- ECHR issues- Article 8
- Whether an interpreter had to be used to take instructions and give advice

# ASSESSMENT PROCEDURE

# ASSESSMENT OF CLAIMS

## Update

- What happened in August 2020?
  - No longer court assessments
- Assessments by the LAA since August 2020?
- Law Society lodged JR proceedings in September 2020
- High Court has formally endorsed a settlement of the Law Society's claim
- Fresh Consultation- Feb 2021 - March/April 2021

# DE NEVO ASSESSMENT- FOLLOWING LAA ASSESSMENT

**Any claim submitted to the LAA (that would have been assessed by the Court)**

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If you are unhappy with the LAA assessment of a claim that would have been assessed by the Court, then providers can have a de novo court assessment pending the outcome of the new consultation.

**What needs to be done?**

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The provider must notify the LAA in advance of submission of the paperwork to court. The LAA will treat the existing payment as a POA, instead of a final claim.

A Bill of Costs will need to be prepared and submitted to the Court.

**Following Assessment by Court?**

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If a claim is further reduced following the court assessment, the LAA will need to be notified and they will arrange the appropriate recoupment.

Subsequently you will need to create an 'appeal bill' in CCMS and inputting 'Appeal % Uplift Assessment' with the value of the claim being the balance between the original payment and amount allowed by the court.

# QUESTION AND ANSWER

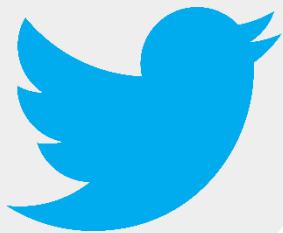




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