

# OTHER CIVIL AND JR COSTS MAXIMISATION

PRESENTED BY  
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WEDNESDAY 24<sup>TH</sup> FEBRUARY 2021



# EFFICIENCY AND MAXIMIZING COSTS

- Public funding certificate- scope and limitations
- Claimable costs and time allowances in CCMS.
- Circumstances to recover costs in JR cases.
- Enhancements specific to COP and JR cases.
- Update as to LAA v Court assessments
- Q&A



# PUBLIC FUNDING CERTIFICATES

# PUBLIC FUNDING CERTIFICATES

## What is in scope?

- Court of Protection
  - Mental Health Act 1983
  - Mental Capacity Act 2005
- Only permitted where the proceedings concerns:
  - Right to life;
  - Liberty or physical safety;
  - Medical treatment;
  - Right to family life;
  - Capacity to marry, enter a civil partnership or enter sexual relations.
- Legal Help- advice and assistance, but excluding representation before the tribunal
- Legal Representation- Certificated work

# PUBLIC FUNDING CERTIFICATES

## What is in scope?

- Judicial Review/public law cases
  - Challenges to central government policies;
  - Article 8 ECHR claim against a local authority for failing to secure a long-term placement for a looked after child;
  - An unlawful detention judicial review;
  - A breach of Article 4 ECHR for failing to protect a victim of trafficking;
  - Claims to secure access to medical treatment

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# JUDICIAL REVIEW

## Legal Help

Will cover initial advice and assistance

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## Certificate for legal representation

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Will cover application for JR

Merits test required:

- For standard criteria to be met
- LBC to have been sent to the proposed Defendant
- Proportionality test
- Prospects of Success to be very good, good or moderate; or borderline
- Significant Wider Public Interest or Overwhelming Importance to Client

# PUBLIC FUNDING CERTIFICATES

## Scope and Costs Limitations

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



# JUDICIAL REVIEW- CIRCUMSTANCES TO GET PAID

# JUDICIAL REVIEW CASES

## How to get paid?

- Can claim all costs up to the issuing of the claim (regardless of outcome)
- 5A (1) The Civil Legal Aid (Remuneration) (Amendment) Regulations 2015

Where an application for judicial review is issued, the Lord Chancellor must not pay remuneration for civil legal services consisting of making that application unless.....

# JUDICIAL REVIEW CASES

## How to get paid?

- (a) the court gives permission to bring judicial review proceedings
- (b) the court **neither refuses nor gives permission** to bring judicial review proceedings and the Lord Chancellor considers that it is reasonable to pay remuneration in the circumstances of the case, taking into account, in particular:
  - (i) the reason why the provider did not obtain a costs order or costs agreement in favour of the legally aided person;
  - (ii) the extent to which, and the reason why, the legally aided person obtained the outcome sought in the proceedings, and
  - (iii) the strength of the application for permission at the time it was filed, based on the law and on the facts which the provider knew or ought to have known at that time;

# JUDICIAL REVIEW CASES

## How to get paid?

(c) the defendant withdraws the decision to which the application for judicial review relates and the withdrawal results in the court—

- (i) refusing permission to bring judicial review proceedings, or
- (ii) neither refusing nor giving permission;

(d) the court orders an oral hearing to consider—

- (i) whether to give permission to bring judicial review proceedings;
- (ii) whether to give permission to bring a relevant appeal, or
- (iii) (iii) a relevant appeal

# JUDICIAL REVIEW CASES

How to get paid?

(e) the court orders a rolled-up hearing.

# 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 COP Examples

- Importance of the matter to the Client
- Did the Client have any medical or mental health issues?
- Urgency
- Complexity
- Experience of the fee earner- Are you an Accredited Legal Representative
- Limited or no recourse to Counsel
- ECHR issues- Article 5 & 8
- Instructions via Official Solicitor or Litigation Friend

# DISCRETIONARY ENHANCEMENTS

## Specific JR Examples

- Extensive pre-action work and day-to-day running of the case
- Did the Client have any medical or mental health issues?
- Urgency
- Complexity- factual and legal circumstances?
- Experience of the fee earner
- Limited or no recourse to Counsel
- ECHR issues- Article 5 & 8
- Does the matter have any wider public interest?

# 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

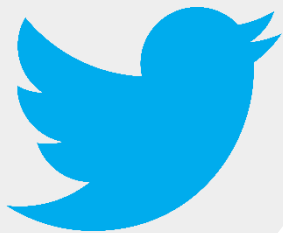




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