

Updating Costs Assessment Guidance June 2020

Resolution's comments and questions

1. We have no comments on the proposed changes to the Costs Assessment Guidance (CAG) set out in the table provided which seem to do what is necessary to implement the transfer of work to the LAA.
2. We would ask that the LAA also consider amending paragraph 15.18 of the CAG to allow time to be claimed for appeals against assessments by the Agency at least where the assessment would previously have been undertaken by the court. Otherwise, there will be a disincentive to deal with complex appeals on costs. Not being able to claim time does not seem to be fair or right for the larger bills. It is possible to claim reasonable costs for costs hearings before a DJ.
3. We have some comments on the amendment to Appendix 1 to clarify the circumstances when the Level 2 private law family fee may be claimed – please see our comments in the table attached.
4. Some providers may not wish to utilise the LAA option fully in the optional phase if they are in areas where their bills are still moving. But the experience to date of our Legal Aid Committee members, using the option to submit court assessed claims to the LAA's civil finance team ahead of the operational consultation closing, has been positive and provided speedy payment. We hope that the LAA will maintain this approach and would ask that target turnaround times be shared with representative bodies and providers as part of the consultation outcome.
5. We would ask whether there is scope for the transfer to the LAA to be temporary, and reviewed in say 6 months, once both the LAA and providers have real experience of the process as operated by the LAA.
6. If that is not possible, our view is that both the options of sending claims to the LAA and the courts should continue to be available for a period of 6 months and certainly for longer than the intended 28 days post consultation. As indicated above, experience across courts varies and some are now moving on costs assessments. It would assist cashflow for both the LAA and court avenues to be open whilst the pandemic continues. There is also a lack of confidence that enough staff could be adequately trained up as costs assessors on more complex bills and gain experience in less time, and to avoid unnecessary retrospective fixes.
7. When all claims transfer, regardless of timing, we are keen to work collaboratively with the LAA to plan for the smooth transition of the assessment process and, importantly, to give providers confidence in the system and that the LAA assessors can understand the complexities and work involved. The concern is that the experience of judges in understanding and assessing hourly rate claims, numbers of hours needed and how complex cases run simply cannot be quickly replaced.
8. We share concerns expressed by the ACL and others about who will be the costs assessors of large previously court bills, whether there will be sufficient LAA staff with the knowledge and

experience to deal with the number of bills in the short term particularly in complex and large cases, and to maintain turnaround times. Whilst we appreciate the LAA's efforts to get bills turned around and improve cashflow for providers, the LAA's capacity is untested (and we would be concerned about them having to rely on less experienced assessors to meet demand).

9. Larger bills for the more complex cases are very different from claims for costs under £2,500, and complex bills are a significant piece of work in themselves. We hope that the LAA will work from information provided in bills as judges do. We would ask for clarification that uploads, for example of multiple emails, will not be needed; and that the LAA will hold bills where there is any need to ask for more information or materials and whilst such is being uploaded.
10. It would be really helpful if the LAA could share with us their training materials for and any internal guidance to their costs assessors, in addition to the CAG and Civil Finance Electronic Handbook (and around how those interface) to ensure a shared understanding of the right approach and consistency, for example, in applying uplifts and enhancements and time allowed for perusal, preparation and work done.
11. At the CCCG meeting on 2 June there was mention of any significant reductions requiring sign off by a senior assessor. That raises the question of what 'significant' means both in the optional phase and beyond. We should be grateful for clarification.
12. It will be important to know the plans for the format of bills to be used in the longer term. The interim plan for the types of bill is flexible and largely welcomed. We would like to see the same flexibility and range of formats continuing to apply including the bill of costs option in a traditional court format. Having to present very large bills in the CCMS format line by line will take considerable time and will raise some software issues. We also agree with the ACL that the 24- 30 mins per 10 lines of a CCMS bill are not going to be reflective of the work that is needed especially if there is to be use of CCMS line by line format only (which we would not encourage).
13. We would ask that more time be allowed for the costs of drawing the bill than 30 – 60 minutes where it takes more time to draft. We think this range will simply be insufficient in some cases which would have previously been assessed by the court.
14. There was also a reference at the CCCG meeting on 2 June to LAA staff being involved in costs appeals in the longer term. We should be grateful for more information on what is being considered. In our view an independent appeals process must be retained. We are firmly of the view that experienced external costs assessors must remain in place and be expanded as necessary according to the volume of appeals. We should be grateful for information about the training independent costs assessors will receive to enable them to deal with this new class of work.