Legal Aid Agency

Providing access to justice through working with others to achieve excellence in the delivery of legal aid

Civil finance #HelpUsSayYes webinar: Your questions

Family advocacy scheme (FAS) for providers

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Contents

Family advocacy scheme general:

Q: As a solicitor advocate, I attended a final hearing date because counsel was sick. The hearing lasted more than one day. How can I claim FAS?

A:

- For final hearings, if the advocate changes overnight, each advocate can claim for the days they attended. Counsel should submit their claim as usual, and the solicitor's attendance will be included in your bill.
- For interim hearings or mid-day changes of a final hearing, the advocate who concludes the hearing should claim the FAS fee for the full hearing / final hearing day (15.19, Appendix 2, Costs Assessment Guidance 2024). No payment is made for wasted preparation. How the fee is apportioned can be agreed between the advocates.
- Independent solicitor advocates can be paid as a solicitor agent, with the provider responsible for agreeing and paying their fees. However, you can claim under FAS as if you had directly provided the services. Alternatively, they can register as an independent solicitor advocate, in the same way as counsel, by registering with the provider records department.

Q: In family proceedings, if the conducting solicitor does not attend a hearing and instruct a colleague instead, can the conducting solicitor still charge for preparing a position statement, even though they will not attend the hearing?

A: No, where you instruct a colleague to attend a hearing, this is considered to be an internal arrangement unlike instructing counsel. The preparation of the position statement in readiness for the hearing is generally considered to be part of the FAS standard fee as per 6.3 of the Civil Finance Electronic Handbook.

Q: What is the difference between the 2 bullet point examples on slide 11?

- **Where a hearing covers significant work under both FAS and excluded work, it will be treated as excluded and paid at hourly rates.**
- **Two proceedings: Where one falls within the fixed fee scheme and FAS and the other is excluded proceedings, the lead proceedings should be billed as an interim bill.**

A: The first bullet point relates to how advocacy should be billed. If the hearing covers multiple proceedings, some of which are excluded from FAS, the whole hearing will fall outside of FAS. Non-advocacy work should be billed at the relevant rates / fee scheme and apportioned appropriately.

The second bullet point relates to how these cases should be billed:

- If there are multiple proceedings, some of which are excluded from the fixed fee schemes, the work not excluded will be claimed under a fixed fee / escaped case bill and the excluded work will be claimed at hourly rates. This should be split into two bills:
    - One should be submitted as an interim bill and, once this is paid, the second should be submitted as a final bill. CCMS will generate the bill type based on the lead proceeding so this will need to be amended before the final bill is submitted.

How to calculate the FAS fee

Q: Do paper hearings include asking the court to make an administrative order, like a third-party disclosure order? Can parties claim a hearing unit 1 fee for that?

A: No, it cannot be claimed under the FAS fee, as it is considered to be an administrative process where no advocacy would be expected.

Q: For paper hearings, if a C2 application is issued for the court to re-timetable matters or direct further evidence, can we claim the hearing unit 1 fee if it is clear the application was considered on paper?

A: No, a C2 application cannot be claimed under the FAS fee because it is considered an administrative order with no expected advocacy. This is different from paper hearings, where you can claim hearing unit 1 since there is a possibility the judge might call for an in-person hearing, requiring preparation.

Q: In paper hearings, does the order need to show that FAS is allowed, as usually we cannot claim payment without it being mentioned in the order?

A: No, there does not need to be any FAS recitals in the order giving start and end times, however, it does need to indicate that it was a paper hearing only. If the order isn't clear, please provide your attendance / file note with clarification that it was a paper hearing only.

Q: If a paper hearing considered the statements in the application, does this also mean the application itself was considered, even if there was no supporting statement?

A: Yes, it would include considering the application, if there was no supporting statement with the application.

Q: For paper hearings, does this also apply to consent orders when an application and draft order are submitted?

A: Generally, an application for a consent order is not considered a paper hearing because advocacy is not expected. This is part of the court's administrative process, so the time spent is remunerated at hourly rates or included in the representation fee.

Q: Do we need to apply for further funding if the court lists a review hearing after an effective final hearing in private children proceedings?

A: When the court makes a final determination and then lists a return or review date to check progress, it is not considered a final hearing and should be claimed as an interim hearing. You do not need to apply for additional funding, but you should record the date of final work on your outcomes is after that hearing.

Q: Would attending court for the handing down of judgement be remunerated at hourly rates?

A: If someone attends court to take notes when a judgment is handed down, this is not considered advocacy. The costs are part of the representation fee (PLFRS or CPGFS) or, if it exceeds the fixed fee, it can be paid at hourly rates (attendance rate, not advocacy rate).

However, if advocacy is expected, the attendance falls under FAS. When claiming a final hearing fee under FAS, make it clear that it involved more than just noting the judgment and that advocacy was expected.

Q: Can you clarify the position regarding judgment: If advocates are attending in front of the judge, isn't that considered advocacy?

A: If someone attends court to take notes when a judgment is handed down, this is not considered advocacy. If advocacy was expected, the advocate who handled the hearing should usually attend. Provide an attendance note with start and end times and explain why advocacy was required.

Q: Are judgment days supposed to be claimed at hourly rates?

A: This depends on whether advocacy was undertaken or not. Please refer to the scenarios in the previous two answers.

Q: For a 5-day final hearing where the solicitor handles the hearing and cross-examines an expert on days 1 and 2, can the bolt-on fee be claimed only for days 1 and 2, or also for the remaining 3 days even though the cross-examination ended on day 2?

A: The bolt-on will apply to every day of the final hearing and not just the days the cross examination of the expert took place. Final hearings are considered to be one activity under FAS regardless of the number of days, so the bolt-on would apply to the whole 5 days.

Q: If a notice of hearing is for 1 day, but on that day a hearing is listed for the following day, should I claim 2 FAS or just 1 FAS for 2 days?

A: This depends on whether the hearing on day two was a separate hearing or a continuation / adjournment of day one. If it was listed as a multi-day hearing or the court directed it to continue the next day, the FAS fee is calculated from the start of the first day to the end time on the last day. If the court directed another hearing, the FAS fee is calculated for each day separately. If it is unclear from the court order, you need to explain why they are separate hearings when submitting your claim.

Q: For remote hearings where the Court includes an hour for drafting / agreeing the order within the FAS fee, what happens if those email exchanges continue into the following day(s)? Can those be claimed as outside of the FAS fee?

A: If the court allows an hour for drafting or agreeing the order, you can use that time even if it takes several days. However, if it takes longer than the allowed time, you will not get extra time unless the court changes the order to approve it.

Advocates meetings

Q: Is there a limit to how many advocates meetings counsel can claim?

A: There is no limit to the number of advocate meetings you can claim. However, usually, there are expected to be two meetings under the public law outline. If you have already been paid for two or more meetings, you must upload the court order for any additional meetings you claim.

Q: If there are more than two advocate meetings, and the first meeting was not pre-directed, would it be disallowed according to the two-meeting rule?

A: Any advocate meeting must be ordered by the court. We will only ask to see the order after two meetings have been claimed. If the meeting was not ordered by the court, it should not be claimed. However, if it is later confirmed in an order that an advocate meeting was needed before the hearing, it will be accepted for FAS purposes.

Q: Can an advocate's meeting Fee be claimed on the same day as an interim hearing?

A: If an advocate meeting happens on the same day as an interim hearing, you can only claim it if the meeting is outside the time period used to calculate the interim hearing fee. You need to confirm the start and end times of both the advocate meeting and the interim hearing to ensure they do not overlap.

Final hearings

Q: Are finding of fact hearings (FFH) listed for 1 day or longer in private law proceedings claimed as interim hearings?

A: A FFH is paid as a final hearing in private law children's proceedings, even if the scope of the certificate does not cover attendance at a final hearing. If the hearing lasts more than one day, it is remunerated like a final hearing, with a final hearing fee per day that covers all work done on that day.

Q: Since a dispute resolution appointment (DRA) in private law matters aims to see if both parties can reach an agreement, and this is implied in the order, can it be claimed as a final hearing if the matter concludes with an agreement at the DRA?

A: Dispute resolution hearings are usually claimed at interim rates. The family practice direction says a DRA can be used as a final hearing. To decide if it is payable as a final hearing, check if it meets the criteria in section 7.127 of the 2024 Standard Civil Contract Specification. It must be listed with the intention of making a final determination and be expected to be contested and effective.

If a DRA is listed as a final hearing and meets the definition in section 7.127 of the 2024 Standard Civil Contract Specification, the certificate must be amended to cover a contested final hearing (level 4). If the certificate does not cover level 4 work, the hearing will be out of scope.

If a DRA is listed as an interim hearing but finalises the matter, it should be claimed as an interim hearing and will be in scope. A final hearing fee cannot be claimed just because final orders were made at that hearing.

Q: If the LAA would reject an amendment to a certificate for a final hearing if it's listed as a DRA, how can you claim a DRA as a final hearing?

A: In most cases, a DRA will be an interim hearing, so it is not appropriate to amend the certificate or claim a final hearing fee. The merits team will consider requests for an amendment based on the order listing the hearing. If the order lists the hearing as a DRA with the possibility of final orders, it would not be a final hearing and would be covered by the family help (higher) limitation. However, if the order shows the DRA is to be used as a contested final hearing and is expected to be effective, the amendment is more likely to be granted.

To claim a final hearing fee for a DRA, there must be evidence, in advance, that the court intends to use it as a contested final hearing. If the court order does not justify granting

cover for a contested final hearing, a final hearing fee would not be claimable. The DRA should be claimed at interim rates.

Q: What you described about final orders being made at an issues resolution hearing (IRH) for older children doesn't match reality. In my experience, these hearings are always paid as final hearings. How can we prepare claims when caseworkers do not know how to assess them?

A: An IRH is paid as a final hearing only if it concludes the proceedings with no further hearings listed. If there is joint representation of children and the court makes a final order for one child but lists further hearings for the others, an interim hearing fee applies since the proceedings have not concluded.

We recognise that such hearings may have been claimed and paid as final hearings in the past. This was identified as a training issue, and our caseworkers have received appropriate guidance and feedback to prevent this in the future.

Q: A consent order was agreed before a final hearing and dealt with in a paper hearing. I tried to claim a unit 1 hearing fee, but it was rejected. They said consent orders fall under the representation fee, not FAS. Can you provide some clarity on consent orders?

A: **Before the hearing**: If a consent order is agreed upon before the hearing and sent to the court for approval, it does not count as a hearing on paper. The time spent on this falls under the relevant representation fee or hourly rates, not FAS. Advocacy was not expected.

- **Pre-hearing discussions**: If the consent order is agreed upon during pre-hearing discussions, you can claim the relevant hearing fee.
- **Final hearing**: If the hearing was scheduled as a final hearing and was expected to be contested, you can claim the final hearing fee, if the consent order was agreed upon in pre-hearing discussions.

Q: If a hearing was listed as an issues resolution hearing (IRH) but was actually heard as a final hearing (FH) in private children's law, and the order states it should be treated as a FH, can this be claimed as a FH?

A: You can only claim an IRH as a FH if it is under the public law outline. In private law, an IRH does not have any context. For an IRH in private law to be claimed as a FH, it must meet the criteria in section 7.127 of the 2024 Standard Civil Contract Specification: It must be listed to make a final determination and be both effective and contested. If it was not listed to make a final determination, it is considered an interim hearing.

Q: Are hearings remunerated differently for the pathfinder court process?

A: The pathfinder process falls under the usual family remuneration provisions, like the FAS and PLFRS fee schemes. Under the pathfinder pilot, a decision hearing is treated like a final hearing. To determine if it should be paid as a final hearing, follow these criteria:

- The hearing is listed as a decision hearing (intended to be contested and resolve the case).
- The hearing is effective as a decision hearing (covers substantive issues).
- The certificate covers attendance at a final hearing.

If the certificate has not been amended to cover a final hearing, no fee can be paid for an effective decision hearing. If the hearing is not listed as a decision hearing or is not expected to be used as one, an interim hearing fee should be paid.

Q: If we claim a final hearing fee and the rules aren't clear, can we explain why in the bill? Will this explanation help avoid rejection, or is it always rejected under FAS? If it is always rejected, how can we clarify this before submitting the bill?

A: We cannot assess FAS fees because they are fixed. If a hearing is claimed incorrectly under FAS, we have to reject it. If you are unsure which fee applies, submit a billing enquiry via CCMS. You can now upload documents with your enquiry, so we suggest uploading the order for the hearing and the order listing it.

Q: If there is no "without notice" hearing, but there is one "on notice" hearing and matters are concluded, is this considered a final hearing?

A: This would depend on whether or not the intention was to make a final order. Presumably the question relates to non-molestation proceedings. Generally, the on notice hearing will be payable as a final hearing.

Q: If the hearing is listed as a FH but the opponent does not turn up, so it is not contested, is this an interim hearing payment or a FH payment?

A: If the opponent fails to attend without notice, you can still claim the final hearing fee because you prepared for a contested final hearing. The hearing must be effective as a final hearing. However, if the opponent gave notice that they would not attend, you should claim the final hearing at interim rates since it was not expected to be contested.

Q: If a hearing continues through lunch, do we need to confirm that there was no lunch break, even if it doesn't affect the hearing units claimed?

A: If a hearing continues between 12pm and 2pm, it is expected that a lunch break was taken. If the hearing starts or ends during this time, it is helpful to note no lunchtime adjournment occurred. This is only necessary if it affects the hearing units being claimed.

Counsel FAS

Q: If the certificate is for family help higher and does not cover the final hearing, but counsel has been allocated the final hearing fee and the LAA has paid it by mistake, how do you resolve this error since the certificate did not cover it?

A: We apologise for any mistakes where we have overlooked an incorrectly billed claim from counsel and made a payment. When these errors are found during the solicitor's claim submission, they need to be corrected before the final bill is paid. As the contracted party, solicitors are responsible for payments on the certificate.

We understand this takes extra time, so we encourage you to check counsel's fee notes before allocating counsel fees and before they submit their claim where possible.

Common issues with incorrect claims include:

- Final hearings not covered by the certificate or hearings that should be billed at interim rates because they were uncontested.
- Hearings at Lay Bench level claimed at District / Circuit Judge level.
- Counsel claiming on the wrong certificate when the client has more than one.

Q: Is it true that CCMS will not show recoupments, and we have to check with counsel if they were recouped?

A: Any recoupments will not reflect in the bill payment screen in the cost allocation. Counsel will need to let you know when they have had fees recouped.

Q: If the system does not show recoupments, how do we know if the fees have been recouped? Can we claim all the extra work as part of the preparation?

A:

- The instructing solicitor should liaise with counsel to ensure all fees are correctly claimed.
- If recoupments have happened or are expected, confirm with Chambers.
- If you cannot get this information from Chambers, submit a billing enquiry, and we can advise on any recoupments.
- Any correspondence with Chambers or the LAA can be claimed, following usual assessment rules.

Q: If counsel did not claim enough, do they need to request a recoupment of their original claim and then submit a new claim for the full amount, or can they just submit a claim for the additional amount?

A: Counsel should contact LAA via a general enquiry to inform LAA of the issue. LAA may then review the claim and advise on the best course of action on a case-by-case basis.

Q: I had a care hearing, but the final hearing was not covered. Counsel was paid for the final hearing, but now I need to get their fee recouped because it was not covered. Wouldn't the LAA check the certificate before paying counsel (even though we should also check)?

A: All bills are processed using a risk-based approach. Counsel are paid under the FAS and claim their fee before the final bill, essentially as an interim bill. We aim to get the payment right the first time, but when counsel submit their claim, there is usually less information available than with the solicitor's final bill. The instructing solicitor confirms that counsel fees match what they instructed and the allocated costs. Additional checks are made when processing the solicitor's final bill to ensure counsel fees are correct based on any new information.

We recommend the instructing solicitors should brief counsel on the type of hearing and the potential FAS fees to ensure the correct fee is claimed.

Q: If counsel has been paid incorrectly (overpaid), do we need to wait for their fees to be recouped before submitting the solicitor's final bill?

A: Yes, await confirmation from counsel that the incorrectly paid fee has been recouped.

Q: How can solicitors ascertain that the correct fee has been claimed when fee notes do not provide a breakdown or any way of knowing how the total has been arrived at?

A: Whilst counsel may only provide you with their fee note, we would ask that if is not clear what they are claiming for, you liaise with them to establish this.

Other

Q: Do you need a VAT receipt for car parking under £20?

A: If a disbursement is under £20 (including VAT) a disbursement voucher, such as a receipt, will not be required. However, we do need to know what the fee is in relation to, so a note in the narrative or attendance note confirming the fee and what it relates to, will be sufficient as evidence.

Q: Does the £20 include VAT? Also, if a ticket shows a breakdown between the base amount and VAT, is VAT calculated on top of the total, meaning VAT on VAT?

A: The £20 includes VAT. If a fee is over £20 with VAT, you need a disbursement voucher. True disbursements can include VAT, but the LAA needs a breakdown showing VAT separately.

According to section 4.13 of the Costs Assessment Guidance:

- “If a travel expense includes VAT, the VAT should not be claimed or calculated twice. The VAT should never be double charged, merely accounted for.”

Q: Can we claim time spent uploading documents to the court portal as fee earner work for public law care cases?

A: Time for applications or correspondence with the court would be claimable subject to the usual assessment provisions irrespective of the method of submission.

However, if, for example, the time is for uploading documents to be included in the court bundle, this would be considered administrative work. This would be the equivalent of making up the bundle which is irrecoverable as per 2.16 of the Costs Assessment Guidance 2024.

We would, therefore, consider the nature of the work being claimed. If you believe time is recoverable, please describe the task being completed through the portal rather than just recording it as ‘uploading documents onto the court portal’. If we can understand the reason documents were uploaded to the portal, it is less likely to be considered a solely administrative task.