

Dear All

Welcome to the Fees Clerk loop V3 !

Please use this version.

Scott Baldwin, Chris Ferrison, Sam Momtaz QC and I started discussions with LAA last week on C19 and legal aid. Scott sets out his excellent summary below. We continue disc this week on Thursday and will update you then. This loop is a line of communication between you all to support each other, ask questions of each other and to have colleagues help you if they can. It also serves to give us a picture of issues on the ground.

**Don't reply all unless necessary.**

**Scott's summary :**

The LAA have clarified the current guidance so that there is certainty about what can be currently claimed. They are looking at other aspects of the regulations to assess whether any changes need to be made to statutory instruments, contracts or guidance.

Formal guidance has been produced see attached. This will shortly be uploaded onto LAA website.

The LAA are going to be as flexible as they can. We need to do all we can to make it easy for them. Follow the guidance below about court hearings and bolt-ons and there is far less risk of a claim being rejected for lack of clarity.

### **HMCTS**

It is a matter for the judiciary whether to hold a hearing via telephone or video conferencing. If it's a teleconference, **then HMCTS staff will set it up** using the BT Meet Me and there is no cost to other participants. If an advocate or client incurs any costs in joining a remote hearing this can be claimed as a disbursement.

If it's a videoconference then **HMCTS staff will set it up**, they are currently using Skype for Business, in addition to the existing JVS video conference system. The choice of conferencing platform is a matter of judicial discretion. HMCTS are considering additional conferencing platforms and they will update their guidance as necessary.

**HMCTS staff, when instructed by a judge, will send the notice of the telephone or Skype hearing to all parties.** This will advise you how you will be invited to the call and provide information for the hearing to be effective.

If somebody requires a reasonable adjustment or an interpreter, HMCTS staff will make sure this is considered and actioned when arranging the hearing. All telephone and Skype hearings will be recorded, even if this is not normally the case.

## Funding for Advocates meetings/conferences

The advocates will decide who should arrange the meeting and set up the telephone or video conference facilities.

Where possible advocates should use free services such as Skype or Zoom. Where this is not possible **the cost of setting up a teleconference and dialling into the meeting are a claimable disbursement.**

We may be able to use the travel/hotel expenses part of CCMS to claim this providing we upload an explanation and evidence, but this is unclear. That will rely on being able to get a copy of your mobile bill promptly or risk delaying a claim. It would be better to use a free teleconferencing tool.

## Advocates Meetings

There are no limits to the number of advocates meetings claimable in Care Proceedings. **There is currently no way to claim for advocates meetings in Private Law or Domestic Abuse proceedings,** see below in hearing times.

The evidence required by the LAA is an endorsed brief and a copy of the approved order listing the advocates meeting. **The brief can be endorsed digitally** without the need for a physical signature.

Advocates meetings **may now be arranged through email rather than court order. The provision of email evidence from the court and/or the judge will be treated as the same as providing the order.**

The LAA **will also accept retrospective recording of advocates meetings in orders** which follow such a meeting.

An advocate's meeting can take place on the same day as an interim hearing but it may be claimed only **if the meeting takes place outside of any time period** that is taken into account in calculating the fee for the interim hearing.

## AA/FAS Forms

An advocate's attendance form **will not be required** in hearings undertaken by video or telephone conference.

Where a court order sets out all the information that is required i.e. the names of each of the advocates that participated in that hearing, the start and finish times for the hearing (including lunch breaks) would be acceptable evidence. If the court order does not have all the required information then the LAA will require an attendance note as well.

Bolt-ons may be claimed for telephone/video hearings if appropriate. As there will be no Advocates Attendance Form, notes of the hearing will need to be recorded and the claim justified on CCMS, the CLAIM 1A or the CLAIM 5A. An easy way to do this would be:

- Expert/Capacity: point to the relevant parts of the instructions
- Harm: copy and paste the relevant section from the C110/threshold
- Bundle: copy of the index

Barristers will have to make it clear which bolt-ons they are claiming and provide the relevant evidence to their clerks.

### **Hearing Times**

The hearing time will start from the time that the telephone call/videoconference was ordered by the judge. **There may be initial discussions which can happen on a conferencing platform which is different to the hearing itself. This time will be counted towards the hearing time.** If the judge attends to ensure everyone is present then absents themselves for pre- hearing discussions and then re-joins the telephone hearing that time will be counted.

Advocates may also need some time after the hearing is finished to finalise the terms of the order. **Time spent on the phone/videoconference finalising the order can be included in the calculation of hearing time.** These discussions may be on a conferencing platform different to the one used for the hearing.

You will need to ensure that the order records the time that the negotiations started and the time that the order was finalised. Those are the start/finish times for calculating the units. You cannot bill for a separate advocates meeting if it takes place inside those times.

There is currently no mechanism to claim advocates meetings in Private Law or Domestic Abuse cases. It is therefore sensible to ensure that all negotiations take place within the hearing times in such proceedings. This is one of the issues the LAA are looking at but to amend it means amending the statutory instrument so it may take time.

### **Email Hearings**

The President's National Guidance says that remote hearings may also be conducted by way of an email exchange between the court and the parties. How such hearings are conducted will vary from case to case. Some cases may be resolved in a few emails whilst others may only be resolved after many emails. The time spent by advocates may therefore vary from case to case. **We will accept a court order that's sets out the start and finish time of the hearing and the names of the advocates.** If this information is not on the court order then advocates would need to self-certify the amount of time spent reading and responding to emails. We would expect to see copies of emails and a copy of the court order with the advocate's name recorded.

The hearing may be calculated based on the time of the first email and the time of the final email confirming the agreed order.

Common sense needs to apply here, and we should not be claiming excessively. A sensible approach may be for parties to agree that email negotiations which are in place of a court hearing would only be conducted during normal office hours.

### **Conferences**

Conferences can currently take place by video-conference or by telephone. The LAA requires an endorsed brief and a note of the conference. Provided the brief has the start/finish times (especially if it's the same day as a hearing) then only a summary of the notes is required.

There are limits to the number of claimable conferences: two in Care and Private Law, but none in Domestic Abuse.

No conference fee may be claimed for any conference held on the same day as a final hearing. Any discussions or negotiations taking place on any day of a final hearing will be covered by the fee for advocacy at that hearing.

A conference fee may be claimed for a conference that takes place on the same day as an interim hearing, only if the conference takes place outside of any time period that is taken into account in calculating the fee for the interim hearing. Therefore no conference fee may be claimed for a conference that takes place between the time that the hearing is listed to start and the time that hearing actually starts as this will be claimed as part of the Hearing Unit.

The issue of conference limits is something else the LAA would need to amend the SI and so are looking into it.

### **Cancelled Hearing**

Where a self-employed advocate has been instructed to provide advocacy at a hearing and carries out at least 30 minutes of preparation work for the hearing, but the hearing does not take place (i.e. it is cancelled before the advocate travels to court) they will be able to claim a payment for a one hour hearing (Hearing Unit 1) if the cancelled hearing was an Interim Hearing, or half of the Final Hearing fee if the cancelled hearing was a Final Hearing. No bolt-on fees may be claimed with any claim for a cancelled hearing.

If an advocates hearing and a hearing are scheduled for the same day and the parties agree an order at the advocates meeting which then vacates the hearing, the advocate can claim both the advocates meeting fee and the cancelled hearing fee.

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