

The proposal to cap ISW fees are contained in the following **Legal Service (Funding) (Amendment) Order 2011** at paragraphs 143 and 144. The expectation is that this will be implemented on 2nd May 2011. The whole of the consultations around this seem to have taken place without any stakeholder input. At mychildcontact.com we are dedicated to lobbying the Government to appoint a Minister with sole responsibility of Child Contact and Access issues. That appointment, in this case would have given us the opportunity to properly address any anomalies in process before implementation. (See our petitions section of the Forum).

STATUTORY INSTRUMENTS

2011 No. 0000

LEGAL SERVICES COMMISSION, ENGLAND AND WALES

The Community Legal Service (Funding) (Amendment) Order 2011

<i>Made</i>	- - - -	<i>2011</i>
<i>Laid before Parliament</i>		<i>2011</i>
<i>Coming into force</i>	- -	<i>2 May 2011</i>

The Lord Chancellor makes the following Order in exercise of the powers conferred by sections 6(4) and 25(8A) of the Access to Justice Act 1999([1]).

The Lord Chancellor has consulted the General Council of the Bar and the Law Society in accordance with section 25(2) of that Act and has had regard to the matters specified in section 25(3) of that Act.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Community Legal Service (Funding) (Amendment) Order 2011 and comes into force on 2nd May 2011.

0. In this Order “the 2007 Order” means the Community Legal Service (Funding) Order 2007([2]) and words and phrases used in this Order have the same meaning as in the 2007 Order.

Amendments to the 2007 Order

1. The 2007 Order is amended as follows.

1. In article 3(1)—

a. after the definition of “the 2007 Act” insert—

““2010 Standard Civil Contract” means the contract so named between the Commission and a provider for the provision of funded services, including the contract for signature, the standard terms, the schedules and the specifications([3]);

“advocates’ meeting” means an advocates’ meeting held under stage 2 or 3 of the Public Law Outline;

“advocacy services” means work done—

- (i) by an advocate at a court hearing;
- (ii) by an advocate, as such, in connection with an advocates’ meeting;
- (iii) by counsel in connection with a conference, and
- (iv) by counsel in connection with an opinion;

and fees and rates for advocacy services include (unless different provision is made in this Order) remuneration for preparatory work, travelling and waiting in relation to those services;

“certificate” means a certificate issued under Part 2 of the Funding Code;

“child abduction proceedings” means proceedings within section 11.13 of Part 1 of the Funding Code”;

- a. after the definition of “Commission” insert—

““counsel” means—

a barrister in independent practice; and

a solicitor or Fellow of the Institute of Legal Executives who does not work in a partnership and who does not hold a Unified Contract;”;

- a. in the definition of “family proceedings” omit everything after sub-paragraph (i);
- a. after the definition of “family proceedings” insert—

““final appeal” means any appeal against a final order in family proceedings but does not include—

- a. an application to the court of first instance for permission to appeal; and
- b. advice on the merits of appealing against a final order;”;
- a. after the definition of “Mental Health Proceedings” insert—

““Public Law Outline” means the outline set out in the table following paragraph 10 of the Practice Direction ‘Public Law Proceedings: Guide to Case Management, April 2010’, made by the President of the Family Division;

“provider” means a party to the 2010 Standard Civil Contract other than the Commission;”;

- a. in the definition of “Unified Contract” before “between” insert “so named”.

2. In article 3(2)—

- a. after ““Family Help (Lower)”” insert ““Family Help (Higher)”, “Investigative Help””;
- a. for ““and “Legal Representation”” substitute ““Legal Representation” and “Full Representation””.

3. For article 5(1)(a) substitute—

- 4. “(a) after competitive tendering as to price has taken place;”.

5.—(1) For article 5(2) substitute—

6.“(2) Any contract for the provision of funded services under section 6(3) of the Act—

- a. must provide for payment by the Commission at the fees and hourly rates set out in Schedules 1 and 2;
- a. may provide for a percentage enhancement to the hourly rates set out in Schedule 1, provided that the percentage enhancement must not exceed—
 - i. 200% for non family proceedings in the Upper Tribunal, High Court, Court of Appeal or the Supreme Court; and
 - i. 100% for all other proceedings;

- a. must, if it relates to family proceedings, include provisions that accord with those in Schedules 3 and 4 insofar as they are relevant; and
- a. must include provisions relating to payment of disbursements that accord with those in Schedule 5, insofar as they are relevant.

1. For the Schedule to the 2007 Order, substitute the Schedule to this Order.

7.—After article 5 insert—

“Advocacy services in family proceedings

5A.—(1) Subject to paragraph (2), the Commission must fund advocacy services in family proceedings as part of the Community Legal Service in accordance with—

- (a) the fees and rates set out in Schedule 2; and
- (b) the provisions of section 2 of Schedule 4.

(2) Where paragraph (3) applies, the Commission must fund advocacy services as part of the Community Legal Service in accordance with the provisions of section 3 of Schedule 4.

(3) This paragraph applies to advocacy services in family proceedings provided—

- (a) to any party in child abduction proceedings;
- (b) in proceedings under the Inheritance (Provision for Family and Dependants) Act 1975(~~[4]~~);
- (c) in proceedings under the Trusts of Land and Appointment of Trustees Act 1996(~~[5]~~);
- (d) in proceedings under Part 4A of the Family Law Act 1996(~~[6]~~);
- (e) in defended proceedings for divorce or judicial separation, for dissolution of a civil partnership or the legal separation of civil partners;
- (f) in proceedings for nullity of marriage or annulment of a civil partnership;
- (g) in applications for a parental order under the Human Fertilisation and Embryology Act 2008(~~[7]~~);
- (h) in proceedings under the inherent jurisdiction of the High Court in relation to children;
- (i) where the advocate separately represents a child in proceedings which are neither specified proceedings within the meaning of section 41(6) of the Children Act 1989(~~[8]~~) nor are heard together with such specified proceedings;
- (j) in proceedings in the Court of Appeal or the Supreme Court;
- (k) in a final appeal;
- (l) by Queen’s Counsel acting as such under a prior authority given by the Commission;
- (m) under an individual case contract for a high cost case issued under rule A3 of Part 2 of the Funding Code.

Disbursements

5B. Subject to the provisions of Schedules 4 and 5, nothing in this Order prevents the Commission from paying reasonable disbursements.”.

Saving provision in relation to the 2007 Order

2. Where funded services are provided under a certificate and—

- a. the application for the certificate was made before 2nd May 2011, regardless of whether the scope of the certificate is extended on or after that date; and
- a. the application was received by the Commission before 9th May 2011,

the 2007 Order continues to have effect as if this Order had not been made.

Revocation of the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001

2.—(1) Subject to paragraph (2), the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001(**[9]**) is revoked.

3.(2) Where funded services are provided under a certificate and—

- a. the application for the certificate was made before 2nd May 2011, regardless of whether the scope of the certificate is extended on or after that date; and
- a. the application was received by the Commission before 9th May 2011,
- b. that Order continues to have effect.
- c.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE

Article 6(2)

“SCHEDULE 1

Article 5

Fees and Hourly Rates

Subject to any specific provisions of this Schedule, words and expressions used in this Schedule have the same meaning as in the 2010 Standard Civil Contract or, in relation to services provided under the Unified Contract, that contract. The fees and rates in this Schedule are exclusive of value added tax. References to “Schedule Authorisation” shall, in respect of serviced provided under the Unified Contract, be read as “Specialist Quality Mark”.

Part 1 - Civil Standard and Graduated Fees

1 - Legal Help and Help at Court

Table 1

The fees in this Table for Housing do not apply to the Housing Possession Court Duty Scheme – see Table 6.

<i>Category</i>	<i>Schedule Authorisation Fixed fee</i>	<i>Schedule Authorisation Exceptional Thresholds</i>	<i>Tolerance Fixed Fee</i>	<i>Tolerance Exceptional Thresholds</i>
Actions against the Police	£266	£798	£154	£462
Clinical Negligence	£217	£651	-	-
Community Care	£296	£888	£179	£537
Consumer General Contract	£177	£531	£149	£447
Debt	£200	£600	£123	£369
Education	£302	£906	£152	£456

Employment	£230	£690	£150	£450
Housing	£174	£522	£138	£414
Miscellaneous	£88	£264	-	-
Personal Injury	£226	£678	£154	£462
Public Law	£288	£864	£207	£621
Welfare Benefits	£167	£501	£136	£408

2 - Family Public Law

Table 2 (a): Legal Help

National

£147

Table 2(b): Family Help (Lower) – section 31 Children Act 1989 Care or Supervision Proceedings only

National

£405

Table 2(c): Legal Representation - section 31 Children Act 1989 Care or Supervision Proceedings only

<i>Party</i>	<i>Court</i>	<i>Number of Clients</i>	<i>Midlands</i>	<i>North</i>	<i>London and South</i>	<i>Wales</i>
Child	Other	1	£2,165	£1,775	£2,485	£2,426
Child	Other	2 or more	£3,247	£2,662	£3,728	£3,639
Child	High	1	£2,879	£2,361	£3,305	£3,226
Child	High	2 or more	£4,319	£3,542	£4,957	£4,838
Joined Party	Other	-	£1,148	£887	£1,334	£1,445
Joined Party	High	-	£1,527	£1,180	£1,774	£1,922
Parent	Other	1	£2,840	£2,359	£3,230	£2,925
Parent	Other	2	£3,551	£2,948	£4,037	£3,657

Parent	High	1	£3,777	£3,137	£4,296	£3,891
Parent	High	2	£4,721	£3,922	£5,369	£4,864

3 - Family Private Law

Words and expressions in Table 3 (e), Table 3 (f) and Table 3 (g) have the same meaning as in Schedule 3.

Table 3 (a): Legal Help

National

£96

Table 3 (b): Legal Help - Divorce Petition only

National

£162

Table 3 (c): Family Help (Lower) - Children

	Fee	<i>Settlement Fee</i>
London	£256	£153
Non-London	£221	£132

Table 3 (d): Family Help (Lower) - Finance

	Fee	<i>Settlement Fee</i>
London	£268	£161
Non-London	£231	£139

Table 3 (e): Higher Standard Fee Scheme – Children

<i>Court</i>	Family Help (Higher) Standard fee	Legal Representation Standard Fee
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London	Other	£471	£335
	High Court	£565	£402
Non-London	Other	£392	£279
	High Court	£471	£335

Table 3 (f): Higher Standard Fee Scheme – Finance

	<i>Court</i>	Family Help (Higher) Standard Fee	Family Help (Higher) Settlement Fee	Legal Representation Standard Fee
London	Other	£523	£105	£416
	High Court	£628	£125	£499
Non-London	Other	£436	£87	£346
	High Court	£523	£105	£416

Table 3 (g): Higher Standard Fee Scheme – Domestic Abuse Proceedings

	<i>Court</i>	<i>Legal Representation Standard Fee</i>
London	Other	£675
	High Court	£810
Non-London	Other	£563
	High Court	£675

4 - Immigration

Table 4 (a): Immigration standard fees

	Stage 1 (Legal Help)	<i>Stage 2a (Controlled Legal Representation)</i>	Stage 2b (Controlled Legal Representation)
Asylum	£459	£252	£630
Immigration Non- asylum	£260	£252	£504

Table 4 (b) Additional payment – Home Office interview

Representation at Home Office interview	£296
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Table 4 (c): Additional payments – advocacy services

	Additional Payment
Oral Case Management Review Hearing	£184
Telephone Case Management Review Hearing	£100
Representation at a substantive hearing in the Immigration and Asylum Chamber of the First-tier Tribunal	£336 Asylum, £263 Immigration
Additional day substantive hearing	£179 Asylum, £179 Immigration

Table 4 (d): Immigration removal centres standard fees (for exclusive schedule holders only)

On-site surgery – advising five or more clients	£400
On-site surgery – advising four clients or fewer	£200
Fast-track standby payment	£37.80

5 - Mental Health

Table 5 (a): Basic Fees

	Basic Fees
Mental Health – non-Tribunal	£281
Level 1 (Mental Health Proceedings)	£143
Level 2 (Mental Health Proceedings)	£357
Level 3 (Mental Health Proceedings)	£327

Table 5 (b): Additional Fees

	Additional Fees
Adjourned Hearing Fee	£130
Remote Travel payment Level 1 (Mental Health Proceedings)	£77
Remote Travel payment: Mental Health – non-Tribunal, Level 2 (Mental Health Proceedings), Level 3 (Mental Health Proceedings)	£153

6 - Housing Possession Court Duty Scheme

Table 6: Standard Fee

London	£84
Non-London	£79.50

Part 2 - Hourly Rates – Controlled Work

7 - Legal Help, Help at Court and Family Help (Lower)

Table 7 (a): Immigration exceptional cases, Mental Health, Actions against the Police etc., Public Law, Education and Community Care

<i>Activity</i>	London Rate	<i>Non-London Rate</i>
Preparation, attendance and advocacy	£58.50 per hour	£53.60 per hour
Travel and waiting time	£30.90 per hour	£30.00 per hour
Routine letters out and telephone calls	£4.50 per item	£4.20 per item

Table 7 (b): Family and Housing (except as in Table 7 (c)) and Employment

<i>Activity</i>	London Rate	<i>Non-London Rate</i>
Preparation, attendance and advocacy	£54.15 per hour	£51.05 per hour
Travel and waiting time	£28.60 per hour	£28.60 per hour
Routine letters out and telephone calls	£4.20 per item	£4.05 per item

Table 7 (c): Legal Help or Help at Court provided in relation to a review under section 202 of the Housing Act 1996([10]) and to a defendant to a possession claim in the county court; Family Help (Lower) and related Legal Help in relation to care or supervision proceedings under section 31 of the Children Act 1989

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, attendance and advocacy	£62.40 per hour	£58.40 per hour
Travel and waiting time	£30.90 per hour	£30.05 per hour
Routine letters out and telephone calls	£4.50 per item	£4.20 per item

Table 7 (d): Immigration hourly rates cases

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, attendance and advocacy	£57.35 per hour	£52.55 per hour
Travel and waiting time	£30.30 per hour	£29.45 per hour
Routine letters out and telephone calls	£4.40 per item	£4.10 per item

Table 7 (e): All other categories and all tolerance work

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation, attendance and advocacy	£51.70 per hour	£48.75 per hour
Travel and waiting time	£27.35 per hour	£27.35 per hour
Routine letters out and telephone calls	£4.00 per item	£3.85 per item

8 - Controlled Legal Representation

Table 8 (a): Immigration – exceptional cases

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
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Preparation and attendance	£64.25 per hour	£60.10 per hour
Travel and waiting time	£31.80 per hour	£30.90 per hour
Routine letters out and telephone calls	£4.60 per item	£4.30 per item
Advocacy	£73.10 per hour	£73.10 per hour

Table 8 (b): Immigration – Upper Tribunal cases where permission granted to client (non-Fast-track)

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and attendance	£82.62 per hour	£77.29 per hour
Travel and waiting time	£40.91 per hour	£39.76 per hour
Routine letters out and telephone calls	£5.94 per item	£5.54 per item
Advocacy	£93.96 per hour	£93.96 per hour

Table 8 (c): Immigration – other hourly rates cases

<i>Activity</i>	<i>London Rate</i>	<i>Non-London Rate</i>
Preparation and attendance	£61.20 per hour	£57.25 per hour
Travel and waiting time	£30.30 per hour	£29.45 per hour
Routine letters out and telephone calls	£4.40 per item	£4.10 per item
Advocacy	£69.60 per hour	£69.60 per hour

Table 8 (d): Representation in Mental Health proceedings

<i>Activity</i>	<i>London Rate</i>	<i>Non London Rate</i>
Preparation and attendance	£64.25 per hour	£60.10 per hour
Travel and waiting time	£31.80 per hour	£30.90 per hour
Letters and telephone calls	£4.60 per item	£4.30 per item

Advocacy	£73.10 per hour	£73.10 per hour
Attending tribunal with counsel	£34.20 per hour	£34.20 per hour

Part 3 - Hourly Rates – Licensed Work

9 - Family Prescribed Rates

Table 9 (a): Care Proceedings

<i>Activity</i>	Higher Courts	<i>County court and family proceedings court</i>
Writing routine letters	£4.70 per item	£4.10 per item
Receiving routine letters	£2.35 per item	£2.05 per item
Routine telephone calls	£4.70 per item	£4.10 per item
Preparation and attendance	£77.85 per hour (London Rate) £73.15 per hour (non-London Rate)	£68.20 per hour (London Rate) £64.90 per hour (non-London Rate)
Attending at court or conference with counsel	£41.25 per hour	£36.30 per hour
Advocacy	£77.85 per hour (London Rate) £73.15 per hour (non-London Rate)	£71.50 per hour
Travelling and waiting time	£35.75 per hour	£32.45 per hour

Table 9 (b): Other Family Proceedings

The fees in this Table do not apply to proceedings under the Inheritance (Provision for Family and Dependents) Act 1975 or proceedings under the Trusts of Land and Appointment of Trustees Act 1996 – Table 10 (a) or Table 10 (b) apply to those proceedings.

<i>Activity</i>	Higher Courts	<i>County court and family proceedings court</i>
Writing routine letters	£7.05 per item	£6.00 per item
Receiving routine letters	£3.50 per item	£3.00 per item
Routine telephone calls	£7.05 per item	£6.00 per item
Preparation and attendance	£78.40 per hour (London Rate) £73.05 per hour (non-London Rate)	£66.00 per hour (London Rate) £61.00 per hour (non-London Rate)
Attending at court or conference with counsel	£41.25 per hour	£36.00 per hour

Advocacy	£78.40 per hour (London Rate) £73.05 per hour (non-London Rate)	£66.00 per hour (London Rate) £63.00 per hour (non-London Rate)
Travelling and waiting time	£35.75 per hour	£32.00 per hour (London Rate) £31.00 per hour (non-London Rate)

10 - Non Family Prescribed Rates

Table 10 (a): Higher Courts, county courts and magistrates' courts for work carried out with Schedule authorisation

<i>Activity</i>	Higher Courts	<i>County court and magistrates' court</i>
Writing routine letters	£7.50 per item	£6.60 per item
Routine telephone calls	£4.15 per item	£3.65 per item
Preparation and attendance	£79.50 per hour (London Rate) £75.00 per hour (non-London Rate)	£70.00 per hour (London Rate) £66.00 per hour (non-London Rate)
Attending at court or conference with counsel	£37.00 per hour	£32.50 per hour
Advocacy	£75.00 per hour	£66.00 per hour
Travelling and waiting time	£33.25 per hour	£29.20 per hour

Table 10 (b): Higher Courts, county court and magistrates' court for work not carried out with Schedule authorisation

<i>Activity</i>	Higher Courts	<i>County court and magistrates' court</i>
Writing routine letters	£7.40 per item	£6.50 per item
Routine telephone calls	£4.10 per item	£3.60 per item
Preparation and attendance	£78.50 per hour (London Rate) £74.00 per hour (non-London Rate)	£69.00 per hour (London Rate) £65.00 per hour (non-London Rate)
Attending at court or conference with counsel	£36.40 per hour	£32.00 per hour
Advocacy	£74.00 per hour	£65.00 per hour
Travelling and waiting time	£32.70 per hour	£28.75 per hour

Table 10 (c) First-tier Tribunal

<i>Activity</i>	London Rate	<i>Non-London Rate</i>
Preparation and attendance	£61.20 per hour	£57.25 per hour
Routine letters out and telephone calls	£4.40 per item	£4.10 per item
Advocacy	£69.60 per hour	£69.60 per hour
Attending tribunal or conference with counsel	£32.55 per hour	£32.55 per hour
Travelling and waiting time	£30.30 per hour	£29.45 per hour

Part 4 – Family Mediation Fees

11- Family Mediation

Table 11 (a): Willingness Test

<i>Willingness Test</i>
£25

Table 11 (b): Assessment Meetings

<i>Activity</i>	
Assessment alone	£87
Assessment separate	£87
Assessment together	£130

Table 11 (c): Mediation Fees

<i>Category of Work</i>	Single Session	<i>Multi Session</i>	Agreed Proposal
All Issues Sole Mediation	£168	£756	£252
All Issues Co-Mediation	£230	£1,064	£252
Property and Finance Sole Mediation	£168	£588	£189

Property and Finance Co-Mediation	£230	£834	£189
Child Sole Mediation	£168	£462	£126
Child Co-Mediation	£230	£647	£126

SCHEDULE 2

Article 5 and 5A

Family Advocacy Scheme: Fees and Rates

Words and expressions used in this Schedule have the same meaning as in Schedule 4. The fees and rates in this Schedule are exclusive of value added tax.

1- Public Law Advocacy Fees

Table 1 (a): Care or supervision proceedings under section 31 of the Children Act 1989 – graduated fees

<i>Court</i>	<i>Interim hearing unit 1 (up to 1 hour)</i>	<i>Interim hearing unit 2 (up to 2.5 hours)</i>	<i>Conference fee</i>	<i>Opinion fee</i>	<i>Advocates' meeting fee</i>	<i>Final hearing fee (per day)</i>
Family proceedings court	£96.35	£240.90	£141.90	£117.40	£142.40	£562.50
County court	£106.00	£264.95	£141.90	£117.40	£156.65	£618.75
High Court	£127.20	£317.95	£141.90	£117.40	£188.00	£742.50

Table 1 (b): Other public law cases – graduated fees

<i>Court</i>	<i>Interim hearing unit 1 (up to 1 hour)</i>	<i>Interim hearing unit 2 (up to 2.5 hours)</i>	<i>Conference fee</i>	<i>Opinion fee</i>	<i>Advocates' meeting fee</i>	<i>Final hearing fee (per day)</i>
Family proceedings court	£84.25	£210.65	£141.90	£117.40	£142.40	£515.90
County court	£92.65	£231.70	£141.90	£117.40	£156.65	£567.50
High Court	£111.20	£278.00	£141.90	£117.40	£188.00	£681.00

Table 1 (c): Public law - bolt-on fees

<i>Category</i>	<i>Payable for</i>	<i>Fee</i>
Client – allegation of harm	Hearing	25% of hearing fee
Client – lack of understanding	Hearing	25% of hearing fee
Expert’s cross-examination	Hearing	25% of hearing fee
Exceptional travel fee	Hearings, advocates’ meetings and conferences	£35.60

Table 1 (d): Public law – bolt-on fees - court bundle payments

<i>Hearing</i>	<i>CB1 (351-700 pages)</i>	<i>CB2 (701-1400 pages)</i>	<i>CB3 (over 1400 pages)</i>
Interim hearing	£66.00	£99.00	£99.00
Final hearing	£177.00	£266.00	£354.00

2 – Private Law Advocacy Fees

Table 2 (a): Private law children – graduated fees

<i>Court</i>	<i>Interim hearing unit 1 (up to 1 hour)</i>	<i>Interim hearing unit 2 (up to 2.5 hours)</i>	<i>Conference fee</i>	<i>Opinion fee</i>	<i>Final hearing (per day)</i>
Family proceedings court	£69.65	£174.15	£139.30	£104.50	£441.15
County court	£76.60	£191.55	£139.30	£104.50	£485.25
High Court	£91.95	£229.85	£139.30	£104.50	£582.30

Table 2 (b): Domestic abuse – graduated fees

<i>Court</i>	<i>Interim hearing unit 1 (up to 1 hour)</i>	<i>Interim hearing unit 2 (up to 2.5 hours)</i>	<i>Final hearing fee (per day)</i>
Family proceedings court, county court and High Court	£90.55	£226.40	£401.30

Table 2 (c): Private law finance – graduated fees

<i>Court</i>	<i>Interim hearing unit 1 (up to 1 hour)</i>	<i>Interim hearing unit 2 (up to 2.5 hours)</i>	<i>Financial dispute interim hearing unit 1</i>	<i>Financial dispute interim hearing unit 2</i>	<i>Early resolution fee</i>	<i>Conference fee</i>	<i>Opinion fee</i>	<i>Final hearing fee (per day)</i>
County court	£70.20	£175.50	£112.30	£280.80	£140.40	£140.40	£105.30	£493.00
High Court	£84.25	£210.60	£134.80	£336.95	£168.50	£140.40	£105.30	£591.60

Table 2 (d): Private law – bolt-on fees

<i>Category</i>	<i>Payable for</i>	<i>Fee</i>
Client – allegations of harm	Private law children hearing	25% of hearing fee
Expert’s cross-examination	Private law children hearing	20% of hearing fee
Exceptional travel fee	Hearings and conferences	£35.60

Table 2 (e): Private law children and finance – bolt-on fees - court bundle payments

<i>Hearing</i>	<i>CB1 (351-700 pages)</i>	<i>CB2 (701-1400 pages)</i>	<i>CB3 (over 1400 pages)</i>
Interim hearing	£66.00	£99.00	£99.00
Final hearing	£177.00	£266.00	£354.00

SCHEDULE 3

Article 5

Family Private Law: Higher Standard Fee Scheme

Interpretation

1. In this Schedule—

2. “aspect” means any of the three types of family private law proceedings to which the Higher Standard Fee Scheme applies, namely—

- a. children;
- a. domestic abuse; and
- a. finance.

b. “children” and “private law children” mean proceedings within section 11.11 of Part 1 of the Funding Code;

- c. “domestic abuse” and “domestic abuse proceedings” mean proceedings within section 11.10 of Part 1 of the Funding Code;
- d. “Family Advocacy Scheme” means the scheme of fees for advocacy services set out in Schedule 2 and supplemented by the provisions of section 2 of Schedule 4;
- e. “family private law proceedings” means any type of family proceedings other than public law proceedings;
- f. “finance” and “private law finance” mean proceedings within section 11.12 of Part 1 of the Funding Code and include any family proceedings (other than children and domestic abuse proceedings) that are not public law proceedings;
- g. “Higher Standard Fee Scheme” means the scheme of standard fees for Family Help (Higher) and Legal Representation in family private law proceedings set out at Table 3 (e), Table 3 (f) and Table 3 (g) of Schedule 1 and supplemented by the provisions of this Schedule;
- h. “other public law cases” means proceedings within section 11.7, 11.8 or 11.9 of Part 1 of the Funding Code (other than care or supervision proceedings under section 31 of the Children Act 1989(~~11~~));
 - i. “public law” means—
 - a. care or supervision proceedings under section 31 of the Children Act 1989; and
 - b. other public law cases;
- c. “relevant hourly rates” means the hourly rates in Part 3 of Schedule 1 applicable to the service provided;
- d. “standard fee” means one of the fees set out in Table 3 (e), Table 3(f) or Table (g) of Schedule 1.

Exclusions from the Higher Standard Fee Scheme: excluded proceedings

- 2.—(1) In proceedings to which this paragraph applies, the Higher Standard Fee Scheme does not apply.
- 2. Where sub-paragraph (1) applies, payment for services provided in respect of the excluded proceedings must be in accordance with the relevant hourly rates in Schedule 1.
- 3. Paragraph 2 applies to the following proceedings—
 - a. child abduction proceedings, including where the supplier represents any party to those proceedings;
 - a. proceedings under the Inheritance (Provision for Family and Dependants) Act 1975(~~12~~);
 - a. proceedings under the Trusts of Land and Appointment of Trustees Act 1996(~~13~~);
 - a. proceedings in which the supplier provides separate representation of a child in proceedings which are neither specified proceedings within the meaning of section 41(6) of the Children Act 1989(~~14~~) nor are being heard together with such specified proceedings;
 - a. proceedings under Part 4A of the Family Law Act 1996(~~15~~);
 - a. defended proceedings for divorce or judicial separation, dissolution of a civil partnership or for the legal separation of civil partners;
 - a. proceedings for nullity of marriage or annulment of a civil partnership;
 - a. proceedings under the inherent jurisdiction of the High Court in relation to children;

- a. applications for a parental order under the Human Fertilisation and Embryology Act 2008([16]).
2. A certificate covering child abduction proceedings may not cover any other family proceedings.
3. Subject to paragraph 4, a certificate may cover proceedings excluded from the Higher Standard Fee Scheme by virtue of paragraphs 2 and 3 as well as proceedings that fall within that scheme.
4. Where paragraph 5 applies services provided in respect of the excluded proceedings—
 - a. may only be claimed for payment if those proceedings are expressly covered by the certificate;
 - a. must be recorded separately; and
 - a. must be claimed at the relevant hourly rates in addition to any standard fee claimed under the certificate.
5. In paragraphs 2 to 6 “excluded proceedings” means the proceedings listed in paragraph 3.

6.Exclusions from the Higher Standard Fee Scheme: excluded services

7. In respect of proceedings to which the Higher Standard Fee Scheme applies, the scheme does not apply to—
 - a. advocacy services, subject to paragraph 29;
 - a. services provided in a final appeal; and
 - a. services payable at hourly rates by virtue of the provisions of paragraphs 23 to 28.

b. Higher Standard Fee Scheme: general

3. A certificate may cover more than one aspect.
8. Where a certificate covers more than one aspect, each aspect and level of service covered by the certificate must be specified on the certificate.
9. A certificate may cover different levels of service in respect of different aspects.
10. Any combination of fees may be claimed under a certificate, provided that the criteria for funding set out in Part 1 of the Funding Code are met in respect of each aspect and level of service claimed.
11. Where a certificate covering Family Help (Higher) is extended to cover Legal Representation, the standard fee for each level of service may be claimed.
12. Subject to paragraphs 31 and 36, the standard fee for an aspect may not be claimed more than once under a single certificate.
13. A supplier who, under separate certificates, represents more than one party in proceedings to which the Higher Standard Fee Scheme applies is only entitled to payment as if the supplier was acting under a single certificate.

14.Level of court

15. In Table 3 (e), Table 3 (f) and Table 3 (g) of Schedule 1—
 - a. “High Court” means proceedings in the High Court or the Court of Protection; and
 - a. “Other” means proceedings in any other court.
16. Where—
 - a. a case is transferred from a court to a different court; and
 - a. a supplier carries out work to which a particular standard fee relates before and after the transfer,

b. the standard fee payable for the work is the fee relating to the court at which the case concluded at first instance.

c. Extending from Family Help (Higher) to Legal Representation

17. An application to extend a certificate to cover Legal Representation for any aspect may only be made when all work that could be carried out under Family Help (Higher) has been carried out.

18. Issue and Control of Certificates

19. Where more than one certificate is issued in respect of the same client in relation to proceedings to which the Higher Standard Fee Scheme applies, all work carried out must be deemed to have been carried out under the first certificate issued.

20. Where paragraph 19 applies, the first certificate issued must be deemed to have continued until the last certificate is discharged.

21. A certificate must not be discharged under section 15.5 (v) of Part 1 of the Funding Code until all aspects covered by the certificate have been concluded.

22. Where—

a. a certificate relating to proceedings to which the Higher Standard Fee Scheme applies is discharged or revoked; and

a. a further such certificate is subsequently granted in respect of the same client;

b. all work carried out under the subsequent certificate must be deemed to have been carried out under the first certificate unless a period of at least six months has elapsed between the date of the discharge or revocation of the first certificate and the grant of the subsequent certificate.

c. Escape from the Higher Standard Fee Scheme

23. Where paragraph 24 applies the relevant standard fee does not apply and payment must be made in accordance with the relevant hourly rates in Schedule 1.

24. This paragraph applies where the total amount payable for the work to which a standard fee relates would, if the fee was calculated on the basis of the relevant hourly rates in Schedule 1, be at least three times the amount of the standard fee.

25. Where a certificate covers more than one level of service, paragraphs 26 and 27 apply instead of paragraphs 23 and 24.

26. Where paragraph 27 applies, the relevant standard fees do not apply and payment must be made in accordance with the relevant hourly rates in Schedule 1.

27. This paragraph applies where the total aggregate amount payable for the work to which the standard fees relate would, if the fees were calculated on the basis of the relevant hourly rates in Schedule 1, be at least three times the aggregate amount of the standard fees for all the levels of service.

28. Where a certificate covers more than one aspect, each aspect must, for the purposes of paragraphs 23 to 27, be considered separately.

29. Where a supplier—

a. who is providing advocacy services in a case;

a. undertakes preparation for a hearing;

a. that hearing does not in the event take place; and

a. no fee for that hearing is payable under the Family Advocacy Scheme,

b. the preparation undertaken for the hearing may be taken into account for the purposes of paragraphs 23 to 27.

c. Standard fees for domestic abuse proceedings

30. The standard fee for domestic abuse proceedings in Table 3 (g)—

- a. covers all work carried out by a supplier in respect of the proceedings up to, and including, the final hearing listed by the court for the purpose of determining whether or not to grant or continue the remedy sought in the proceedings; and
- a. subject to paragraph 31, no additional fee is consequently payable under the Higher Standard Fee Scheme in respect of any other hearings in the proceedings.

4. Where—

- a. an injunction is granted at the final hearing of domestic abuse proceedings; and
- a. one or more subsequent court hearings take place in respect of breach of the injunction, whether by application for committal or otherwise, at which the client is represented by an advocate,
- b. a maximum of one standard fee additional to the standard fee for the original domestic abuse proceedings may be claimed.

31. Paragraph 31 applies regardless of whether the work in respect of the breach of the injunction is carried out—

- a. under the certificate relating to the original domestic abuse proceedings; or
- a. under a new certificate.

32. Paragraphs 26 and 27 apply with the necessary modifications where an additional standard fee is payable under paragraph 31 as they apply to where a certificate covers more than one level of service.

33. Settlement fee: finance

34. The Family Help (Higher) Settlement Fee in Table 3 (f) of Schedule 1 is payable in addition to any Family Help (Higher) Standard Fee that is payable provided that each condition in paragraph 35 is met.

35. The conditions are—

- a. the finance aspect was concluded under Family Help (Higher);
- a. the finance aspect does not proceed to a new level of service within six months of the date of the settlement either with the supplier claiming the settlement fee or, so far as that supplier is aware, another supplier;
- a. there was a genuine settlement to conclude the finance aspect, rather than circumstances such as a reconciliation between the parties, the death of one of the parties or one of the parties ceasing to provide instructions to their representatives;
- a. the settlement is recorded in the form of a consent order approved by the court; and
- a. the finance aspect is not payable at hourly rates by virtue of the provisions of paragraphs 23 to 29.

b. Enforcement proceedings: children and finance

5. Where—

- a. in relation to the children or finance aspect;
- a. representation at enforcement proceedings is authorised under the certificate; and
- a. enforcement proceedings are issued,
- b. a maximum of one fee additional to any fees for the original children or finance aspect may be claimed.

36. The additional fee in paragraph 36 is the amount equal to half the relevant standard fee for legal representation.

37. Any work reasonably carried out in respect of enforcement proceedings may be included—

- a. within the work to which the standard fee relates in paragraph 24 for the purpose of making the calculation in that paragraph; or

- a. within the work to which the standard fees relate in paragraph 27 for the purpose of making the calculation in that paragraph.

38. Paragraphs 26 and 27 apply with the necessary modifications where an additional fee is payable under paragraph 36 as they apply to where a certificate covers more than one level of service.

39. Transfer of supplier

6. Paragraphs 41 to 44 apply where—

- a. during proceedings to which the Higher Standard Fee Scheme applies a certificate is transferred from one supplier to another;
- a. the first supplier ceases to provide representation in the proceedings; and
- a. during the course of the proceedings both the first supplier and one or more subsequent suppliers has carried out work to which a standard fee relates.

40. Each supplier must calculate what their fee would be if the fee was calculated on the basis of the relevant hourly rates in Schedule 1.

41. Where a fee calculated in accordance with paragraph 41 is equal to, or greater than, the relevant standard fee, that standard fee is payable.

42. Where a fee calculated in accordance with paragraph 41 is less than the relevant standard fee, the amount payable is the amount equal to half that standard fee.

43. Where paragraph 40 applies, each supplier must be treated separately for the purposes of paragraphs 23 to 29.

44. Where—

- a. a supplier acts for more than one client in proceedings to which the Higher Standard Fee Scheme applies;
- a. one or more of those clients transfer to another supplier; and
- a. the first supplier continues to represent one or more clients in the proceedings;
- b. each supplier is entitled to payment under the Higher Standard Fee Scheme in accordance with Table 3 (e), Table 3 (f) and Table 3 (g) of Schedule 1 and the provisions of this Schedule.

45.—(1) In any of the circumstances to which sub-paragraph (2) applies a supplier is not entitled to any standard fee.

46.(2) This sub-paragraph applies where—

- a. a supplier is instructed by a client for a total duration of less than twenty four hours;
- a. a supplier is instructed by a client where—
 - i. that client has previously instructed a different supplier in respect of the same work; and
 - i. the certificate has not been transferred; or
- a. a supplier acts for a client in circumstances where an application to join that client to proceedings to which the Higher Standard Fee Scheme applies is refused.

47. Where paragraph 46 applies, any work reasonably carried out by the supplier is payable at the relevant hourly rates.

48. Nothing in paragraphs 40 to 46 creates any additional entitlement for a supplier to apply to the Commission for payment.

49. Applications for payments on account

50. A supplier may apply for payments on account in respect of services provided under Family (Help) Higher and Legal Representation in family private law proceedings in accordance with the Standard Terms of the Unified Contract, subject to the provisions of paragraphs 50 and 51.

51. Where an application for a payment on account relates to work to which a standard fee applies, the application may not be for an amount exceeding three quarters of that standard fee unless at the time that the application is made the supplier has already undertaken sufficient work that, in accordance with paragraphs 23 to 29, the work is payable by hourly rates.

52. Where an application for a payment on account relates to work payable by hourly rates, the application may not be for an amount exceeding three quarters of the fee payable for that work calculated in accordance with the relevant hourly rates.

53. Final payment

54. Applications for final assessment and final payment in respect of services provided under Family (Help) Higher and Legal Representation in family private law proceedings must be made in accordance with the Standard Terms of the Unified Contract.

55. Subject to the Standard Terms of the Unified Contract in respect of final assessment—

- a. a supplier may apply for payment for an aspect from the time that the aspect is concluded; and
- a. an application may be for the full amount of all fees payable in respect of that aspect, even if the certificate continues in respect of other aspects.

56. Where an application is made for a standard fee under paragraph 53, if the supplier has not previously made any application for a payment on account in respect of work to which that fee relates, the supplier must confirm that fact in writing to the Commission.

57. Where—

- a. an application is made for a standard fee under paragraph 53; and
- a. no confirmation is given to the Commission in accordance with paragraph 54,
- b. any payments on account made under the certificate may be deducted by the Commission from the standard fee applied for.

58. Where—

- a. a payment has been made to a supplier by the Commission pursuant to an application made in accordance with paragraph 53; and
- a. additional work is subsequently carried out by the supplier in respect of the aspect to which the payment related, whether under the same certificate or a new certificate,
- b. the previous payment must be treated by the Commission as a payment on account for the purposes of final assessment.

59. Where paragraph 56 applies, the payment treated by the Commission as a payment on account must be disregarded for the purposes of any limitation on the number of payments on account permitted by the Standard Terms of the Unified Contract.

60.

SCHEDULE 4

Article 5 and 5A

Advocacy services in family proceedings

SECTION 1

Interpretation

1. In this Schedule—

2. “aspect” means any of the three types of family private law proceedings to which the Family Advocacy Scheme applies, namely—

- a. children;
- a. domestic abuse; and
- a. finance;
- b. “bolt-on fee” has the meaning given at paragraph 41;
- c. “children” and “private law children” mean proceedings within section 11.11 of Part 1 of the Funding Code
- d. “domestic abuse” and “domestic abuse proceedings” mean proceedings within section 11.10 of Part 1 of the Funding Code;
- e. “Family Advocacy Scheme” means the scheme of fees for advocacy services set out in Schedule 2 and supplemented by the provisions of section 2 of this Schedule;
- f. “family private law proceedings” means any type of family proceedings other than public law proceedings
- g. “finance” and “private law finance” means proceedings within section 11.12 of Part 1 of the Funding Code and includes any family proceedings (other than children and domestic abuse proceedings) that are not public law proceedings;
- h. “final hearing” has the meaning given at paragraphs 9 to 15;
- i. “Higher Standard Fee Scheme” means the scheme of standard fees for Family Help (Higher) and Legal Representation in family private law proceedings set out at Table 3 (e), Table 3 (f) and Table 3 (g) of Schedule 1 and supplemented by the provisions of Schedule 3;
- j. “interim hearing” has the meaning given at paragraph 16;
- k. “officer of the Children and Family Court Advisory and Support Service” has the same meaning as in the Criminal Justice and Court Services Act 2000([17]);
- l. “other public law cases” means proceedings within section 11.7, 11.8 or 11.9 of Part 1 of the Funding Code (other than care or supervision proceedings under section 31 of the Children Act 1989);
- m. “particular activity” means an activity listed in the column heading to a table in Schedule 2;
- n. “public law” means—
 - a. care or supervision proceedings under section 31 of the Children Act 1989; and
 - b. other public law cases
 - c. “relevant hourly rates” means the hourly rates in Part 3 of Schedule 1 applicable to the service provided;
 - d. “Welsh family proceedings officer” has the meaning given by section 35 of the Children Act 2004([18]).

SECTION 2

Family Advocacy Scheme

General

61. Subject to the provisions of this Schedule, there is no limit on the number of fees under the Family Advocacy Scheme that may be claimed in a case.

62.—(1) A maximum of one fee may be claimed in respect of each occasion that a particular activity is undertaken.

63.(2) Accordingly—

- a. an advocate who represents more than one party in relation to a particular activity is entitled to the same fee for that activity as an advocate who appears for only one party;
- a. where a particular activity relates to more than one set of proceedings to which the Family Advocacy Scheme applies, the advocate is entitled to the same fee as if the activity related to only one set of proceedings; and
- a. only one legal representative may claim a fee in relation to a particular activity.

3. Where a particular activity—

- a. relates to more than one set of proceedings; and
- a. one or more of those proceedings are proceedings to which paragraph (3) of article 5A applies,
- b. the activity must be remunerated as if all of the proceedings were proceedings to which that paragraph applies.
- c. **Agents and Counsel**

64. Where a supplier instructs a person (other than counsel) to provide services to which the Family Advocacy Scheme applies, the services are treated as having been provided by that person as the agent of the supplier and any fee for those services under the Family Advocacy Scheme is payable to the supplier as if the supplier had supplied the services directly.

65. Where a supplier instructs counsel to provide services to which the Family Advocacy Scheme applies—

- a. any fee payable for the services must be paid directly to counsel;
- a. the supplier may not instruct counsel to provide the services at an amount lower than that which would be due under the Family Advocacy Scheme; and
- a. the supplier may not instruct counsel on the basis that any fee, or any part of a fee, payable to counsel under the Family Advocacy Scheme must be paid by counsel to the supplier.

4. This paragraph applies where a supplier—

- a. instructs counsel to provide services in proceedings to which the Family Advocacy Scheme applies; and
- a. the services do not involve any particular activity for which a fee is payable under the Family Advocacy Scheme.

5. Where paragraph 7 applies—

- a. any fee for the services provided by counsel is payable by the supplier at a rate agreed between the supplier and counsel; and
- a. any such fee may not be charged to the supplier's client or claimed by the supplier from the Commission as a disbursement.
- b. **Meaning of "final hearing"**

66. Paragraphs 10 to 15 apply for the purposes of determining whether a hearing is a final hearing.

67. Subject to paragraph 11, any hearing listed by the court for the purpose of making a final determination—

- a. in respect of the whole of the proceedings; or
- a. in respect of all the issues relating to an aspect,
- b. is a final hearing.

6. A hearing—

- a. falling within paragraph 10 or 14 which is listed for the purpose of disposal by way of a consent order; or
- a. which is otherwise not expected to be contested or effective,
- b. is not a final hearing.

7. Subject to paragraphs 13 and 14, there may only be one final hearing in respect of an aspect.

68. Where in public law proceedings a case is concluded at an Issues Resolution Hearing, that hearing is also a final hearing.

69. Subject to paragraph 11, where in private law children proceedings a fact-finding hearing is listed pursuant to the 'Practice Direction: Residence and Contact Orders: Domestic Violence and Harm' issued by the President of the Family Division on 14 January 2009, that hearing is also a final hearing.

70. Where in public law proceedings a final hearing is listed for more than one separate hearing so that particular issues may be heard or determined in advance of others, all the hearings must be treated for the purposes of the Family Advocacy Scheme as a single final hearing.

71. Any hearing that is not a final hearing is, for the purposes of the Family Advocacy Scheme, an interim hearing.

Payment for hearings

2. Final hearings must be remunerated in accordance with the applicable final hearing fee specified in Schedule 2.

3. The final hearing fee is payable—

- a. for each day on which the final hearing takes place; and
- a. it does not matter for these purposes how long the hearing on any particular day lasts.

8. Interim hearings must be remunerated in accordance with—

- a. the applicable interim hearing unit fee specified in Schedule 2; and
- a. paragraphs 20 to 24.

4. Where an interim hearing lasts no more than one hour in duration, an interim hearing unit 1 fee is payable.

9. Where an interim hearing:

- a. exceeds one hour in duration; but
- a. lasts no more than two hours and 30 minutes in duration,
- b. an interim hearing unit 2 fee is payable.

10. Where an interim hearing exceeds two hours and 30 minutes in duration—

- a. a separate interim hearing unit 2 fee is payable for each period of two hours and 30 minutes within the total duration of the hearing; and
- a. a further interim hearing unit 2 fee is payable for any remaining period of that duration not falling within sub-paragraph (a).

5. The duration of a hearing is the period from when a hearing commences to when the hearing concludes disregarding any period during which the court is adjourned—

- a. overnight; or
- a. for a lunch break.

6. For the purposes of paragraph 23—

- a. subject to sub-paragraphs (b) and (c), a hearing is to be treated as commencing at the time that the hearing is listed to commence or at such earlier time as the court specifically directs the advocate to attend;
- a. in respect of an emergency hearing where—
 - i. the court has not listed the hearing for a specific time or directed the advocate to attend at a specific time; and
 - i. the papers were issued by the court on the day of the hearing so that the advocate is required to wait at court for the hearing to take place,
 - ii. the hearing is to be treated as commencing at the time that the papers were issued; and
- a. in respect of a hearing that takes place by telephone or video link the hearing is to be treated as commencing at the time that the call to start the hearing is made.

7. Where—

- a. counsel is instructed to provide advocacy services at a hearing;
- a. counsel undertakes thirty minutes or more preparation for that hearing; and
- a. the hearing does not in the event take place,
- b. a fee is payable to counsel in accordance with paragraph 26.

8.—(1) The fee payable to counsel under paragraph 25 is—

- a. in the case of an interim hearing, the applicable interim hearing unit 1 fee specified in Schedule 2; or
- a. in the case of a final hearing, the amount equal to one half of the applicable final hearing fee specified in Schedule 2.

3. No bolt-on fees may be claimed in addition to the fee payable under sub-paragraph (1).

4. **Advocates' meeting fee: public law**

9. The advocates' meeting fee in Table 1 (a) and Table 1 (b) of Schedule 2 is only payable where the meeting takes place on the direction of the court.

10. The advocates' meeting fee is payable regardless of whether the meeting takes place—

- a. in person;
- a. by telephone; or
- a. by video link.

11. Where in care or supervision proceedings under section 31 of the Children Act 1989([19])—

- a. the court directs an advocates' meeting; and
- a. the advocates concerned resolve all relevant matters without the need for such a meeting,
- b. a fee is payable to each advocate in accordance with paragraph 30.

12.—(1) The fee payable under paragraph 29 is the amount equal to one half of the applicable advocates' meeting fee in Schedule 2.

13.(2) No bolt-on fees may be claimed in addition to the fee payable under sub-paragraph (1).

14.Fee for counsel's opinion

15. Subject to paragraph 32, where counsel—

- a. is instructed to provide a written opinion in proceedings to which the Family Advocacy Scheme applies other than domestic abuse proceedings; and
- a. provides such an opinion;

b. the applicable opinion fee in Schedule 2 is payable.

16.—(1) Subject to sub paragraph (2), a maximum of two opinion fees may be claimed by counsel in any case.

17.(2) An opinion fee is payable in respect of a written opinion on the merits of an appeal against a final order regardless of whether two opinion fees have already been claimed in the case.

18.(3) For the purposes of sub-paragraph (1), each aspect must be treated as a separate case.

19. A supplier may only instruct counsel to provide a written opinion where it is a reasonable and proportionate step to do so in all the circumstances of the case.

20. Where—

- a. on an assessment of a supplier's costs;
- a. it is determined that the supplier instructed counsel to provide a written opinion contrary to paragraph 33,
- b. the remuneration due to the supplier may be reduced by any amount paid or payable to counsel in respect of that written opinion.
- c. **Fee to counsel for advising in conference**

21. Subject to paragraphs 37 and 38(1), where counsel advises a client in conference in proceedings to which the Family Advocacy Scheme applies other than domestic abuse proceedings, the applicable conference fee in Schedule 2 is payable.

22. Paragraph 35 applies regardless of whether the conference takes place—

- a. in person;
- a. by telephone; or
- a. by video link.

23. Paragraph 35 does not apply to—

- a. a conference that takes place on any day of a final hearing; and
- a. a conference that takes place on the same day as an interim hearing, except where the conference does not take place during the duration of the hearing as determined in accordance with paragraphs 23 and 24.

24.—(1) A maximum of two conference fees may be claimed by counsel in any case;

25.(2) For the purposes of sub-paragraph (1), each aspect must be treated as a separate case.

26. A supplier may only instruct counsel to advise in conference where it is a reasonable and proportionate step to do so in all the circumstances of the case.

27. Where—

- a. on an assessment of a supplier's costs;
- a. it is determined that the supplier instructed counsel to advise in conference contrary to paragraph 39,
- b. the remuneration due to the supplier may be reduced by any amount paid or payable to counsel in respect of that conference.

c. **Bolt-on fees: general**

28. A bolt-on fee is—

- a. a fee set out in—
 - i. Table 1 (c) of Schedule 2;
 - i. Table 1 (d) of Schedule 2;
 - i. the “Early resolution bolt-on fee” column of Table 2 (c) of Schedule 2;
 - i. Table 2 (d) of Schedule 2; or

- i. Table 2 (e) of Schedule 2,
 - a. which is payable—
 - i. to an advocate in accordance with paragraphs 42 to 66; and
 - i. in addition to other fees payable to the advocate for a particular activity under the Family Advocacy Scheme.
29. Where a bolt-on fee is expressed in Table 1 (c) or Table 2 (d) as a percentage of a hearing fee—
- a. this refers to a percentage of the applicable hearing fee in Schedule 2; and
 - a. no account is to be taken of any other bolt-on fee that may be payable in addition to the applicable hearing fee in Schedule 2.
- b. **Bolt-on fees: Client – allegation of harm**
30. A bolt-on fee is payable in accordance with Table 1 (c) or Table 2 (d) of Schedule 2 in addition to the applicable—
- a. interim hearing unit fee; or
 - a. final hearing fee,
 - b. where paragraphs 44 and 45 apply.
31. This paragraph applies to—
- a. public law proceedings; and
 - a. private law children proceedings.
- 32.—(1) Subject to sub-paragraph (2), this paragraph applies where—
- a. it is alleged against the advocate’s client that the client caused significant harm to a child; and
 - a. the allegation remains an issue in the proceedings.
5. This paragraph does not apply in public law proceedings unless the allegation—
- a. is made by the local authority; or
 - a. if made by another party to the proceedings, is adopted by the local authority.
33. In paragraph 45(a) “significant harm” means—
- a. death;
 - a. significant head or fracture injuries;
 - a. burns or scalds;
 - a. fabricated illness;
 - a. extensive bruising involving more than one part of the body;
 - a. multiple injuries of different kinds;
 - a. other significant ill treatment likely to endanger life, including suffocation or starvation; and
 - a. sexual abuse.
 - b. **Bolt-on fees: Client – lack of understanding**
34. A bolt-on fee is payable in accordance with Table 1 (c) of Schedule 2 in addition to the applicable—
- a. interim hearing unit fee; or
 - a. final hearing fee,
 - b. where paragraphs 48 and 49 apply.
35. This paragraph applies to public law proceedings.
36. This paragraph applies where—

- a. the advocate's client has difficulty in giving instructions or understanding advice;
- a. the difficulty is attributable to a mental disorder or to a significant impairment of intelligence or social functioning; and
- a. the disorder or impairment is verified by a medical report from a psychologist or psychiatrist.

37. In paragraph 49(b) "mental disorder" has the meaning given by section 1(2) of the Mental Health Act 1983([20]).

38. **Bolt-on fees: exceptional travel fee**

39. A bolt-on fee is payable in accordance with Table 1 (c) or Table 2 (d) of Schedule 2 in addition to the applicable—

- a. interim hearing unit fee;
 - a. final hearing fee,
 - a. conference fee; or
 - a. advocates' meeting fee
- b. where paragraphs 52 and 53 apply.

40. This paragraph applies to public law proceedings and private law proceedings.

41. This paragraph applies where it is determined that—

- a. it was reasonable for the particular advocate to have been instructed in all the circumstances of the case, having regard to whether there are any suitable alternative advocates based closer to the court or, where applicable, the location of the conference or advocate's meeting; and
 - a. a single journey from the advocates' office or chambers to the court or, where applicable, the location of the conference or advocates' meeting, exceeds twenty five miles.
- b. **Bolt-on fees: expert's cross examination**

42. A bolt-on fee is payable in accordance with Table 1 (c) or Table 2 (d) of Schedule 2 in addition to the applicable—

- a. interim hearing unit fee; or
 - a. final hearing fee,
- b. where paragraphs 55 and 56 apply.

43. This paragraph applies to—

- a. public law proceedings; and
- a. private law children proceedings.

44.—(1) This paragraph applies where—

- a. an independent expert witness is cross-examined; and
- a. the evidence of the independent expert witness is substantially challenged by any party to the proceedings.

6. For the purposes of sub-paragraph (1)—

- a. an officer of the Children and Family Court Advisory and Support Service or a Welsh family proceedings officer;
- a. any other social worker; and
- a. an employee of any party to the proceedings,
- b. is not to be treated as an independent expert witness.

45. A bolt-on payment payable by virtue of paragraph 54 is only payable in respect of the individual hearing at which the cross-examination takes place.

46. Bolt-on fees - court bundle payments

47. Subject to paragraphs 61 and 62, a bolt-on fee is payable in accordance with Table 1 (d) or Table 2 (e) in addition to the applicable—

- a. interim hearing unit fee; and
- a. final hearing fee,
- b. where paragraph 59 applies.

48. This paragraph applies—

- a. to any proceedings to which the Family Advocacy Scheme applies except for domestic abuse proceedings; and
- a. where the total number of pages in the court bundle exceeds 350 pages.

49.—(1) Where the total number of pages in the court bundle for an interim hearing or final hearing:

- a. exceeds 350 pages; and
- a. does not exceed 700 pages,
- b. the applicable CB1 payment in Table 1 (d) or Table 2 (e) of Schedule 2 is payable.

7. Where the total number of pages in the court bundle for an interim hearing exceeds 700, the applicable CB2 payment in Table 1 (d) or Table 2 (e) of Schedule 2 is payable.

8. Where the total number of pages in the court bundle for a final hearing:

- a. exceeds 700 pages; and
- a. does not exceed 1,400 pages,
- b. the applicable CB2 payment in Table 1 (d) or Table 2(e) of Schedule 2 is payable.

9. Where the total number of pages in the court bundle for a final hearing exceeds 1,400 pages, the applicable CB3 payment in Table 1 (d) Table 2 (e) of Schedule 2 is payable.

50. In respect of public law proceedings—

- a. a maximum of two court bundle payments may be claimed in any case in respect of interim hearings; and
- a. a court bundle payment may only be claimed in respect of an interim hearing if that hearing is a Case Management Conference, an Issues Resolution Hearing or is otherwise a hearing that is listed to hear contested evidence.

51.—(1) In respect of private law children and private law finance proceedings, a maximum of one court bundle payment may be claimed in a case in respect of interim hearings.

52.(2) For the purposes of sub-paragraph (1), each aspect must be treated as a separate case.

53. Bolt on fees - Early resolution bolt-on fee

54. A bolt-on fee is payable in accordance with the “Early resolution bolt-on fee” column of Table 2 (c) of Schedule 2 where paragraphs 64 and 65 apply.

55. This paragraph applies to private law finance proceedings.

56. This paragraph applies where each of the conditions in paragraph 66 is satisfied.

57. The conditions are—

- a. the finance aspect of the case was concluded at the first appointment or Financial Dispute Resolution hearing;
- a. the advocate attending that hearing materially assisted in reaching the settlement;

a. the finance aspect does not proceed to a new level of service within six months of the date of the settlement either with the supplier instructing the advocate or, so far as the advocate is aware, another supplier;

a. there was a genuine settlement to conclude the finance aspect, rather than circumstances such as a reconciliation between the parties, the death of one of the parties or one the parties ceasing to provide instructions to their representatives; and

a. the settlement is recorded in the form of a consent order approved by the court, whether at the hearing itself or subsequently.

b. Payments on account and final payment

58. A supplier may apply for payments on account in respect of work payable to the supplier under the Family Advocacy Scheme in accordance with the Standard Terms of the Unified Contract, subject to the provisions of paragraphs 68 to 69.

59. An application for a payment on account under paragraph 67 may not be for an amount exceeding three quarters of the aggregate of all standard fees and bolt-on fees payable to the supplier.

60. A supplier may not apply for a payment on account in respect of any advocacy services provided by counsel.

61. Where advocacy services to which the Family Advocacy Scheme applies are provided by counsel, counsel may apply for payment in respect of those services, on a form approved by the Commission, for each particular activity as soon as that activity is completed.

62. A supplier who instructs counsel to provide advocacy services to which the Family Advocacy Scheme applies must, within seven days of receipt of a request by counsel, provide counsel with such information as counsel may reasonably require for the purposes of applying for payment under the Family Advocacy Scheme or challenging any reduction in fees payable under the Scheme.

63. A payment made to counsel under the Family Advocacy Scheme may be recovered from counsel if it is subsequently determined that the payment was not due under the Scheme.

64. Where a determination under paragraph 72 is made during an assessment of a supplier's costs, the supplier must notify counsel of the determination and the reasons for the determination.

65. All payments made under the Family Advocacy Scheme, whether to a supplier or counsel, are to be taken into account for the purposes of determining whether any cost limitation on a certificate has been reached.

66.

SECTION 3

Advocacy services in other family proceedings

67.—(1) Subject to paragraphs 76 to 78, advocacy services within article 5A(3) must be remunerated in accordance with the relevant hourly rates in Schedule 1.

68.(2) Where sub-paragraph (1) applies, preparation for advocacy is payable in accordance with the relevant hourly rates for preparation in Schedule 1.

11. Where advocacy services within article 5A(3) are provided by counsel—

a. reasonable remuneration as determined on cost assessment is payable to counsel; and

a. in making that assessment regard may be had to—

i. the remuneration that would have been payable had the services been remunerated in accordance with paragraph 75; and

i. the remuneration that would have been payable had the services been remunerated under the provisions of the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001([21]).

2. Where advocacy services are provided in proceedings falling within sub-paragraph (l) of article 5A(3) those services must be remunerated in accordance with the prior authority given by the Commission.

3.—(1) Where advocacy services are provided in proceedings falling within sub-paragraph (m) of article 5A(3) those services must be remunerated in accordance with the provisions of the individual case contract.

4.(2) An individual case contract may provide that advocacy services must be remunerated in accordance with the Family Advocacy Scheme.

SCHEDULE 5

Article 5

Disbursements

Contact related activities

1.—(1) The costs and expenses relating to the activities listed in paragraph 2 are not payable by the Commission as disbursements in family proceedings.

2.(2) The activities are—

- a. risk assessments made under section 16A of the Children Act 1989([22]);
- a. activities required under a contact activity direction or contact activity condition made by the court under section 11A or section 11C of the Children Act 1989([23]);
- a. consideration of making a contact activity direction under section 11E of the Children Act 1989([24]);
- a. child contact centre activities, including assessments and reports on supervised contact and any other professional assessments of contact.

b. Independent social work

1. The costs and expenses of independent social work services provided by any person are not payable by the Commission as a disbursement in family proceedings where such services are provided outside England and Wales.

1. Where independent social work services are provided within England and Wales, the costs and expenses of such services are payable as a disbursement at rates not exceeding the rates routinely paid for such services by the Children and Family Court Advisory and Support Service or the Children and Family Court Advisory Service Wales.

2. Experts

1.—(1) The costs and expenses relating to experts listed at paragraph 2 are not payable by the Commission as disbursements.

2.(2) The costs and expenses are—

- a. any administration fee charged by an expert, including (but not limited to)—
 - i. a fee in respect of office space or provision of a consultation room;
 - i. a fee in respect of administrative support services, such as typing services;
 - i. a fee in respect of courier services; and
 - i. a subsistence fee.
- a. any cancellation fee charged by an expert, where the notice of cancellation was given to the expert more than 72 hours before the relevant hearing or appointment.

1. The maximum amount that the Commission may pay as a disbursement in respect of an expert's vehicle mileage is £0.45 per mile.

1. The maximum amount that the Commission may pay as a disbursement in respect of an expert's travel time is £40.00 per hour.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Community Legal Service (Funding) Order 2007 (S.I. 2007/2441) and imposes conditions on the funding of services as part of the Community Legal Service, by limiting the powers of the Legal Services Commission to pay remuneration under contract for the provision of funded services.

The Order inserts five new Schedules into the 2007 Order.

The first Schedule replaces the existing Schedule to the 2007 Order and sets out revised remuneration fees and rates which will be payable for funded services. Words and expressions used in the Schedule carry the same meaning as in the Legal Services Commission's 2010 Standard Civil Contract or (in relation to services continuing to be provided under the Unified Contract) that contract. These contracts are available on the Legal Services Commission website www.legalservices.gov.uk.

The second Schedule sets out fees and rates payable for advocacy services in certain family proceedings. The Order requires the Commission to pay remuneration for advocacy services in those proceedings in accordance with the fees and rates in that Schedule and section 2 of the fourth Schedule. It also requires the Commission to pay remuneration for advocacy services in other family proceedings in accordance with section 3 of the fourth Schedule.

The third Schedule contains provisions relating to payment for Family Help (Higher) and Legal Representation services in family private law proceedings. The Order requires the Commission to pay for those services in accordance with the provisions of that schedule.

The fifth Schedule contains provisions relating to the payment of certain types of disbursements.

An impact assessment was published on 21st October 2009 by the Legal Services Commission as part of “Family Legal Aid Funding from 2010: a Consultation Response” and is available from the Commission at 4 Abbey Orchard Street, London SW1P 2BS or at www.legalservices.gov.uk.

(11) 1999 c. 22. The reference in section 6 to the Lord Chancellor was changed to the Secretary of State by S.I. 2003/1887 and changed back to the Lord Chancellor by S.I. 2005/3429. Section 25(8A) was inserted by section 153 of the Coroners and Justice Act 2009 (c. 25).

(12) S.I. 2007/2441, amended by S.I. 2008/1328, 2008/2704, 2009/2468 and 2010/95.

(13) Published by the Commission on 26th March 2010 and available on its website at www.legalservices.gov.uk.

(14) 1975 c. 63.

(15) 1996 c. 47.

(16) 1996 c. 27. Part 4A was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 (c. 20).

(17) 2008 c. 22.

(18) 1989 c. 41. Section 41(6) was amended by section 122(1)(a) of the Adoption and Children Act 2002 (c. 38).

(19) S.I. 2001/1077, amended by S.I. 2003/2590, 2005/184, 2006/2364, 2007/2443, 2007/3169 and 2008/666.

(20) 1996 c.52.

(21) 1989 c. 41.

(22) 1975 c. 63.

(23) 1996 c. 47.

(24) 1989 c. 41. Section 41(6) was amended by section 122(1)(a) of the Adoption and Children Act 2002 (c. 38).

(25) 1996 c. 27. Part 4A was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 (c. 20).

(26) 2008 c. 22.

(27) c. 43.

(28) c. 31.

(29) 1989 c. 41.

(30) 1983 c. 20. Section 1(2) was amended by sections 1(1) and 1(2) of the Mental Health Act 2007 (c. 12).

(31) S.I. 2001/1077, amended by S.I. 2003/2590, 2005/184, 2006/2364, 2007/2443, 2007/3169 and 2008/666.

(32) c. 41. Section 16A was inserted by section 7 of the Children and Adoption Act 2006 (c. 20).

(33) c. 41. Section 11A and section 11C were inserted by section 1 of the Children and Adoption Act 2006 (c. 20).

(34) c. 41. Section 11A was inserted by section 1 of the Children and Adoption Act 2006 (c. 20).

