

**St John's
Buildings**

High Cost Family:

Two Counsel Cases, FGF and Other Tricky Bits



Two Counsel Cases



How to apply for authority for two counsel

All the guidance relating to High Cost Family cases can be found here:

<https://www.gov.uk/guidance/civil-high-cost-cases-family>

Specific guidance is titled:

Guidance on authorities and legal aid for cases in courts outside England and Wales

Solicitor applies via CCMS supported by advice from counsel



Types of two counsel case

KC & Junior

- substantial, novel or complex issues of law or fact
- the opposing party has engaged a KC
- the case is exceptional for some other reason

Two Junior

The number of bundles exceeds the number of main hearing days(350 pages per bundle) and/or the total case papers exceed 700 pages per main hearing day

Senior Junior & Junior

Where authority granted for KC & Junior, but no KC can be found.



What rates apply?

Hearing less than 11 days – FGF/FAS

Hearing 11 days or more – Events

KC & Junior

KC £2,079 – Junior £1,188

Two Junior Counsel

£1,188 each

Senior Junior & Junior

Senior £1,665 – Junior £1,188



Costs limits and case plans

Single Counsel - £32,500

- Normally enough for POA to end of case

Two Counsel - £60,000

- If FGF/FAS will normally cover to end of case
- If Events then will need interim case plan

Fully Costed Case Plan – No standard costs limit

- Costs agreed in stages throughout case
- Be prepared to give estimates for future work



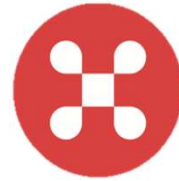
Costs limits and case plans

KC & Junior Events cases will always need an increase to £60,000 limit

KC	£2,079
Junior	£1,188
Solicitor	£1,107
Total	£4,374

The total cost of 14 Events is £61,236 not including any expert's costs, disbursements, travel etc.

Likely that there will have been work done before authority granted and KC instructed.



Family Graduated Fees

FGF - The forgotten fee scheme



10% Reduction from original rates

Four categories of work

Category 1 – Family Injunctions

Category 2 – Public Law Children

Category 3 – Private Law Children

Category 4 – Ancillary Relief and all other family work



FGF – Functions

Functions

F1 – Advice/written work

F2 – Enforcement (not often used)

F3 – Interim hearings & advocates meetings

F4 – Conference

F5 – Final or fact finding (two types)



FGF – Functions

F1 and F4 - fee per item, limited number of each claimable.

F2 - unlikely you'll ever use it.

F3 - paid in 2.5 hour units for all interim hearings and advocates meetings.

- As with FAS, time ordered to attend court for pre-hearing discussions, and time ordered to agree the order count as hearing time.
- Lunch break should be deducted from hearing time.
- Where court sits beyond 5pm and the hearing concludes that day there is a single payment of one half of a hearing unit.



FGF - Functions

F5 – Final hearing or fact finding, fee paid per day.

- F5 Primary

- Paid for the first day of the main hearing
- Can only be claimed once (not once for Fact find and once for final)
- The IRH/PHR can be claimed as the F5 Primary
(this doesn't count to length of hearing)

- F5 Secondary

- Paid for all refreshers after F5 Primary
- Can be claimed as often as needed



FGF SIPS and Special Prep

Special Issue Payments – SIPS

- Paid as a percentage uplift to the base function fee
- Paid per unit in F3
- Can be claimed as often as they apply

Client difficulty giving instructions/understanding advice – 25%

Representing parents/perpetrators against whom allegations are made that has caused harm to child – 25%

Conduct resulting in significant harm to child – 20%

More than one expert – 15%

Foreign element – 25%

Special Preparation

Can be claimed where:

- the proceedings involve exceptionally complex issues of law or fact or was otherwise an exceptional case of its nature; or
- in Public Law where the main hearing is split (fact finding/final) so that a period of at least four months elapses between its commencement and the time at which it resumes; or
- the court bundle comprises of more than 700 pages.

Rates

KC - £90.45 per hour

Junior - £36.18 per hour



Bundles, Bolt-Ons, and Incidental Items

Bundle Payments

- Can be claimed as often as apply, no limits
- Claimable for all Functions
- No fee for 175 pages or less
- CBP1 – 176 to 350 pages
- CBP2 – 351 to 700 pages
- Anything over 700 pages claim Special Prep in addition to CBP2

CMH Bolt-on

Easy to forget!

KC - £162.50

Junior - £65



Bundles, Bolt-Ons, and Incidental Items

High Court Uplift

The total graduated fee shall be increased by 33% in respect of all work carried out while the proceedings are in the High Court.

This doesn't include the CMH bolt-on, Special Prep, or Incidental Items. It does include the hearing units and the SIPS.

Incidental Items

All travel costs only applicable where no local Bar

Travel time - £13.60 per hour

Travel expenses - 46p per mile

Hotel expenses - £100 in London, £65 elsewhere

Audio or video evidence - £10.90 per 10 minutes, per tape.



Claiming SIPs, Special Prep, Bundles etc

Provide justification to the LAA

- Few LAA staff fully understand FGF
- May be reduced by LAA

Use a SIPS form

- Needs to be signed by judge and sealed by court
- Won't be reduced by LAA
- Will need to upload to CCMS with final bill, make reference to it in case plan etc

Add a recital to the court order

- Won't be reduced by LAA
- Will always be included in final bill



Suggested Recital for Court Order

In accordance with the Community Legal Service (Funding) (Counsel in Family Proceedings) Order 2001 (as amended 4 August 2009) that applies to the funding of Kings Counsel acting alone, or with Junior Counsel, or two Junior Counsel.

The Court bundle is [INSERT NUMBER] pages

The following SIPS apply: [DELETE AS APPLICABLE]

- i. representation of a person who has difficulty giving instructions
- ii. more than one expert
- iii. representation of a parent and/or another person (including a child) alleged to have caused significant harm to a child
- iv. a relevant foreign element
- v. conduct resulting in significant harm to a child

Special preparation is approved for:[INSERT NAME] of [INSERT TIME] on the basis that: [DELETE AS APPLICABLE] they involve exceptionally complex issues of law or fact [AND/OR] the court bundle exceeds 700 pages.

[REPEAT FOR AS MANY COUNSEL AS NEEDED]

The hearing unit fees are to be calculated on the basis of the total FAS time prescribed above.



Other Tricky Bits





Differences between Events schemes

Advocates meetings

Single Counsel – we can claim as many as are ordered in advance by the court. They can't be ordered retrospectively.

Two Counsel – two are claimable per advocate, where ordered in advance by the court, per part of proceedings i.e. KC, Junior and solicitor can each claim two advocates meetings prior to the fact finding and two prior to the final hearing.



Differences between Events schemes

Written Submissions

Single Counsel – where the judge sets aside one of the main hearing day for counsel to prepare written submissions then an Event fee can be claimed.

Two Counsel – where the main hearing is listed for more than 10 days and the judge substitutes one of those days for the drafting of submissions then one of the advocates can claim an Event fee, the other advocate can only claim an underrun.



Differences between Events schemes

High Court

Single Counsel – there are two different rates of pay depending on whether the case was heard by a DJ/CJ or High Court Judge/s.9 Judge.

Case must conclude in High Court to claim at higher rates

Two Counsel – the rates of pay are the same regardless of the level of judge.



De-Registering High Cost Cases

Once a case has been accepted by the LAA as High Cost, then it can remain so and be claimed as such, **subject to a contract being agreed and signed together with the appropriate Counsel Acceptance Form also being signed**, even if the costs end up being less than £25,000.

Equally, where no High Cost contract has been agreed or signed, and the case concludes with costs less than £25,000, the case may be de-registered.

Junior fees would revert to FAS

KC fees would be agreed on an hourly rates basis at £180 per hour



Fully Costed Case Plans

For all cases other than Care the LAA will utilise fully costed case plans, including:

- Private Law Children
- Financial Remedies
- International Child Abduction
- Inherent Jurisdiction
- Wardship

Fees agreed in key stages based on estimated fees, be ready to provide estimates.

Far more complex and time consuming than Care Case Fee Scheme. LAA will go back through fees claimed prior to High Cost contract and assess all of them.



Fully Costed Case Plans

Child Abduction, Inherent Jurisdiction & Wardship escape FAS so will normally be claimed at hourly rates **BUT...**

If High Cost Two Counsel then FGF will apply **UNLESS....**

The LAA consider the case to be exceptional Counsel and then will be paid at hourly rates under a Costed Case Plan at the following rates:

King's Counsel £150/hr.

Senior Counsel (over 10 years call) £120/hr.

Junior Counsel £110/hr.



Last thoughts

LAA and costs lawyers get things wrong, don't be afraid to push back.

- Quote the regs/guidance and make your case.
- Provide an illustration of the impact of the lower fees.
- Don't try and claim something that clearly isn't claimable.
- Be polite, ask nicely, it goes a long way!

I always assume I've potentially got it wrong and double check the regs/guidance.

If I'm really stuck, I'll ask someone else to check my assumptions.



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