



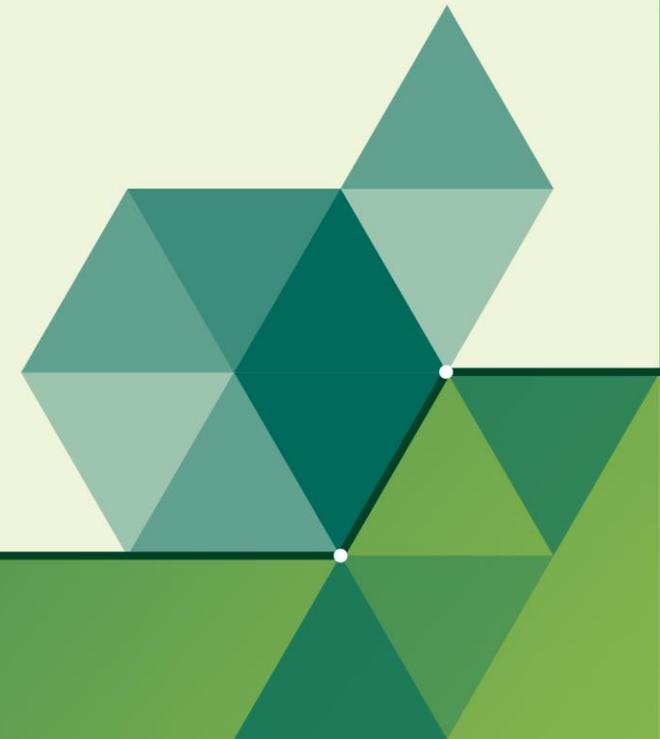
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Civil (Family) Legal Aid Billing Seminar

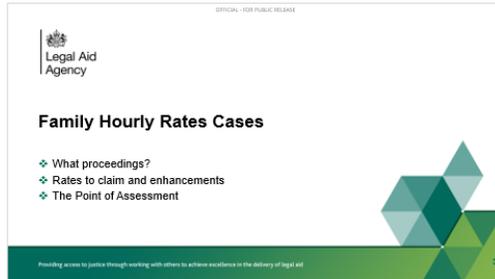
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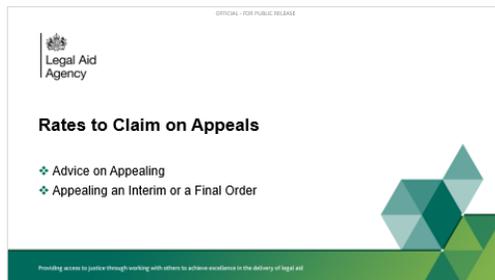


Content



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When do they apply, what can be claimed, and what enhancement can be applied



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What should be uploaded with your claim for payment and what do LAA need to see in court orders



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Family Hourly Rates Cases

- ❖ What proceedings?
- ❖ Rates to claim and enhancements
- ❖ The Point of Assessment

What Proceedings are Excluded from FAS

- ❖ Child Abduction proceedings
- ❖ Proceedings under the Inheritance (Provision for Family and Dependants) Act 1975
- ❖ Proceedings under the Trusts of Land and Appointment of Trustees Act 1996
- ❖ Separate representation of a Child in proceedings other than Specified Proceedings (as defined in section 41(6) of the Children Act 1989) and proceedings which are being heard together with Specified Proceedings (including where the Child is the applicant or respondent in proceedings as well as 16.4 cases)
- ❖ Applications for Forced Marriage Protection Orders under the Forced Marriage (Civil Protection) Act 2007
- ❖ Defended proceedings for divorce, judicial separation, dissolution of a civil partnership or for the legal separation of civil partners
- ❖ Nullity proceedings (including proceedings for annulment of a civil partnership)
- ❖ Proceedings under the inherent jurisdiction of the High Court in relation to the children
- ❖ Applications for Parental Orders under the Human Fertilisation and Embryology Act 2008

What Services Are Excluded From FAS

- ❖ Cases under an Individual Case Contract for a Very High Cost Case
- ❖ Work undertaken by King's Counsel acting as such under a prior authority issued by LAA
- ❖ Work in relation to any appeal against a final order
- ❖ Cases before the Court of Appeal or Supreme Court



[2024 Family Specification, paragraphs 7.107 - 7.109](#)

How to Calculate the Rates Payable

- ❖ The Civil Legal Aid Remuneration Regulations do not lay out a specific rate for advocates in independent practice for any work undertaken for Family proceedings that fall outside the scope of the Family Advocacy Scheme (FAS).
- ❖ The 2024 Standard Civil Contract Family Specification provides that the rates will be determined as reasonable on assessment.
- ❖ It also gives the authority to use the rates payable to a solicitor for the same work or, alternatively, the rates payable under the now defunct Family Graduated Fee scheme (FGF) less 10%.

“Where you provide Advocacy Services in proceedings or circumstances excluded from the FAS Where such Advocacy Services are provided by Counsel, they are subject to reasonable remuneration as determined on cost assessment under this Specification. Any such assessment of the reasonableness of Counsel’s fees may however take into account the rates which would be payable under this Specification if the services had been provided by a solicitor, and the rates which would have been paid under the Community Legal Service (Funding) (Counsel in Family Proceedings) (Remuneration) Order 2001.”

2024 Family Specification, para 7.113

Which Rates Apply When

Table 9(a)

Proceedings that are specified under Parts IV or V of the Children Act 1989, e.g.:

- ❖ Appealing a Care/Supervision order
- ❖ An Education Supervision order that has reached the Court of Appeal

Table 9(b)

Any other family proceeding, e.g.:

- ❖ CAO (Residence) where you represent the child in proceedings
- ❖ Forced Marriage Protection order



[Civil Finance Electronic Handbook, Appendix 2](#)

Deprivation of Liberty (DOLs)

Listed and heard within care proceedings

- Can be amended on to an existing care certificate
- Payment made as 'related proceedings', so under the Family Advocacy Scheme (FAS). The applicable rates would be for care proceedings

Listed standalone and heard entirely standalone

- A new certificate is required as it is a new funding determination
- Excluded from FAS under provisions covering proceedings heard under the inherent jurisdiction of the High Court
- The applicable hourly rate would usually be Table 9(a) rates for a legal aid funded solicitor

Listed standalone and merged within care proceedings

- A new certificate is required as it is a new funding determination, this can later be linked to a care certificate if the court consolidates
- Any substantive work pre-consolidation can be claimed standalone and would be Table 9(a) for a legal aid funded solicitor
- Post-consolidation it would be treated as 'related proceedings', the applicable rates would be for care proceedings

Enhancement: The Basics

- ❖ There is no contractual basis to enhance a rate that is not laid out in statute
- ❖ The starting point would be the rates payable to a solicitor: then if a case is complex or out of the ordinary, a higher hourly rate can be claimed under the same principles as enhancement
- ❖ The advocate should specify any higher rate being claimed, drawing the assessor's attention to any key issues in the claim
- ❖ The assessor will consider the evidence in front of them against the rate claimed and either authorise, reject for more information or reduce the enhancement claimed
- ❖ The assessor will not allow or assume any higher rate unless it has specifically been requested by the advocate

Enhancement: Some Useful Guidance



[Civil Finance Electronic Handbook, chapter 3](#)



[Cost Assessment Guidance, chapter 12](#)



[CCMS Interactive Module: how to submit an Appeal Bill](#)

Point of Assessment

The right to claim is incurred at the end of the case. This is normally from the date the court orders detailed assessment or the client's funding is withdrawn.

This is to:

- ❖ Protect the client in case a financial interest arises
- ❖ Protect advocates from debt arising if costs are awarded at the end the case
- ❖ Prevent inconsistent assessment

This applies regardless of LAA or the court being the assessing party

Payments on Account



LAA has no right of assessment on a POA, it is either paid or refused for not being eligible. This means payment of a POA is not guarantee of payment on final assessment of costs. It is a payment in advance of final assessment and will be balanced off against the actual final payment.

All claims for Assessment and payment by us must be submitted within 3 months of the right to claim accruing. The right to claim accrues in the following circumstances:

- a) when an assessment certificate is issued by the court; or
- b) where the Claim is to be assessed by us when:
 - (i) a final order of the court is made for detailed assessment of your costs under this Section 6; or
 - (ii) the later of: the date of service of a notice of discontinuance under Civil Procedure Rule 38.3 in respect of the entire proceedings under the determination to which the Certificate relates; or
 - (iii) 3 months after the date of the dismissal of application to set the notice of discontinuance aside under Civil Procedure Rule 38.4; or
 - (iv) an offer to settle is accepted or a payment into court is made under Civil Procedure Rule Part 36 in respect of the entire proceedings under the determination to which the Certificate relates; or if none of (i) to (iii) above apply, the date of the withdrawal of the determination (or, where relevant, the date that the withdrawal has been finally confirmed on appeal)

Standard Civil Contract Specification 2024, para 6.33



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Rates to Claim on Appeals

- ❖ Advice on Appealing
- ❖ Appealing an Interim or a Final Order

Advice on Appeal of a Final Order

Family Advocacy Scheme:

Claimable as an Opinion fee. The applicable rate is determined by the proceeding per FAS rules

Advice on appeal of a final order does not count towards the limit of 2 per proceeding. However, there must still be merit to the advice being sought

Not allowable in Domestic Abuse proceedings. This is because no Opinion fee exists under the FAS rules for these proceedings

Hourly Rated:

No fixed fee is applicable, any work to provide an opinion is remunerated at hourly rates in line with any other substantive work undertaken

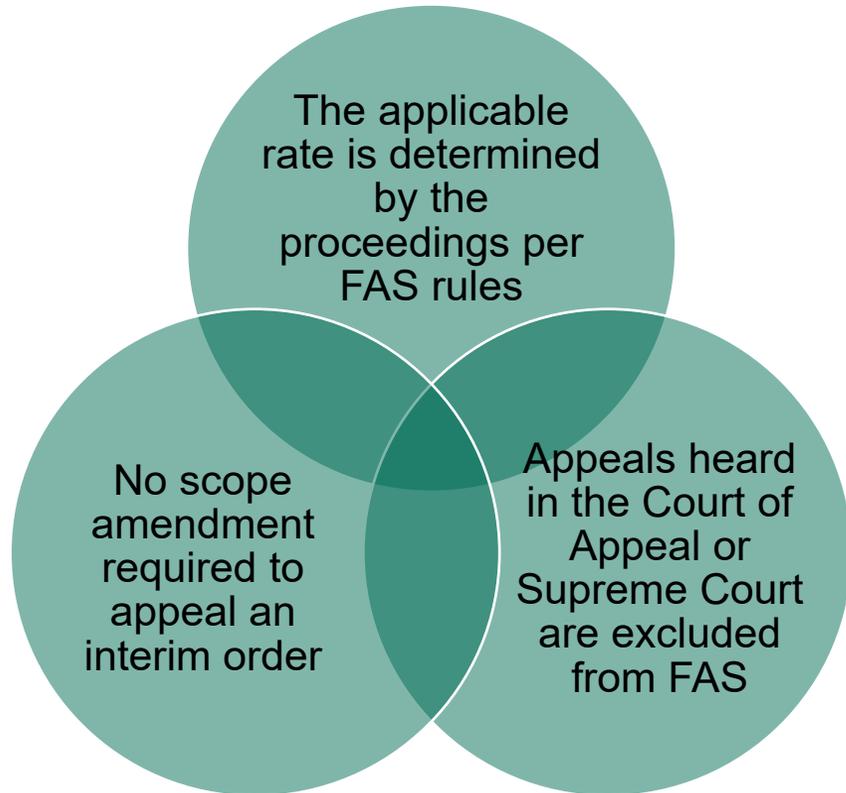
Rates will be determined on assessment. LAA will factor in the rates allowable to a solicitor in line with the Family Specification Contract paragraph 7.107

There are no limits to the number of opinions, but on assessment of costs there would need to be merit to the opinions being sought

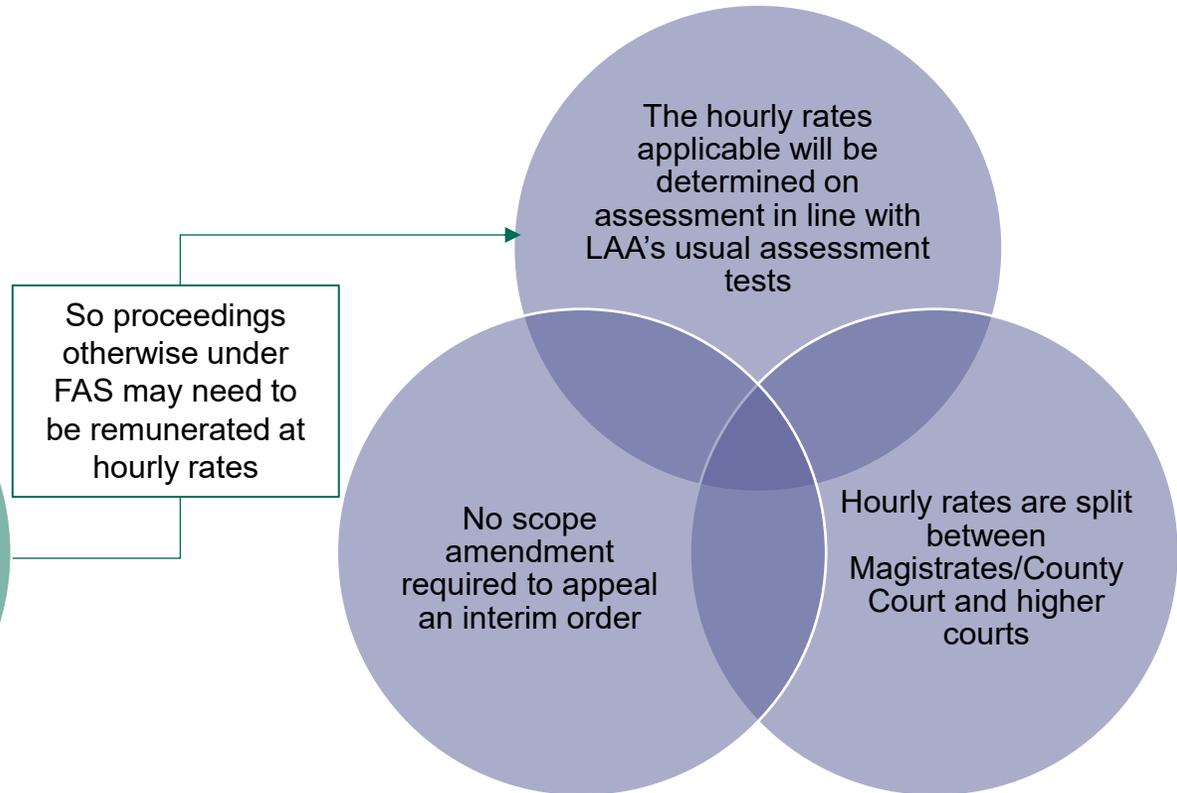


Appealing an Interim Order

Family Advocacy Scheme:



Hourly Rated:



Appealing a Final Order



Appealing a final order is excluded from FAS. Regardless of the nature of payment for the original proceedings, any work appealing a final order is payable by way of hourly rates



This is also not affected by the level of court hearing the appeal. For example, an appeal of an order by a District Judge to the High Court would be hourly rated, not FAS, even though there are FAS rates for the High Court



The rate applicable on assessment of costs will be determined in line with LAA's usual assessment tests to determine the hourly rate



Important to note that any appeal of a final order, once permission to appeal is given, requires a fresh means and merits-tested application for public funding



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Supporting Evidence

- ❖ Recitals in Court Orders
- ❖ What Supporting Documents Are Required



Evidential Requirements for FAS and Hourly Rates

- ❖ The Cost Assessment Guidance has always envisioned remote hearings taking place.
- ❖ Since 2020, we have accepted court orders in lieu of Advocates Attendance Forms more widely. Advocates Attendance forms remain acceptable evidence
- ❖ **Hearings:** an approved order listing the hearing times and bolt-ons/uplifts if applicable, or an attendance note confirming the hearing times where an order not available or doesn't have the detail.
- ❖ **Advocates Meetings:** an endorsed brief and a copy of the approved order listing the meeting. The brief can be endorsed electronically rather than physically.
- ❖ **Conferences:** an endorsed brief or attendance note that confirms the time of the conference is separate to that used for the hearing and a brief note of what was discussed.

A hearing may take place by any method directed by the court e.g. by either video or telephone conference without attendance at court. If the court directs an alternative method of hearing then the advocate will receive the appropriate fee as if the hearing had taken place at court...

As there will be no Advocates Attendance Form, detailed notes of the hearing will need to be recorded.

Cost Assessment Guidance 2024, Appendix 2, chapter 14.8



Evidential Requirements for Court Orders

Family Advocacy Scheme

- ❖ All information for calculating the applicable fee (level of judge, type of case, hearing start and finish times)
- ❖ Any other factors (e.g. lunch adjournments)
- ❖ Any additional allowed bolt-on fees

Guidance for Judges:



It is not mandatory, but LAA have circulated guidance for judges on FAS under the '*Family Advocacy Scheme: Information for Judiciary*' document. This contains a standard recital for FAS evidence that can be copied and pasted into a draft order for the judge

Other Evidence Required

- ❖ Evidential support for any experts costs as directed by the court: for example, the type of drugs testing requested and the number of drugs to be tested
- ❖ Any unusual or specific apportionment of costs for an expert fee
- ❖ Any specific or unusual disbursement (e.g. transcription fees)

Getting this right first time can help reduce administrative time for both you and your instructing solicitor!

Recitals for FAS Timings

UPON this hearing having taken place in person / remotely by CVP / telephone / Teams / as a hybrid hearing by order of the Court [*delete as appropriate*];

AND UPON the court noting the following provisions for FAS:

Family Court before: [*Judge*]

Hearing date:

Court type: [*e.g. Lay Bench, Circuit/District, High Court*]

Case type: [*Domestic Abuse, Care, Other Public Law, Private Children, Ancillary Relief*]

Type of Hearing: [*e.g. Directions/Case Management, FDR, FoF, IRH, Final Hearing*]

Case Settled: [*yes/no: for use where the FDR or IRH has concluded proceedings*]

Advocates' Bundle: [*number of pages*]

Pre-hearing discussions began at:

Start time of the hearing:

End time, including time to agree an order:

TOTAL LENGTH OF THE HEARING: [*for an interim hearing, hours and minutes, deducting any adjournment; alternatively, please confirm if there was no adjournment. For a Final Hearing, number of days*]

Bolt-ons and uplifts:

Advocates' meetings: [*e.g. the date of any linked Advocates' Meeting for the hearing*]

Evidential Requirements for Disbursements

Travel to court

- The journey from chambers to the court must exceed 10 miles
- LAA may check to see if there was a more appropriate local bar for longer journeys, so please make sure you provide justification, especially on longer journeys
- Can be by any method, but public transport is generally more justifiable than car or taxi
- The ticket itself is sufficient for any public transport, for mileage LAA need to see a ledger entry showing the cost

Overnight costs

- Are unusual, but can be justifiable for example if specialist counsel is required
- Costs limited per city, large cities have a higher upper limit for allowable costs
- Subsistence is claimable alongside an overnight stay, but limited to maximum of £25
- All costs need to be evidenced with receipts, invoices, or other evidence to demonstrate a financial transaction

LAA will expect to see evidence of the transaction for any costs incurred over £20, inclusive of VAT. If you cannot provide a voucher, your claim may be rejected or the costs removed on assessment.



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