



Legal Aid
Agency

Chief Executive's Correspondence & Parliamentary
Engagement Team

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Ms. Yvonne Wilson
nagalro@nagalro.com

Our Ref:11443
1 July 2024

Dear Ms Wilson,

Re: Independent Social Workers (ISW) Fees

I write further to your complaint dated 14 May, addressed to the Ministerial Correspondence Unit. Your letter has been forwarded to my team to provide a response as your complaint chiefly seems to concern and be directed against the Legal Aid Agency (LAA) I confirm this has been registered as a first stage complaint. Regrettably, your correspondence was only passed to me on 6 June, and I apologise for the delay arising from the lateness of this referral.

I should make clear that the LAA is an Executive Agency of the Ministry of Justice and as such has its own complaints and correspondence handling process. Contact details for the LAA are set out on its [website](#).

You have raised two grounds of complaint:

1. Failure to respond substantively to correspondence and in particular your email of 14 February 2024.
2. Failure to provide information to Independent Social Workers regarding an increase to the maximum hourly rate which may be claimed in legal aid cases.

By way of redress you are seeking:

- Response to your letter dated 14 February 2024;
- Explanation for the failure of the LAA to notify professionals of its decision to increase the maximum rate permitted for ISWs;
- Explanation and apology for the delays in responding to correspondence; and
- Suggestions about how future communications between the LAA and you may proceed more efficiently.

Response to your letter dated 14 February

You have requested a full and detailed response to your letter of 14 February. A response to the specific issues raised in that letter is annexed to this response.

Explanation for the failure of the LAA to notify professionals of its decision to increase the maximum rate permitted for ISWs

I should clarify at this point that the decision to increase the maximum hourly rate for ISW's undertaking family legal aid work was dependant on an increase to fees by Cafcass. The LAA has been clear at all times it will pay ISWs at a rate comparable with Cafcass and that position has not changed.

The key document that set out remuneration in relation to ISW's in family cases is the 2018 Standard Civil Contract Family Specification which governs the relationship between the LAA and providers.

The 2018 Standard Civil Contract Family Specification has not changed in relation to ISWs since it came into force on 1 September 2018 sets out that:

7.181 In all other cases, if independent social work expertise is claimed as a disbursement, it may not be claimed at a rate in excess of such rates as the Director may from time to time specify on the website. Such rates will be comparable to the rates usually payable for such services by Cafcass or CAF/CASS Cymru

The LAA were not consulted beforehand or made aware Cafcass had increased its in May 2022.

Although, it is accurate to say that the LAA were aware of the change prior to 1 August 2023, it was necessary to consult with MOJ Policy teams which have overall responsibility for remuneration of legal aid work before updating any guidance. There was delay in this process as a result of a number of staff leaving the team. There was then some further delay in updating the guidance as there were a number of pending updates and it was considered preferable to make these as part of a single consolidated update. In the event 1 August 2023 was the first available opportunity for the LAA to clarify the increase to the rate. Given the delay in publishing the update the LAA agreed the amended rate would be applied retrospectively where instructions were received on or after 1 May 2022 to ensure consistency with CAF/CASS.

When the revised Handbook was published reference to it would have been included in the legal aid bulletin which is an email that goes out every two weeks to providers and anyone else who has signed up for. Albeit we cannot guarantee that every provider will read the bulletin or disseminate information throughout the firm. Our understanding is that some representative bodies such as the Association of Lawyers for Children did highlight changes to their members. I consider the LAA has taken all reasonable steps to highlight the increased fee to legal aid providers.

The LAA meets with provider representative bodies (including The Law Society and Resolution) on a regular basis. Following receipt of your complaint, the LAA asked these representative bodies to include a reminder to their members when they next write out to them at the last meeting which took place on 12 June.

The LAA's contract is with legal professionals who are responsible for the instruction of and payment to any third parties engaged to undertake work on a legal aid case. I am unable to accept that the LAA had any obligation or duty to proactively update ISWs,

including your members of the changes made, especially as it had no effective mechanism for doing so.

That said your members are able to subscribe to the LAA Bulletin which would ensure they are kept up to date with any legal aid news which may affect them <https://labulletin.org.uk/p/4P-5T3/sign-up-form> .

I acknowledge that the Guidance on Remuneration of Expert Witnesses ought to have been updated at the same time as the Civil Finance Handbook. I apologise that this was overlooked at the time and was only updated in March 2024. I am also grateful to you for pointing out that the updated to that guidance was inaccurate as it implied the rate applied retrospectively to cases where instructions were provided on or after 1 April 2014. This has now been corrected.

Explanation and apology for the delays in responding to correspondence

You have indicated that since 27 April 2023 you have been attempting to discuss with the LAA the issue of the hourly rates payable to ISWs in cases where the fees are paid through the LAA.

I reiterate that the LAA is an Executive Agency of the MOJ subject to an independent framework and governance arrangements with different contact details. Your initial letter was addressed to Abi Marx who is a Policy Official for MOJ. As Ms Marx had left her position within the Legal Aid Policy Team, she forwarded your correspondence to other Policy Officials within MOJ. The LAA was not directly included in your communications until 18 September at which point Eleanor Druker in the LAA's Service Development Team provided a response whereas there had previously been confusion as to who would be replying to your correspondence.

Prior to 18 September there was some confusion about who was responding as your correspondence had originally been directed to the MoJ policy team. Ms Druker replied immediately to you at the point she was directly copied into correspondence from your organisation. Ms Druker replied promptly to your communications throughout September 2023.

I do, however acknowledge that there were delays by the LAA in responding to correspondence to you after this point and in particular there has been substantial delay in providing a substantive response to your email 14 February 2024.

The LAA aims to respond to all complaints and correspondence within 20 working days in accordance with Cabinet Office Guidance. I accept that the delay in responding to correspondence has been unacceptable. I understand the delays were due to the need to agree a position with the MOJ policy team who are responsible for remuneration, staff leaving in that particular team, illness of LAA staff and the prioritisation of other urgent work.

I offer an unreserved apology for the delay in providing a substantive response to correspondence and can appreciate that this has caused frustration to you and your members. Every effort is made to respond to correspondence as soon as possible, however, in this case, some factors were outside the control of the LAA. Nonetheless, feedback will be provided to the LAA teams involved, to avoid similar issues arising in future cases.

Suggestions about how future communications between the LAA and you may proceed more efficiently

The LAA agrees that it would be helpful to have more regular and direct channels of communication with your organisation. The LAA would be happy to meet with you on an ad-hoc or a quarterly basis to discuss any issues that may arise. However, I should make clear that the LAA is only able to discuss operational issues with you, issues regarding remuneration are primarily a matter for the MOJ.

The LAA's service development team can discuss contractual and guidance matters and the case management team can discuss any general issues that arise in relation to billing. Ms Druker has in the past dealt with individual queries from members of your organisation in relation to issues they have had on specific cases e.g. where a solicitor has been late in paying an invoice and this has been referred to the provider's contract manager for them to discuss.

If you would like to arrange a meeting or if you wish to correspond directly with the relevant LAA team regarding contractual or billing matters, then please get in touch with Neil Lewis who is the Head of the Service Development Team. He will ensure that your query is dealt with by the relevant team and his details are Neil.Lewis@justice.gov.uk

I trust this letter clarifies the LAA's position and will be helpful to you when considering your next steps.

What to do if you are unhappy with this response

If you remain dissatisfied with this response and wish to pursue the matter further, then please explain why you are unhappy with the initial reply and what issues remain unanswered quoting complaint reference 11443.

I confirm that further details of our complaints procedure are available on our website <https://www.gov.uk/government/organisations/legal-aid-agency/about/complaints-procedure>

Should you have any further queries about this matter please do not hesitate to contact corporatecorrespondenceteam@justice.gov.uk.

Yours sincerely,

Nazmun Nahar

**Chief Executive's Correspondence & Parliamentary Engagement Team
Legal Aid Agency**

Annex – response to specific issues raised in 14 February email

The Guidance on Remuneration of Expert Witnesses has now been updated to accurately reflect the increased hourly rate, which I hope will be of assistance in highlighting to legal aid providers the increased rate claimable.

I set out below answers to the four specific queries raised in your email.

1. Please confirm that any instructions received by an ISW received after 1 May 2022 may, if not yet invoiced, be invoiced at £35.

That is correct, these may be invoiced at £35 per hour.

2. Where ISWs have had their invoices for work after 1 May 2022 reduced on assessment from £35 to £33 per hour how should they have the reduction reinstated?

We are not aware of any cases where rates have been reduced on assessment, however, if you your members do have specific cases, please advise them to send these to Chris.Needham@justice.gov.uk who will look into them.

3. If instructions have been invoiced and paid at £33 per hour but the certificate is still open will the LAA reimburse the instructing solicitor if a revised invoice of £35 per hour is submitted?

In these circumstances, if the final bill from the legal aid provider has not been submitted, the provider should request recoupment of the original payment on account (POA) and then submit a new one at the higher rate. They can then pay the ISW the difference. They should submit the amended invoice when they submit their final bill for payment. If the provider is ready to bill the case, there is no need to adjust any payment made on account, instead the amended invoice can be submitted with the final bill and a covering note of explanation provided.

4. The process where the case has been concluded and the certificate has been closed.

Where a certificate has been closed providers can submit a general enquiry on CCMS requesting that the certificate is reopened. The LAA will then review this on a case-by-case basis to see if it's reasonable to reopen the case. Once this has been done a provider can submit an adjustment bill.

We are not aware of any cases where there was an appeal against the lower rate that was unsuccessful, I however, if there has been then please refer those specific cases to Chris.Needham@justice.gov.uk who can discuss with providers how to deal with these.