A Practical Guide to Managing High Cost Family Cases for Barristers and Clerks

There are three different sets of guidance governing High Cost Family (HCF) cases:

* Care Case Fee Scheme (Single Counsel) – Normally only available for Care Proceedings
* Care Case Fee Scheme (Two Counsel) - Normally only available for Care Proceedings where prior authority for KC and Junior or two junior counsel is granted by the LAA
* Fully Costed Case Plans – all other HCF cases

It is important to understand the differences between the three different schemes. The two Care Case Fee Schemes (CCFS) are very similar and thankfully very simple. Fully costed case plans are completely different and much more complicated. The vast majority of HCF cases are Single Counsel CCFS or Two Counsel CCFS. Fully costed case plans and non-Care cases are much less common and subsequently most of this guidance focusses on CCFS.

**Common Misconceptions**

There is no point repeating the entirety of the regulations here, instead we will look at the things that barristers and clerks most commonly get wrong.

*The case has been listed for 11 days (or more) so it is High Cost.*

*All the other advocates in the case are High Cost so I must be too.*

In all Single Counsel HCF cases the High Cost threshold is where the total of solicitors’ costs, counsel’s fees, and disbursements (experts fees etc) exceed or are likely to exceed £25,000 net of VAT. If the costs threshold isn’t met then the case can’t be High Cost. When calculating your estimated costs you have to use FAS rates, you can’t use events rates to artificially increase costs.

Even if the threshold is reached a High Cost Contract will only be issued if the solicitor applies to the LAA to register the case as HCF through CCMS. In Two Counsel cases the threshold for HCF is normally when authority is granted for Two Counsel, simply put the vast majority of Two Counsel cases are HCF.

*If it’s High Cost then it gets paid at events rates*

Events rates apply in Care cases where a HCF contract has been issued **and** the main hearing length is 11 days or more. The length of the main hearing is the total number of days of the fact finding and final hearing combined. The calculation of the length of the main hearing does not include the IRH/PHR, or the drafting of written submissions, or any reading days.

It is common for the planned length of the main hearing to change as a case progresses. Where the planned length changes more than 5 working days before the start of the hearing and this means the length of the main hearing is now less than 11 days, then events no longer applies. In such circumstances FAS would apply in Single Counsel, and FGF in Two Counsel.

The converse is also true where a HCF case was originally listed with a main hearing length of less than 11 days then FAS (or FGF in Two Counsel) would apply, if the main hearing however increased to 11 days or more then events would be claimable.

*You won’t get paid for years for High Cost Cases.*

In CCFS cases it is possible to claim 100% payment on account after every six events and to be paid within 7 -14 days of that claim. It is common to get to the end of a case and for counsel to have been paid all of their fees even though the solicitor does not submit a final bill until months later.

In fully costed case plans delays are more common. This shouldn’t be the case but fully costed case plans are a nightmare to manage. Fees have to be agreed for each stage of the case and as cases can often move quickly and erratically this can cause issues. This can be particularly annoying as a lot of these cases remain at FAS rates.

 *The case required the drafting of written submissions so an event can be claimed.*

In Single Counsel CCFS an event can be claimed for drafting written submissions where the Judge sets aside a day for the drafting. If it isn’t in a court order you can’t claim it.

In Two Counsel CCFS where the main hearing is listed for more than 10 days an event can be claimed where the Judge sets aside one of the days of the judicial timetabled hearing for the drafting of written submissions by one of the advocates. The other advocate could only claim an underrun.

 *Only two advocates meetings can be claimed in HCF*

In Single Counsel CCFS there is no limit to the number of advocates meetings that can be claimed provided they are ordered in advance by the court. This differs from FAS where they can be ordered retrospectively.

In Two Counsel CCFS up to two advocates meetings can be claimed per advocate, per part of proceedings. The KC, junior, and solicitor can each claim two advocates meetings prior to the fact finding and two prior to the final/welfare hearing. Where a fact finding, or final hearing has to be re-heard following an appeal then the LAA will consider paying additional advocates meetings, but this has to be requested and justified.

*The case has gone short so I can claim underruns.*

In CCFS, if a main hearing is vacated within 5 working days of the listing and is not subsequently relisted it is claimable as an underrun. This is straight forward, if the case cracks 5 days or fewer than the start of the hearing you can claim the underrun. If however the case is relisted and so doesn’t crack but is adjourned then no underrun is claimable.

The LAA will however consider paying some or all of the underruns on a case by case basis, where the preparation for the vacated hearing is effectively wasted. This could be because the original advocate is not available for the relisted dates, considerable volume of new disclosure, a significant delay between the adjourned and relisted dates etc. To request payment of underruns where they would not normally be claimable should be done by way of a note to the LAA sent through the solicitor when submitting a case plan.

**Best Practice**

The biggest complaint barristers and clerks normally have about HCF cases is around delays to payments. It should however be possible to be paid very soon after work is completed, much as is possible in FAS cases. This requires an understanding of the regulations, pro-active case management, and effective lines of communication between barrister, clerk, and solicitor.

Know the Rules

The starting point in effectively managing High Cost Family (HCF) cases is in understanding the regulations. These are all available to download from the LAA website [High cost case family - GOV.UK (www.gov.uk)](https://www.gov.uk/guidance/civil-high-cost-cases-family)

* If your claim is wrong it will delay case plans and final bills.
* You may end up claiming more than is allowed under the regs through 100% payments on account and end up owing the LAA substantial sums.
* Don’t try it on – follow the rules, know where there is flexibility and use it when appropriate.

Identify HCF Cases

Where you identify HCF cases early you have more time to prepare the groundwork and ensure everything is ready for you to make a claim as soon as possible. This requires clerks and barristers to work together.

If as a barrister you are aware that a case you are dealing with is going to be listed for 11 days or more, or if you are considering applying to the LAA for prior authority for KC and junior/two juniors, then you need to inform your clerks.

Clerks should be alive when submitting FAS claims where CCMS indicates that the case has a High Cost Contract in place and consider is it a case where the combined fact finding, and final hearing could exceed 10 days.

Communicating with Solicitors

Once you’ve identified a potential HCF case you need to open lines of communication with the solicitor. First consider who you need to communicate with. Busy Care practitioners may not necessarily be the correct person to speak to about High Cost. It may be a secretary or assistant who manages HCF, the firm may have an in-house costs team or else they may outsource HCF to a costs lawyer.

You need to send a costs estimate to the solicitor based on the current timetable. Where a case hasn’t yet been registered as HCF you should send the solicitor an estimate of fees at both FAS and events rates. This will help them consider whether they need to register it as a HCF case. You should be aware that the solicitor has a far better grasp of the global costs in the case and may feel that they are still some way from getting close to the £25,000 limit and may feel there is no need to register as HCF.

As the case progresses you need to keep updating the solicitor with the costs position. If you do this and the solicitor acts on your prompts then it should mean you should always be able to claim a payment on account. This again takes communication between clerks and barristers.

In two counsel cases there is one very important piece of information you must get from your solicitor which is the CCMS notification granting authority for two counsel. It will normally only cover the use of two counsel to the end of the fact finding hearing. The legal aid certificate only notes that the authority has been granted, but it is the CCMS notification which confirms the specific limitations. Get this wrong and you may well have a KC doing a lot of work for which they will not get paid.

Costs Limits

When a case is registered as High Cost and the solicitor has submitted a signed high cost contract the LAA will grant an automatic costs increase to £32,500 in Single Counsel cases and £60,000 in Two Counsel cases. The solicitor can apply to increase these limits by submitting an Interim Case Plan as often as is required. This interim plan requires only very basic information about the case and is relatively simple to complete. It is not a huge administrative task for your solicitor, and it forms part of the work required for the Final Case Plan so is useful in keeping the case up to date for billing purposes.

In the majority of single counsel cases you will find that the £32,500 costs limit is sufficient for counsel to be able to claim 100% payment on account all the way through the case without the need for the solicitor to submit an Interim Case Plan. In two counsel cases the £60,000 costs limit will be swallowed rapidly. The total of KC, junior, and solicitor per event is £4,374 which only takes 13 events to get to £60,000. It is quite common for junior and solicitor to have completed several events before KC is instructed and so that £60,000 limit may well be already depleted by the time KC starts work. It is therefore normal to need to submit an Interim Case Plan to increase the costs limit in most two counsel CCFS cases. Where the main hearing does not exceed 11 days and events don’t apply and FGF (or FAS) is claimed, then normally the £60,000 limit will be sufficient to get to the end of the fact finding.

You should always bear in mind that you will only be able to see what has been claimed and paid by barristers from your set. The solicitors may well have had payments on account of their own fees, they will have paid some disbursements with experts fees often taking a big chunk. If counsel from other chambers have acted you will be unaware of their costs.

Claiming Payments on Account

In events cases you can claim for 100% of the outstanding fees once a HCF contract has been issued, after every six events, or when six months have elapsed. You should therefore be able to claim soon after any substantive work has been done. However you can only claim a payment on account if the solicitor has allocated the costs to you on CCMS, this is no different from what is required in FAS cases. Obviously for the solicitor to allocate costs there must be sufficient costs limit available for them to do so.

To claim 100% payment on accounts you need to email a POA1 and fee note to the LAA at this email address: Counsel\_Events\_POA@Justice.gov.uk

If you are claiming at FGF rates you can only claim 80% payment on account, and this is done via CCMS.

You should always remember to offset any previous claims paid against what you are requesting as a payment on account, whether that be payments made at FAS rates before the case became HCF and any previous payments on account.

Final Bill

When a case concludes the solicitor has to submit a final case plan and together with that they have to supply all the supporting documents relating to the case. This includes information about counsel’s fees. It may take the solicitor some time to pull all this information together so at the conclusion of the case you should start work on getting together the information they will need and on checking that your part of the bill is correct.

You’ll need to provide a fee note which accurately reflects the fees you are entitled to claim. You therefore need to check that full events, under runs, and over runs are correctly claimed. It is worth cross referencing your fee note against the court orders to check you are claiming correctly. You also need to check the specific differences between single and two counsel cases especially relating to advocates meetings and written submissions.

If you haven’t already provided one you will need to send a signed counsel’s acceptance form (CAF) to the solicitor. You also have to provide endorsed briefs/back sheets for any conferences or advocates meetings claimed. If you are seeking payment for underruns where they wouldn’t normally be allowed or are claiming for additional advocates meetings following an appeal where a re-hearing is ordered you should provide written justification.

Make sure the solicitor sends you a copy of the final case plan before it goes to the LAA. If counsel’s fees are recorded in the case plan differ from what you have then the solicitor will have to amend it and send it back to the LAA to be approved.

These are the things which can cause a final bill to be bogged down for months and months as the LAA have to reject the final case plan until it is correct. They are incredibly common errors and it’s important to get them right first time.

**Best Practice Summary**

Know and follow the rules - [High cost case family - GOV.UK (www.gov.uk)](https://www.gov.uk/guidance/civil-high-cost-cases-family)

 Different rules for single and two counsel cases

Where there is flexibility you must provide justification

 Underruns where cases relisted

 Advocates meetings for re-hearing following appeal

 SIPS/Special Prep in FGF cases

Identify potential HCF cases early

 Time estimates in excess of 10 days/very large bundles/lots of intervenors

 HCF options on CCMS when trying to claim at FAS rates

 When another party gets authority for two counsel

Open up communication lines with solicitors

Ensure you are communicating with the right person

Liaise with solicitors about registering HCF

Keep them up to date with ongoing costs

In two counsel cases obtain copy of CCMS notification granting authority – not certificate

Keep checking the timetable

 Changes to the length of hearing may mean you can or can’t claim events

 Vital for keeping solicitors in the loop about counsel’s costs

 IRH/PHR is a good point to check the timetable as they often change at these hearings

Payments on account

 Have to request costs allocation on CCMS from solicitor

 Remember to offset previous FAS payments and payments on account

Final bill

 Check you are claiming at the right rates

 Check events, over runs and under runs using court orders

 Correct number of advocates meetings and conferences

 Provide CAF, endorsed backsheets, and justification where required

**Tricky Bits**

Length of main hearing

The length of case is something that can catch anyone out as case timetables can change at any time. A single day can mean the difference between being paid at events rates or FAS. Get it wrong and it can be incredibly costly.

For a case to be events the planned length of the main hearing must be 11 days or more. The main hearing is the combined length of the fact finding and welfare hearing.

This includes any judgment hearing where the parties attend court.

It does not include PHR/IRH.

It does not include reading days, unless the parties appear before the judge that day.

It does not include the drafting of written submissions.

This part is fairly simple. Actual length is fine, a case where the main hearing runs for 15 days where a HCF has been issued will be paid at events rates. The tricky part is the word planned.

In a HCF case if the planned main hearing length is reduced by judicial order less than five working days before the hearing starts then the for the purposes of calculating the length of hearing it remains the same. If it is reduced more than five days before the hearing starts then it changes.

To illustrate this let us consider some worked examples:

HCF contract in place a month before main hearing started. Fact finding originally listed for 10 days, reduced to 7 days, and final hearing runs for 3 days.

*Scenario 1*

The fact finding was reduced to 7 days at the IRH which was heard 2 weeks before the fact finding was due to start. Main hearing length is 10 days and so FAS applies.

*Scenario 2*

The fact finding was reduced to 7 days at the IRH which was heard 3 days before the fact finding was due to start. Main hearing length is 13 days and so events apply.

In single counsel cases if the HCF contract is issued part way through a main hearing it can also be a factor.

Fact finding listed for 7 days starts but only runs for 5 days. Final hearing later listed and also runs for 5 days.

*Scenario 3*

Notification of the case being registered high cost after fact finding hearing. Main hearing length is 10 days, so FAS applies.

*Scenario 4*

Notification of the case being registered high cost before fact finding hearing. Main hearing length is 12 days, so events apply.

This is an interesting one as it’s easy to miss. Generally final hearings aren’t listed until after the fact finding so you may miscalculate the fact finding length which is also reliant on when the HCF contract was issued.

Two Counsel - FGF

Where the main hearing length is less than 11 days in two counsel cases then FGF rates apply. These are the rates which were reduced by 10% by LASPO in 2012, so make sure you are using the correct rates.

KC can only claim at FGF as there are no KC rates in FAS. Junior counsel however can opt to claim at FAS or FGF rates for the whole case, you can’t pick and mix for each hearing.

When claiming FGF it is best practice to get the judge to authorise your SIPS form and claim for Special Preparation as was done prior to FAS. Alternatively have the SIPS, bundle, and Special Preparation claimed recorded in the order, as you do with bolt-ons for FAS.

If you do not get the court to authorise your SIPS form or get the details recorded in the order you will need to justify what you are claiming to the LAA. This can be done by a short note explaining what you have claimed.

The LAA have helpfully provided an [FGF calculator](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F1105902%2Ffgf_calculator.xlsx&wdOrigin=BROWSELINK) to assist with calculating FGF Fees.

Hourly Rates

In very limited and specific circumstances the LAA will consider paying KC at hourly rates. This is usually where KC alone has been instructed for a specific discrete part of a case. The LAA will not pay hourly rates to junior counsel in a Care case unless they agree it is a case where events would not sufficiently remunerate counsel for the work involved and then it would be dealt with under a Fully Costed Case plan. Generally speaking it would need to be a very unusual case for the LAA to grant hourly rates. Fully Costed Case plans are much more complicated, and it takes far longer to get paid than CCFS.

Hourly rates do however apply in appeals to the Court of Appeal or the Supreme Court. You must provide justification for the hours of preparation claimed and hourly rates in these cases. Back in the mists of time it was common to draft a note on taxation to accompany your fee note to justify the fees claimed. It is very sensible to do something similar in appeal cases.

**Problems**

When problems arise with HCF it is normally due to communication issues. It can also often be due to misunderstandings of the regulations. If you have followed the best practice guidance you should avoid most issues but there will always be times when a HCF case gets stuck, and you can’t get paid.

Where a solicitor is simply refusing to engage with you, then you may need to consider reporting the matter to the solicitors contract manager at the LAA. Obviously this needs careful consideration. It may feel like a step too far with a solicitor who provides a lot of work. It isn’t however necessarily a punitive action, the LAA will try and engage with the solicitor and help them over the line.

The LAA can potentially assist in a number of ways, and they have provided the details below.

**For Non-Urgent General Queries**

It is useful to check our processing dates before calling  to check the progress of a submission [www.gov.uk/guidance/civil-processing-dates](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.uk%2Fguidance%2Fcivil-processing-dates&data=05%7C01%7C%7C3cc03b4696ed490a2d8f08dae27c4445%7C66f11b9f2a334cdbb688a64773f3b82d%7C0%7C1%7C638071320611380578%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=JZr6hyUnfMUfxWEa3B8xu0Lr9N8nql77PyBeKwPe%2Blw%3D&reserved=0)

CCMS cases (online submissions) -

* Submit a general enquiry submission on CCMS ( include the certificate number, client name, Counsels name and account number)
* Use the online chat available on the Legal Aid learning page – [www.legalaidlearning.gov.uk](file:///C%3A%5CUsers%5Cmcv93u%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CH1I224WK%5Cwww.legalaidlearning.gov.uk)  select the “Contact us” option

Pre CCMS Cases (paper submissions) -

* Email  contactcivil@justice.gov.uk if the matter is a non-high cost case matter
* Email  highcostfamily@justice.gov.uk if the matter is a family case with a case plan registered
* Email ContactECC@justice.gov.uk for any non-family cases with a case plan registered

The following self-help resources may also be of assistance  -

Legal aid learning Quick guides - [www.legalaidlearning.gov.uk](file:///C%3A%5CUsers%5Cmcv93u%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CH1I224WK%5Cwww.legalaidlearning.gov.uk)

CCMS Advocate  - Getting started -  [https://legalaidlearning.justice.gov.uk/course/view.php?id=202](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Flegalaidlearning.justice.gov.uk%2Fcourse%2Fview.php%3Fid%3D202&data=05%7C01%7C%7C3cc03b4696ed490a2d8f08dae27c4445%7C66f11b9f2a334cdbb688a64773f3b82d%7C0%7C1%7C638071320611380578%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=s2AlwZ5YV8Oe3DCKMOmVffIh0F62Hbqm4xo%2BqjxrD4I%3D&reserved=0)

CCMS Advocate  - Closing cases and submitting bills
<https://legalaidlearning.justice.gov.uk/totara/catalog/index.php?catalog_cat_browse=395&catalog_cat_panel=825&orderbykey=text&itemstyle=narrow>

**High Cost Family Fixer and Civil Claim Fix Service**

‘High cost family fixer’ can help with a range of issues which are explained on our [training and support website.](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Flegalaidlearning.justice.gov.uk%2Fpluginfile.php%2F1195%2Fblock_html%2Fcontent%2FCivil%2520Fixer%2520Guidance%2520v8.pdf&data=05%7C01%7C%7C3cc03b4696ed490a2d8f08dae27c4445%7C66f11b9f2a334cdbb688a64773f3b82d%7C0%7C1%7C638071320611380578%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=QMdxzBbYl5q8%2FUOGSbLqo2gpYNUkuwP%2FZ38rv1%2FE%2Fio%3D&reserved=0)

highcostfamilyfixer@justice.gov.uk

civilclaimfix@justice.gov.uk

**The Customer Services Team can be contacted by telephone on 0300 200 2020 - Option 1  for Civil enquiries including High Cost Family matters, this line should be used for urgent queries only**

The caller will be asked for  **ALL** the following details:

* Case reference number
* Client’s name
* Counsel’s name and account number
* Name of the Instructing Solicitors Firm

**If you encounter any technical issues while using CCMS**

* Email Online-support@justice.gov.uk
* Use the online chat available on the Legal Aid learning page –[www.legalaidlearning.gov.uk](file:///C%3A%5CUsers%5Cmcv93u%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CH1I224WK%5Cwww.legalaidlearning.gov.uk)  select the “Contact us” option
* Call The Customer Services line , 0300 200 2020 and select Option  3 to speak with a member of the Online Support Team

When contacting the Online Support team please provide the following information –

* Case reference number
* Client’s name
* Counsel’s name, account number and Chambers

If sending an email please include screen shots of any errors that have occurred

**For any queries in relation to remittance statements, statement of accounts or missing payments you can contact Payment Information**

Paymentinformation@justice.gov.uk

You should provide –

* Counsel’s name
* Account number
* Chambers name
* Dates of any statements being requested

**This guidance was prepared by** [**Scott Baldwin**](https://www.stmarysfamily.co.uk/staff/scott-baldwin) **and** [**Chris Ferrison**](https://1gc.com/clerks-and-staff/profile/chris-ferrison)**.**

Scott is the Chief Executive at [St. Mary’s](https://www.stmarysfamily.co.uk) and has over 30 years clerking experience. He is a member of the Institute of Barristers Clerks Management Committee and chaired their annual conference in 2016.

Scott is a member of The Bar Council Remuneration Committee and The Bar Council Regulatory Reform Working Group. He has worked with the Family Law Bar Association and Legal Aid Agency on improving training guides and processes related to CCMS and VHCC.

Chris is the Senior Fees Clerk and has over 30 years clerking experience. He is responsible for the management of all fees at [1GC Family Law](https://1gc.com) but primarily deals with the billing of all High Cost Cases and Court of Protection cases.

He also advises the Family Law Bar Association (FLBA) on Family High Costs and attends meetings at the Bar Council on the same. During the Covid-19 pandemic, he has also been advising on family fees more generally.