

Stage Billing in Fresh Asylum Claims - *the bulletin no. 26*

This bulletin contains important information for those conducting asylum casework under an LSC contract. Understanding when hourly paid matters can be stage billed could help improve your cash flow in asylum matters.

This paper has been written by Paul Benjamin, National Relationship Manager in the LSC Immigration Policy Team to clarify stage billing in fresh asylum claims. It applies to fresh claims in cases that are paid at hourly rates (ie where the *original* asylum application was made before 1st October 2007).

If you have any questions about the contents of this bulletin, please contact CLS Support on 0845 241 2588 1pm to 4pm Monday to Friday, or email cls.support@asauk.org.uk anytime.

Clarification of the Current Billing Points

The Current Contractual Requirements

The Immigration Specification sets out the points at which Stage Claims and Completed Matter Claims must be made.

Claiming for Graduated Fees

Paragraph 11.70 of the Unified Contract Immigration Specification states:-

“You must submit a Controlled Work Claim within three months of the end of each of the following stages of the case citing the correct Unique Client Number (see Paragraph 11.80 to 11.83):

(a) Legal Help – at the end of Stage 1.

Where incurred you should also claim any relevant additional payments including disbursements.

(b) Controlled Legal Representation - at the end of Stage 2.

Where incurred you should also claim any relevant additional payments including disbursements.

You must submit either a Stage 2a or Stage 2b Claim. Only one Stage 2 Claim will be claimable.”

Claiming for cases paid at Hourly Rates

Paragraph 11.71 of the Unified Contract Immigration Specification states:-

“You must submit a Controlled Work Claim within three months of the end of each of the following stages of the case citing the correct Unique Client Number (see Paragraph 11.80 to 11.83):

(a) Legal Help:

- (i) The date that Controlled Legal Representation is granted or refused in relation to the Home Office decision;
- (ii) Following the submission of a fresh application for asylum to the Home Office (See 11.120); or
- (iii) When you have completed work under Legal Help, if earlier.

You should ensure that any advice/assistance in relation to an Independent Funding Adjudicator Review against the decision to refuse to grant Controlled Legal Representation, is provided as part of this Claim.

(b) Controlled Legal Representation:

- (i) The date you have applied the appropriate Controlled Legal Representation merits test to making a section 103A NIA 2002 review application (and advised the Client appropriately as to their options); or
- (ii) When you have completed work under Controlled Legal Representation if earlier.”

The Fresh Claim Billing Point

In May 2006 following representations from stakeholders we consulted on a further Stage Claim. This was intended to alleviate the problem of providers having significant Work In Progress (WIP) tied up in relation to fresh asylum claims due to delays in obtaining decisions in respect of those cases. This new Stage Claim facility (introduced in October 2006) allowed providers to submit a Legal Help Stage Claim at the point that a fresh asylum application was submitted to the Home Office rather than having to wait for the initial Home Office decision in respect of that fresh claim.

The fresh claim Stage Claim facility is now set out under Paragraph 11.71(a)(ii) of the Unified Contract Immigration Specification. This confirms that for fresh claim matters that are paid hourly rates (i.e. those where the original asylum application was lodged prior to 1st October 2007¹) a stage claim must be made at the point that the fresh asylum claim is submitted to the Home Office.

A further claim must be made when the decision in respect of the fresh claim is received from the Home Office.

¹ See Paragraph 11.2 of the Unified Contract Immigration Specification.

Which Codes to Use When Making a Fresh Claim Stage Claim?

The Immigration section of the Civil Claim Codes Guidance document explains that Stage Reached code IR (Legal Help Completed, CLR Continuing) should be used when making any stage claims in respect of a fresh claim. The outcome code will be '-- (apostrophe dash dash) because there is by definition no outcome as the matter is ongoing.

As such if a fresh asylum claim is made and the Home Office refuses that application and you choose to appeal that decision, a provider will make 2 IR Stage Claims. The first will be at the point the fresh claim was submitted and the second will be made at the point that CLR is granted to pursue the appeal against the Home Office's refusal of that fresh claim.

The Retrospective Application of 11.71(a)(ii)

Although the fresh claim Stage Claim point was only introduced in October 2006, it applies retrospectively i.e. providers may submit stage claims for costs incurred up to lodging any fresh claim even in those cases where the fresh claim was lodged before October 2006.

Definition of a Fresh Claim

Paragraph 11.1(a) of the Unified Contract Immigration Specification already contains a definition of what an asylum matter is. It follows from the wording of this section of the Specification that a fresh claim will include the following:-

- A fresh claim on asylum grounds.²
- A fresh claim on human rights grounds (Article 3 or Article 8) where the matter was opened as an asylum matter pre 1st October 2007.
- A claim by a dependent (an applicant who was previously³ part of a substantive asylum claim that is either ongoing or been determined).
- A further leave to remain application advanced on asylum or human rights grounds (Article 3) on behalf of a client for whom some form of leave⁴ was granted before 1st October 2007.

² Note that this Stage Claim facility will only be available where the original asylum application was lodged pre 1st October 2007 (i.e. it will not be available where the original asylum application was made on/after 1st October 2007 and attracted a graduated fee).

³ See footnote 1 above.

⁴ This includes Discretionary Leave, Humanitarian Protection and other forms of limited leave to remain.