

CLS Support Email Bulletin (Contracting No.19): Signed Sealed & Delivered (claiming time for pre-signature work)

1 Introduction

- 1.1 This Bulletin is applicable to Not-for-Profit (NfP) contract holders providing Legal Help under the General Civil Contract. It has been written as a response to enquiries on the CLS Support consultancy line, which included apparent disagreements over the interpretation of the rule between LSC audit staff and NfP caseworkers performing contract casework.
- 1.2 This Bulletin discusses when it may be appropriate to claim for work done prior to a client signing an application for Legal Help on the CW1 (Controlled Work 1) form as described in the NfP contract specification at Rule 2.6.
- 1.3 The Policy and Legal Department of the Legal Services Commission (LSC) has approved this interpretation of the Rule here for accuracy. It may therefore be relied upon by caseworkers when performing casework and also in any later assessment of controlled work at audit or otherwise.
- 1.4 Please note, any casework examples used in this Bulletin are for illustrative purposes only and are not meant to represent an accurate or full exposition of the law or of how you, as a caseworker, should apply the law to any particular case. Equally, when time claims are used within the case studies they are to illustrate the application of the rule only and should not necessarily be viewed as indicative of how long the described activities might take if you were dealing with a real case.

2 The Rule

- 2.1 The rule on pre-signature work is found in the NfP contract specification at Rule 2.6.
- 2.2 As a quality marked provider of advice, you have a professional responsibility to respond appropriately to a legitimate legal enquiry made to you in the course of providing your service.
- 2.3 Sometimes this may mean that you feel obliged to perform work on a matter before the CW1 form is completed and signed. The time taken to perform this 'pre-signature' work may be claimable, but only in the limited circumstances that the LSC allows.
- 2.4 In general, and only in the limited circumstances set out at here at paragraph 2.8, the contract rule suggests that you should limit any pre-signature work to a minimum, whilst observing any relevant professional codes of conduct and/or accepted principles of client care.

- 2.5 This is because the Rule is aimed at ensuring that legal services are only provided to those properly assessed as eligible at the outset of the matter.
- 2.6 You must also bear in mind that any pre-signature work you undertake before eligibility is assessed and the form signed is at your own risk. If a client turns out to be ineligible or does not subsequently sign the form then you will not be able to claim the time or disbursement costs for any work you have done (unless it had concluded as a Level 1 matter).

What does the Rule say?

- 2.7 Rule 2.6 of the specification states that you must not claim for any work done before the client signs the CW1 unless one of four exceptions applies.
- 2.8 These exceptions are (abbreviated):
- Where the form is signed during an interview;
 - Where you have given preliminary telephone advice;
 - Where the client has arranged an appointment for a first interview in advance and has given specific details of their case;
 - Where outward travel to a first interview is justified.

If I rely on the Rule, do I need to evidence it anywhere?

- 2.9 Whatever work you intend to claim for, pre-signature or otherwise, there must be a timed and dated attendance note on the case-file indicating what work was performed.
- 2.10 Therefore it should be clear from this note that the pre-signature work you have claimed for was performed under one of the circumstances listed above at 2.8, that it met the sufficient benefit test and was reasonable given the particular circumstances of the case
- 2.11 In addition, where you intend to claim for *pre-signature telephone advice* or, for *outward travel to a first interview before the form is signed*, then you should tick the appropriate box on page 5 of the CW1 and make a note of the reason(s) why, with reference to rule 2.6 on the CW1 form itself, at page 5.
- 2.12 However, if you believe that your attendance note already contains adequate justification for performing this work, then rather than writing all this out again on the CW1 it is acceptable to make a brief note on page 5 of the CW1 that you have relied on rule 2.6 and direct the reader to the particular dated attendance note.
- 2.13 Please see section 4 of this Bulletin for information on pre-signature telephone advice, and section 6 for the limited circumstances in which you might be able to claim for outward travel to a first interview.

3 What if the (CW1) form is signed during an interview?

- 3.1 This exception is found in the NfP specification at 2.6(1)(a).
- 3.2 You would not usually complete a CW1 and assess eligibility as soon as a client enters the room. It will be more common for you to complete the form during, or at the end of the interview when you decide to open a case for the client, even where you do not intend to advise or assist them beyond this initial interview.
- 3.3 Where a CW1 form is completed during an interview, and the client assessed as eligible, then all the time spent taking instructions and advising the client from the start of that interview is claimable.

Example 1

- *You are an Immigration caseworker and you see a new client who wants advice and assistance in relation to an asylum application*
- *You determine that the client has not received previous advice on the same matter*
- *You listen to what the client has to say and advise them you may be able to act on their behalf if they are eligible for Legal Help*
- *On completion of the CW1 and find that the client is eligible and so they sign the form*
- *You go on to advise the client further and decide on an agreed course of action*
- *The total interview took 1 hour and the form was completed and signed about a third of the way through*
- *The time claim you make is from the start of the interview, not from the time the client signed the form*
- *Therefore, you claim the full 1 hours work as an attendance on the client*

4 Can I claim for preliminary telephone advice?

- 4.1 This exception is found in the NfP specification at 2.6(1)(b).
- 4.2 It states that:
- "You can claim for preliminary telephone advice given to the client before the form is signed. However, unless we have contracted for you with a telephone service we expect you to see the overwhelming majority of clients at your office."*
- 4.3 The intention of this part of the rule is to avoid advice providers who are contracted to provide a face-to-face service making up any significant amount of their contract work by delivering a different type of service to prospective clients (i.e. telephone advice) than that for which they are contracted for. It also ensures that eligibility will be calculated properly, and in conjunction with seeking to obtain proper proof of income, it

ensures that CLS Fund resources are directed appropriately at eligible clients.

- 4.4 This does not preclude you from providing 'stop-gap' telephone advice to a client where this is necessary prior to you seeing them in person at the office or before the CW1 is completed and signed. Such 'stop-gap' advice to a client before they attend an appointment or sign the form would generally be claimable as pre-signature work but would be subject to the usual rules of sufficient benefit and reasonableness.
- 4.5 Brief 'stop-gap' telephone advice of maybe 1 or 2 units will probably be common where a prospective client telephones you directly and in this discussion you identify: what their enquiry is about, whether or not you can help them, and then relate your conclusions to them prior to setting an appointment when you will be able to see them in person.
- 4.6 Of course, there may be cases where due to the urgency of the enquiry you provide more extensive and time-consuming advice than this. This too would, in principle, be claimable on the same grounds. However, an auditor would still want to be assured from the case notes that it was both necessary and reasonable to provide such extensive advice over the telephone rather than arrange an appointment and provide the advice in person.

Example 2

- *You are a caseworker and a prospective client telephones you and says that they need assistance with a legal problem they are having*
 - *You ask the client what the problem is in order for you to determine whether or not you can help them, whether there is likely to be sufficient benefit if you did help them, and the urgency of the matter*
 - *You discuss the clients enquiry with them and give preliminary advice including that you will be able to help them further, and what you propose you and they should do next*
 - *The client agrees to you assisting them and as you think it is likely they will prove eligible from your conversation with them, you arrange an appointment at a later date*
 - *The client attends the appointment where you assess eligibility, complete the CW1 and continue with their case*
 - *You claim time for the preliminary telephone advice as well as any time spent in the interview and after the form is signed*
- 4.7 Occasionally you might conclude the matter at this initial telephone contact and so there would be no need for any further work or for the client to visit your office. In these situations it is acceptable for you to complete the eligibility check over the telephone and then post the CW1 form to the client for their signature and return [see paragraph 6.11].
 - 4.8 As an alternative to sending the CW1 form to the client for signature, if you complete and conclude the matter over the telephone within 35 minutes then it might be more practical for you to choose to class it as a Level 1 matter rather than as pre-signature work, as this would mean you would not have to complete the CW1 form or obtain the client's signature.

- 4.9 Nothing in the rule stops you from providing telephone advice to a client after full completion of the CW1, as this would constitute 'post-signature' work.
- 4.10 Any pre-signature telephone advice given before the appointment should help you maximise your time at that appointment as you would already have covered some ground by discussing the matter with the client. Depending on the extent of the discussion at the pre-signature telephone advice stage it may also mean that the time claim for the interview is proportionally less.

Example 3

- *You are a Housing caseworker and an individual telephones you asking for help*
- *You ask the individual what the problem is in order to determine whether this is a matter which will merit your professional involvement*
- *You also have to consider whether to simply make an appointment for them or whether it might be necessary and reasonable for you to provide preliminary telephone advice prior to seeing them in person*
- *The client tells you that they are going to be evicted from their home in four days time. You question the client and establish that unless an application to court is made then the eviction will go ahead*
- *You are unable to see the client until the day before the proposed eviction date and you know that there is no other advice provider locally who could see them*
- *Given this, and the urgency of the matter, you feel that in addition to making an appointment, extensive preliminary telephone advice is both necessary and reasonable*
- *You advise the client that they may be able to suspend the warrant and how this can be done. You go through what the client needs to do next, including specific things you need them to do and information that you want them to bring to the appointment and why this is important to their case. You explain that you will advise the client more fully and complete your work when you see them*
- *You see the client at the appointment, where you provide any further necessary work and complete the CW1*
- *The client is eligible so you claim all the interview time but also the time spent providing preliminary telephone advice*

5 Can I claim for any work where the client has arranged an appointment for a first interview?

- 5.1 This exception is found in the NfP specification at 2.6(1)(c).
- 5.2 It says that you may be able to claim for any reasonable and necessary preparatory work that you undertake where a client has made an appointment in advance.
- 5.3 However, to take advantage of this part of the rule the client must have given specific details of their case over at the time of making the

appointment and/or, handed over relevant documents. The key here is that you perform some specific task(s) relating to the client's case not just general work e.g. checking on the law.

5.4 There are a number of ways in which this might occur:

Example 4

- *A client visits a generalist advice session with an employment query and due to the complexity of the enquiry it is decided that the case should be passed internally to you, an Employment caseworker*
- *The generalist advisor makes the client an appointment with you for 2 weeks time*
- *They also prepare a full written record of the enquiry and this is passed, along with photocopies of relevant documents the client provided, to you the following day*
- *You read through the documentation and plan out the interview including preparing a list of key dates that will need to be complied with and preliminary questions relevant to the case*
- *This preparatory work will mean that the interview will be more focussed as you will already be aware of the key issues in the case, including the possible costs and benefits of you proceeding*
- *The client attends the interview and you provide assistance, assess eligibility and complete the CW1*
- *You claim the time spent in preparation prior to the interview in addition to the time spent in the interview itself*

Example 5

- *You are a Debt caseworker and a receptionist makes you an appointment to see a client who has asked for help with a number of debts*
- *The client hands over some documents relating to their case for you to have a look at but does not receive any preliminary advice*
- *You go through these prior to the interview in order to help form a view of how you will proceed with the case including the possible extent of your involvement (whether sufficient benefit), and also to check for any relevant time limits etc*
- *This means that you now have a certain familiarity with the issues in the case and will not have to spend significant time re-reading the documents during the interview – you might also have a good idea of what strategy to adopt in the interview when you see the client depending on the clients instructions*
- *The client attends the interview and you provide assistance, assess the client as eligible and complete the CW1*
- *You claim the time spent in preparation prior to the interview in addition to the time spent in the interview itself*

Example 6

- *You are a Housing caseworker and a client telephones you complaining of harassment by a landlord and saying that they are afraid to return to their home*
- *You are unable to see the client for a few days so take relevant details and agree that you will contact the landlord to try and defuse the situation as far as possible until you are able to see the client in person. You tell the client that if the alleged harassment continues in the interim that they should telephone the police as well as updating you*
- *You telephone the landlord, explaining that you are assisting the client, and discuss the situation including explaining his/her legal responsibility in respect of this tenant. You also confirm this conversation in writing to the landlord and copy the letter to the tenant*
- *The client attends the interview and you provide assistance, completing the CW1 and assessing the client as eligible*
- *You claim the time in giving advice to the client in the initial telephone conversation as per section 4 of this document*
- *In addition, as the client has given specific details of their case over to you at the time of making the appointment, you claim the time spent in preparation prior to the interview in addition to the time spent in the interview itself*
- *The preparation prior to the interview in this example would include time spent in the telephone conversation with the landlord and the time claims for the letters out*

5.5 Key points on preparatory work:

- ✓ Any preparatory work you undertake prior to an interview should be both necessary and reasonable
- ✓ The work claimed for must be some specific task(s) relating to the client's case not just general work e.g. checking on the law
- ✓ If you intend to claim time for this work then there should be evidence of the work performed in the form of a timed and dated attendance note on the case file
- ✓ Claimable work prior to an interview could include:
 - Reading through documents to get a preliminary idea of what the case is about, including forming a view of how you were going to proceed including planning out the interview
 - Contact with some third party by letter or telephone
 - Contact with the client themselves (although please bear in mind that if this contact with the client was by telephone then the guidance above at section 4 would apply to that telephone conversation)
- ✓ When considering whether you can claim for any preparatory work prior to an appointment, it does not matter whether the client received preliminary advice or not at the time of making the appointment, providing that they gave specific details of their case and/or handed over relevant documents at the time the appointment was made

6 Can I claim for outward travel to a first interview?

- 6.1 This exception can be found in the NfP specification at 2.6(1)(d).
- 6.2 Please note, although there are a number of circumstances where you might travel out to a client to perform a first interview, whether you can claim the time spent travelling, or the costs of travelling as a disbursement, will depend on where it is that you are travelling to in order to see the client.
- 6.3 Unless you obtain prior permission from the LSC, then pre-signature outward travel, such as for an initial appointment, must be to see a client in one of the following circumstances:
- (a) The client is in custody or detention, for example in a prison, police station, immigration detention centre or mental hospital
 - (b) The client is in hospital
 - (c) A home visit is justified (as in paragraph 6.8)
- 6.4 You can claim the travel costs of travelling out to visit the client in any of these situations (a) (b) and (c) as a disbursement.
- 6.5 Please note: travel time to see a client before the CW1 is signed can only be claimed in the situations at (a) and (b), i.e. where the client is in custody/detention or hospital. In addition, you must hold a Specialist Quality Mark (SQM) or provisional SQM in the category of law that the work is in to claim outward travel time in either of these situations.
- 6.6 You cannot claim the time you spend travelling out to see a client on a home visit prior to getting the client to sign a valid application for Legal Help. However, once the client has signed the form then future travel time, including travel back to the office from the home visit, may be claimable.
- 6.7 In order to claim the costs of your travel to a home visit as a disbursement, prior to signature of the CW1, then the home visit would need to be justified. The LSC state that:

"This will be where the client is elderly, ill or disabled or is caring for another person who is elderly, ill or disabled and in either case the client is as a result unable to travel to your office. Note that a home visit is unlikely to be justified if the incapacity is temporary and the client could postpone seeing you without damaging their case."

(NfP specification 2.10(2)(c))

Example 7

- *You are a Welfare Benefit caseworker and an appointment has been made for you to make a home visit to see a housebound client with a disability benefit problem*
- *As the client's inability to attend your office is not temporary and there is merit in you providing assistance, you travel out to see the client,*

taking a local train. The cost of the train ticket is £10 which covers both outward and return journeys

- *You see the client and you provide assistance, assess eligibility and complete the CW1*
- *You then return to the office*
- *You claim the full costs of the travel, outward and return, as a disbursement of £10*
- *You do not claim the time it took you to travel out to see the client before the form was signed*
- *You do claim the time it took you to travel back to the office after the form was signed*

6.8 Given that you are unable to claim the outward travel time to a home visit before a form is signed you might consider whether or not it is appropriate to post the form to the client ask them to sign it and return it to you before you make the journey (or have it ready to hand to you when you visit them). This would make the outward travel time to see the client post-signature, and therefore claimable.

6.9 This is described in the NfP specification at 2.3(5):

“You should see the client in person in order to assess eligibility and complete the form. However, if the client is unable for good reason to attend your office (for example if they are in detention or are ill or disabled or are abroad) or if you have provided initial telephone advice to the client then you can send them the form to complete instead.”

6.10 Please note that the LSC will monitor overall travel time reported under the contract to see clients out of the office and may intervene where this is thought to be excessive without good reason.

6.11 There is also the possibility that you might act as an Authorised Person and sign the form on behalf of the client and so claim the outward travel time (see NfP specification 2.10(4)). However, in order for you to act as an Authorised Person the client must have a physical or mental condition that renders it impracticable for them to attend your office.

6.12 It must be noted however, that this section in the specification is really aimed at situations where you will never see the client face-to-face, where for example the case would be conducted entirely by telephone. Whilst it is potentially useful to you, the LSC's preferred option is that the client signs the CW1 himself or herself, therefore any claims that you make acting as an Authorised Person, will be very closely monitored.