

How do you apply the Sufficient Benefit Test under the Fixed Fee regime?

Introduction

This email bulletin clarifies how caseworkers should apply the sufficient benefit (SBT) to individual (fixed fee) matters from 1st October 2007. It is applicable to anyone working under the Unified Contract (Civil), at the Legal Help and Help at Court levels of service, who is being credited for work they have done at fixed fee rates. CLS Support will be updating its briefing “*Sufficient Benefit Test – principles and practice*” to reflect these changes.

The amount of any fixed fee that you will be paid should not be used as the basis for applying the SBT

The LSC has stated in correspondence with CLS Support that:

“It is still the notional cost of the work carried out on an hourly rate basis, rather than the fixed fee, that should be considered along with the potential benefits for the Client in considering whether the “sufficient benefit” test is met for providing Legal Help to the Client”

Therefore, when deciding whether or to what extent a matter meets the SBT, you should compare the likely benefit to the client of your help with the likely costs, not the fixed fee. The likely costs will be the amount you expect to ultimately submit as “Profit Costs” on your Consolidated Matter Report Form. You use the likely costs figure even though the LSC will only credit you with the fixed fee when you close the matter (assuming it was not an exceptional case).

The LSC has said that this is because fixed fees are designed to remunerate all cases done under a contract as opposed to an individual case under the fixed fee scheme.

Applying the SBT appropriately throughout a case is of particular importance to cases that may end up being paid for at hourly rates, ie exceptional cases. This is because the LSC may reduce the cost of the work you say you have done in an exceptional case, on cost assessment, in instances where it feels the case no longer passes the SBT.

Could the test prevent you opening a matter start at all?

It would be unusual for you to be able to identify that a case did not meet the test before you had provided any legal help at all to a client; the LSC does not expect you to take full instructions from the client or examine substantial documentation to establish whether the sufficient benefit test is met before opening a matter start and being able to claim a fixed fee in respect of that client.

However, the LSC would still expect you to have a general idea of the nature of the client’s case and/or the client basis for seeking assistance. This is so that you can be satisfied that the sufficient benefit test might be met on the basis of that information, before opening a matter start. For example, you should not be providing assistance and opening a matter start where the client is seeking assistance in relation to a non-legal issue or, it is clear right from the outset that the client’s “case” is vexatious or an abuse of the process.