

Copy of email to Eleanor Druker, Service Development – Family and Civil Services,
Legal Aid Agency, 102 Petty France, Area 13.54, Westminster, London, SW1H 9AJ

14 February 2024

Dear Eleanor

Re: Hourly Rates for ISWs

Thank you for your email of 12 February 2024. We hope that you are now fully recovered.

With respect, your blanket statement that 'LAA documentation is clear that the LAA pay the Cafcass rates' is inaccurate. In our previous letter, dated 6 February 2024, we have set out in full paragraph 5.3 from version 7 of the *Guidance on the Remuneration of Expert Witnesses in Family Cases*, published in September 2022, over four months after the Cafcass rate had changed. Referring to the 2014 rate of £33 per hour, the *Guidance* states that the 'LAA will allow claims for **this rate** in relation to ISW instructions' (emphasis added). There is no reference to a different rate for instructions after 1 May 2022. The plain meaning of this, we would contend, is that the LAA had not followed Cafcass's change to pay rates in 2022, otherwise, the subsequently published *Guidance* would have reflected this.

As you accepted earlier, the prior authority guidance for solicitors had also not been changed to inform solicitors that a rate of £35 per hour could be agreed without obtaining prior authority. Solicitors, of course, would have no reason to know the payment arrangements between Cafcass and independent social workers.

In addition, we must ask why, if the matter was as clear as you now say, it took from 27 April to 18 September 2023 for the LAA to respond to our correspondence?

All of this may, we can accept, have been nothing more than an unfortunate oversight on the part of the Legal Aid Agency, leading to version 7 of the *Guidance* and the prior authority guidance not being updated at the relevant time. These things do occur and it is then simply a matter of finding a sensible and equitable solution. You will see our suggestions in the numbered points below.

Pausing briefly, however, we should also deal with your suggestion, in the fourth paragraph of your email of 12 February 2024. The invoices listed in the



spreadsheet attached are all invoices where the work was charged at £33 per hour. None of them were cases where the LAA had reduced the invoice from £35 to £33. Instead, the rate agreed and invoiced was based on your published guidance. Ms Wilson has therefore suffered a loss as a result of her detrimental reliance on your published material.

So that we can ensure that ISWs are kept fully informed about the correct approach to their fees could you please let us have clear answers to the following:

1. Please confirm that any instructions received by ISWs after 1 May 2022 may, if not yet invoiced, be invoiced at £35 per hour.
2. Where any ISWs have had their invoices for work after 1 May 2022 reduced on assessment from £35 to £33 per hour, how should the ISW apply to have the reduction reinstated?
3. If such instructions have been invoiced and paid at £33 per hour but the legal aid certificate is still open, will the LAA reimburse the instructing solicitor if a revised invoice based on £35 per hour is submitted?
4. How do you propose to deal with cases where the circumstances are as detailed at 2 above but the case is concluded and the certificate closed? We anticipate that the instructing solicitors may be unable to submit any further claims but the issue of losses arising from detrimental reliance on your publications remains. Will the LAA meet those losses, perhaps on an *ex gratia* basis and with an agreed time limit for claims to be submitted?

Our final point arises from the third paragraph of your email of 12 February 2024. You appear to suggest that information about future changes to payment arrangements for ISWs should be channelled through Cafcass. You may not be aware that many ISWs do not work with Cafcass and none of them are employed by Cafcass. Would it not be more efficient if the LAA communicated with us directly? We pride ourselves in having an efficient system for disseminating information to members and would ensure that our members are kept fully informed about future changes which affect their practices.

We look forward to hearing from you.

Yours sincerely

Yvonne Wilson, Nagalro Chair, and Fiona Wallace, Nagalro Vice Chair