

INFORMATION FOR COUNSEL

Payments on Account in Publicly Funded Cases

Payments Under Review

The Legal Aid Agency (LAA) reviews payments on account outstanding on publicly funded cases (and particularly on older, dormant cases), where the conducting solicitor has not yet submitted a final report or final claim for costs. Solicitors are asked to make reports to the LAA, to enable it to determine whether or not the case(s) can be closed.

If as a result of the enquiries made, a solicitor informs the LAA that a case can be closed, the LAA may then write to you as counsel, if you have received a payment or payments on account in the case in question. You will be asked to complete and return a simple form to enable the LAA to determine how your fees should be dealt with.

The LAA's purpose in writing is not to recover the payment(s) on account made to you. Where appropriate it will be open to you to submit a further claim for fees. However, a payment is likely to be recovered if;

- (i) It becomes clear that you have been paid in full for your work on the case by a third party (in which case the LAA's payment on account will be an overpayment and will be recoverable) or;
- (ii) You fail to respond to the LAA's request for information.

Under the circumstances, should you receive a request to report about a case, it is important to ensure a response is made to the LAA within the 21 days allowed. Failure to make a report may result in a payment being recovered from your account.

A template of the LAA's standard letter and the standard report form being used are annexed to this guidance. The form can be returned by DX, by post, or scanned and returned by email if more convenient. If for any reason you are unable to return the report within the allowed time you should contact the member of the LAA's staff who wrote to you, via the telephone or by e-mail.

Payments on Account in Other Circumstances

There are some circumstances in which the conduct of a solicitor may impact upon counsel's ability to realise his or her fee – if a solicitor fails to include the full amount of counsel's fee in a final claim for example. Situations of this type will be dealt with on a case-by-case basis, taking account of the individual circumstances in each case, but the general approach of the LAA will be to ensure that counsel is not unfairly penalised by the conduct of the solicitor involved. Should a situation of this type arise, counsel should contact the LAA by writing to the central postal address in South Tyneside, or e-mail the central e-mail box.

There are also circumstances where counsel can be disadvantaged by events over which they have no control – for example, if a solicitor's firm ceases to trade or is intervened in. Again, the LAA will deal with cases of this type individually, taking account of the individual

circumstances in each case and the financial interests of all the parties involved. In some circumstances fees may be payable to counsel, in which case a payment can be made.

Normally issues relating to payments on account should be resolved with either the author of any correspondence sent by the LAA (if a letter from the LAA has triggered the issue), or through the LAA's normal contact points for correspondence and e-mails.

If for any reason it is not possible to resolve matters in this way, counsel may wish to contact Rob Damião, via the addressed below:

Post: FAO Rob Damião, Legal Aid Agency, Level 6 The Capital, Union Street, Liverpool, L3 9AF

DX: FAO Rob Damião, Legal Aid Agency, DX 745 810, Liverpool 35

Email: Robert.damiao@justice.gov.uk

Phone: 07341 880 059

Advice for members of the Bar in relation to payments on account is also available from the Bar Council's Remuneration team.

By email:

Remuneration@BarCouncil.org.uk

By telephone:

020 7611 1323