



Legal Aid
Agency

Providing access to justice through working with others
to achieve excellence in the delivery of legal aid

Exceptional case funding: #HelpUsSayYes webinar: Your questions

Immigration controlled work

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Matter starts

Q: In relation to appeals that involve both ECF and asylum elements, should these be considered as 1 matter / case?

A: In these situations, it is unlikely that two matter starts can be justified. However, providers should review paragraphs 3.30 to 3.37 of the 2024 Standard Civil Contract General Specification, as well as paragraphs 8.34, 8.40, and 8.41 of the Immigration Specification.

Form completion

Q: Is it correct the CW1 form can be completed in the sponsor's name, but the CW2 form must be completed in the appellant's name?

A: That's correct. Please see the clarification below, including details on the one exception to this:

Legal Help: Family reunion (ECF applications)

Where both the means and merits tests are met in family reunion cases:

- The sponsor (the person based in the UK) may apply for legal advice in connection with a family reunion application submitted to the entry clearance officer (ECO).
- The ECF1 form and the legal help (LH) application should be completed in the sponsor's name.

Controlled Legal Representation (CLR): First-tier Tribunal (FTT)

For CLR in appeals before the First-tier Tribunal (Immigration and Asylum Chamber):

- The person applying for funding must be the appellant, that is, the individual overseas who is appealing the ECO decision.
- The sponsor is not a party to the proceedings and therefore cannot apply for CLR.

This requirement is set out in Regulation 18 of the Civil Legal Aid (Merits Criteria) Regulations 2013 (as amended).

Application Requirements

- The ECF1 and CW2 forms must be completed in the appellant's name.
- The means assessment will be based on the appellant's financial situation, not the sponsors.
- However, under Regulation 39 of the Merits Regulations, the LAA may consider other potential sources of funding, such as a sponsor with sufficient means who could reasonably be expected to cover the costs.

Exception: Separated migrant child sponsors

The only exception to the above CLR rule applies when the sponsor is a separated migrant child:

- In these cases, the child sponsor may apply for CLR in their own name.
- This is permitted under Regulation 18 and falls within the scope of legal aid, so an ECF application is not required.
- See Regulation 18 of the Civil Legal Aid (Merits Criteria) Regulations 2013 and Paragraph 31A(2)(a), Part 1, Schedule 1 of LASPO 2012 (Legal Aid, Sentencing and Punishment of Offenders Act 2012).

Q: In a family reunion appeal, is the appellant eligible for legal aid, even though they were not the original client in the Legal Help matter?

A: Yes, an appellant in a family reunion appeal may be eligible for legal aid, even if they were not the original client in the earlier legal help matter. The fact that the sponsor in the UK was the initial legal help client does not prevent the appellant from applying for legal aid for the appeal.

To qualify, the appellant must meet both the means and merits tests, as set out in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 and the Civil Legal Aid (Merits Criteria) Regulations 2013, as amended. The ECF1 and CW2 forms must be submitted in the appellant's name.

Q: Are there any instances where the solicitor does not need to sign the CW1 / CW2?

A: No. Both the CW1 and CW2 forms should be completed for all applications. If the solicitor believes the applicant is unable to sign the forms, they should clearly explain the reasons in support of the application

Q: Can I confirm that, at the controlled work level, the ECF team only needs to be notified of relevant changes in financial circumstances, as outlined in paragraph 11.1 of the Controlled Work Financial Eligibility Guidance?

A: That is correct.

Q: Do we need to sign the ECF part on the CW1 and CW2 if we are not applying for ECF?

A: No. The forms are clear that the certification on page 16 of the CW1 (version 32) and page 14 of the CW2 IMM (version 23) only need to be completed when applying for ECF. However, the declaration on page 15 of the CW2 IMM must be completed by the accredited adviser in all CLR applications, including those where the adviser has delegated authority to grant funding.

Q: If an outdated version of the CW1 or CW2 form is completed in error, but ECF is granted and this is identified before billing, what is the appropriate way to proceed? Should the case still be billed as normal, given that ECF has been approved by the LAA?

A: Using an outdated CW1 or CW2 form may be noted during an audit or file review, but it typically won't affect the decision to authorise or validate a payment—unless the form is missing required fields or includes outdated eligibility criteria. In such cases, the validity of the grant could be impacted. If this happens, we advise you to contact the ECF team, who may ask for a corrected form or additional clarification.

If the outdated form does not materially affect the grant, the following steps are recommended:

- Record the error and any corrective action taken in the case file.
- If there is any uncertainty, contact the ECF team to confirm whether further action is needed.

Billing and VAT

Q: In the family reunion example discussed, where the CW1 form is signed by the sponsor who is lawfully in the UK, the case would be subject to VAT. However, if the matter proceeds to appeal and the CW2 form is signed by the adult appellant, who is outside the UK, the case would not be subject to VAT. Is that correct?

A: VAT can only be claimed on profit costs and counsel fees in asylum and immigration matters where the client has legal status or the right to remain in the UK at the time they are instructed. If the sponsor is based in the UK and holds such status, VAT may be claimable.

However, if the appellant is outside the UK, these costs will not attract VAT.

For further guidance, please refer to IA Key Card 6 – VAT, which is available on the Legal Aid Learning website: [Immigration and asylum key cards – Legal Aid Learning](#)

Q: When the matter is still pending, can we claim expert fee without billing the full file?

A: The provisions relating to the interim claiming of disbursements are set out in paragraph 8.141 of the 2024 Standard Civil Contract Immigration Specification.

Q: There is currently no dedicated Matter Type 2 (MT2) code specifically for billing human rights appeal matters funded by ECF. Which codes should we use to bill these matters?

A: If an applicant is making a leave to remain application on human rights grounds, the most appropriate Matter Type 2 (MT2) code to use is **ILEA**. While the current description of this code refers specifically to applications for further leave or extensions of leave. We will add clarification that it can be used for ECF matters (or matters in which an Exemption applies) in relation to applications and appeals for leave to remain based on human rights grounds.

Where a client's case raised both asylum and ECF elements, and 1 matter start is opened, how would the costs be reported?

A: If the work is carried out as a single matter under the Standard Fee Scheme, only one standard fee can be claimed. However, providers must report the full value of the work completed, including both the in-scope and ECF elements, within the profit costs and counsel fee fields. These reported costs will be used to assess whether the case qualifies for an escape fee and whether the escape fee threshold has been exceeded.



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