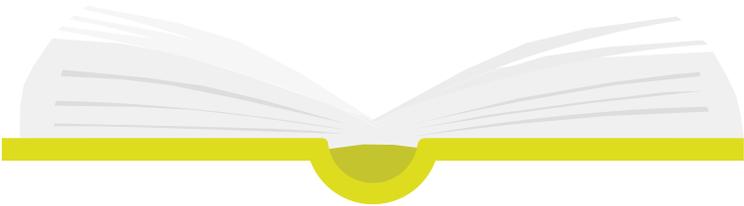
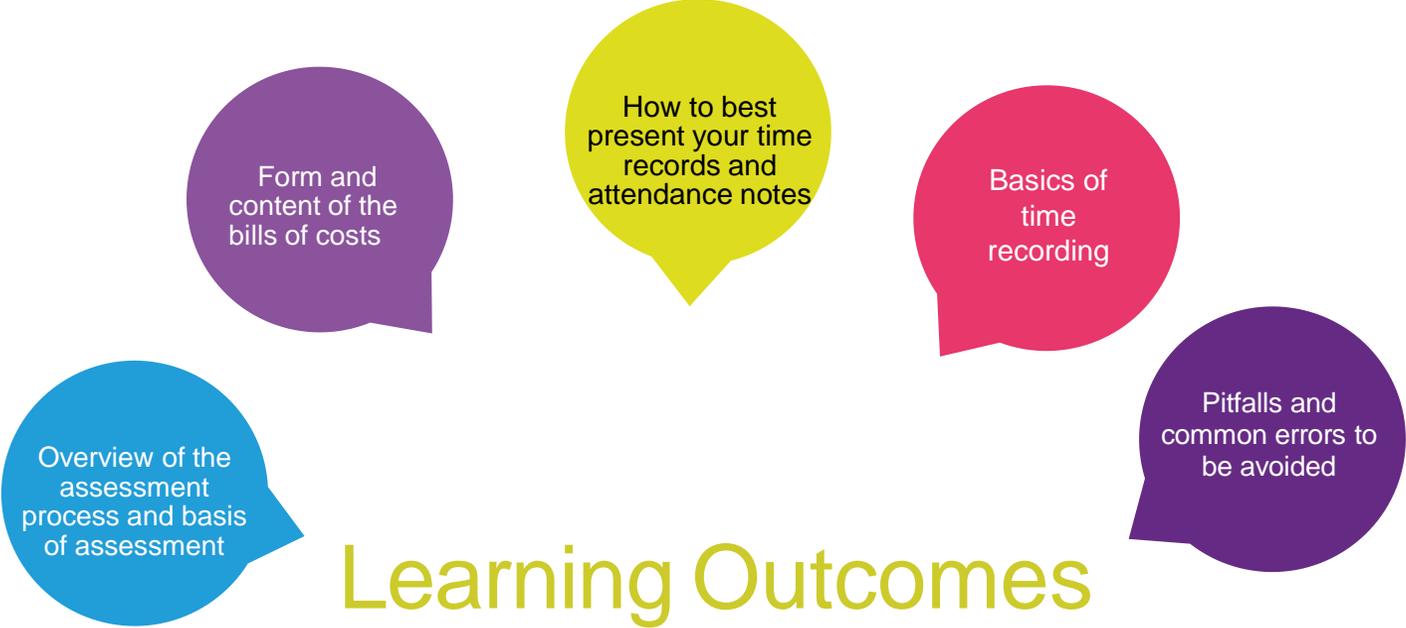


Court of Protection costs Back to Basics



Paul Cruickshanks
Head of Court of Protection

23 May 2023





Basis of assessment

- 📍 “This order is to be treated as authority to the SCCO to carry out a detailed assessment on the standard basis”
- 📍 Applications billed upon conclusion (once the order is obtained and, if relevant, once the actions have been undertaken)
- 📍 General management billed annual in accordance with the date the order was made each year
- 📍 Exceptions for limited value estates (<£16k)
- 📍 Fixed costs available as an alternative (£950, £1,670 and £1,320 plus VAT)
- 📍 Costs have to be reasonable and proportionate – CPR. 44.4. Even if costs were necessary, still have to be proportionate



Basis of assessment

- Any doubt from CO – item reduced or disallowed;

“If in doubt it comes out”!

- Up to us to convince the CO that all time claimed is reasonable



Basis of assessment

CPR 44.4(3) The court will also have regard to –

- (a) the conduct of all the parties, including in particular –
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;



Basis of assessment

CPR 44.4(3) The court will also have regard to –

(e) the skill, effort, specialised knowledge and responsibility involved

(f) the time spent on the case;

(g) the place where and the circumstances in which work or any part of it was done; and

(h) the receiving party's last approved or agreed budget. (Refer to estimate of costs/OPG105 for COP matters)



Basis of assessment

CPR 44.3(5)

Costs are proportionate if they bear a reasonable relationship to

(f) Any additional work undertaken or expense incurred due to the vulnerability of a party or any witness



Hourly rates following PLK and Others (1 October 2020 to 30 September 2021) unless terms to support higher rates

Grade	A	B	C	D
London 1	£490	£355	£271	£165
London 2	£380	£290	£235	£151
London 3	£275 - £320	£206-£275	£198	£145
National 1	£260	£230	£193	£142
National 2	£241	£212	£175	£133



2021 guideline hourly rates – 1 October 2021 to ???

Grade	A	B	C	D
London 2	£373	£289	£244	£139
London 3	£282	£232	£185	£129
National 1	£261	£218	£178	£126
National 2	£255	£218	£177	£126

GHR's to be reviewed annually to account for inflation according to new CJC guidance published only last week. Keep your CCL letters updated with specific rates to ensure recovery.



Billing Process

- Bill is e-filed with the SCCO and files sent for assessment
- Costs officer reviews work and decides:-
 1. Reasonable so allow in full
 2. Reasonable on the whole but reductions made to rate and/or time
 3. Unreasonable – disallowed in entirety
- Sometimes SCCO will tot up the costs recovered but usually we have to do this (E-bill calculates this now!)
- If happy, accept assessment and request final costs certificate (FCC)
- If unhappy can appeal – we can advise here
- If still unhappy, appeal to Master James or Whalan (rare)



Time recording tips and tricks

Letters

'Routine'

- 1 unit per letter
- Letter on file evidence enough for work

'Complex'

- Additional time can be claimed –
- Supported by attendance note detailing work done
- Can note on the letter by hand;
- Copy of the letter on file helpful to costs draftsman and costs officer



Time recording tips and tricks

Phone calls

'Routine'

- Details of date of call
- Fee earner undertaking
- Duration (routine calls up to 6 mins)
- Simple note or details of the time recording sufficient evidence

'Long'

- 6 minutes +
- Additional detailed required as to what was discussed
- Agreed actions
- How it progressed the case
- Bullet points a quick way of doing this



Time recording tips and tricks

Meetings & Attendances

'Details'

- Who was at the meeting?
- What was discussed?
- Agreed Action points?
- Any other issues arising at meeting? e.g. any issues needed patience or sensitivity

'Expenses'

- Travel time
- Costs of attendance
 - Travel expenses
 - Mileage
 - Train fares
- Reductions to time charged
e.g. May spend 3 hours on a meeting but limited to 2.5 as reasonable. This can be detailed in the bill.

Reasonable time for attendance notes for longer calls and these meetings can be claimed in the preparation part of the bill



Time recording tips and tricks

Preparation time

'5.0 hrs drafting'

Difficult to include these items in the bill as we do not know what is being drafted or why it took so long!

Vs

*'5.0 hrs drafting
OPG Reports'*

Better and something meaningful can be included in the bill but:-

TOP TIP

Quantification of documents helps enormously!



Time recording tips and tricks

Preparation time

- 📍 “5.0 hrs drafting OPG reports; this time includes:-
 - 📍 Reviewing approx. 24 monthly statements across two different account
 - 📍 Considering all entries/transactions
 - 📍 Calculating and reconciling figures to ensure report will balance (some 200 entries)
 - 📍 Multiple entries given carer wages payments
 - 📍 Considering income from property rentals”
- 📍 Here we can see the use of bullet points, the details of the case justifying the time spent and the quantification of documents both reviewed and prepared



Time recording tips and tricks

Preparation time

- If reviewing documents, state length of documents:

“Reading and reviewing 24-page IFA reports; considering advice on performance of investments and ongoing strategy; reviewing risk profile and ensuring all in order; identifying further queries to be raised with IFA and how best to proceed”

- The same can be used for drafting and preparing documents:-

“Drafting and preparing detailed, 3-page letter, to capacity assessor with instructions for updated assessment; time includes reviewing files for details of P’s background and extracting relevant information”

All these help to persuade the CO the time spent is reasonable.



Time recording tips and tricks

Preparation time

- 📍 **Remember!** It can be over a year between you doing the work and the bill being drafted and then assessed. Will you remember the work done in a year? Always best to note it
- 📍 These above tips also help with file continuity and will assist your colleagues should be away from the file for any reason
- 📍 Remember the costs officer's phrase:-

“If in doubt, it comes out”!!!



Bill Payments

- Payment for routine bills or payments will only be allowed at half a unit (3-minutes) at your local grade D rate (£6.95, £6.45 or £6.30 plus VAT per payment)
- This is following guidance provided by OPG and the SCCO in 2017 (SD9)
- This time includes reviewing sums due and updating any schedules of income and expenditure following payment
- Consider and detail any issues which may cause your payment to take it out of the norm, e.g. a payment made in another currency or a substantial transaction (for example, payment of contractor fees following work undertaken to adapt a property). Details within the file note should be provided to ensure this conveyed to the court



OPG Guidance on visits to P

- 📍 OPG guidance suggests only one meeting per year with P. Necessary to justify additional attendances
- 📍 Brief note on the file note recording the attendance usually sufficient to ensure reasons for additional meetings are conveyed to the court
- 📍 Also bear in mind case of Trudy Samler (unreported); COs will seek to reduce attendances in line with this case; may be scope to appeal
- 📍 Difficult to recover the time of more than one fee earner attending a meeting but can be recovered if i) “exceptional circumstances apply” and/or ii) it is in P’s best interests (and may even save money)



Common mistakes on time recording

- Use of the term research – the CO will jump on this as overheads and views such as the deputy learning the tools of the trade. Avoid any reference to use of the term “research”. Consideration time is much more likely to be allowed, whilst ensuring you do not mislead the court
- Referring to your specific case helps with this last point
- Internal communications – The case of *Leighanne Radcliffe [2004] EWHC 90039 (Costs)* refers.
- No internal comms between deputy and team allowed; avoid use of phrases such as “Meeting with deputy” or “Meeting with legal assistant”; agree who will record their time (usually senior fee earner given the input required) and present as consideration of the issues being discussed/considered



Common mistakes on time recording

- Letters in – Section 5.22 (1) Costs Practice Direction Supplementing CPR 47.6 states:-

“Routine letters out, routine e-mails out and routine telephone calls will in general be allowed on a unit basis of 6 minutes each, the charge being calculated by reference to the appropriate hourly rate. The unit charge for letters out and e-mails out will include perusing and considering the routine letters in or e-mails in.”

- Difficult to recover routine “letters in”; if something of substance, claim as consideration time, quantify the document size and provide details as to how the time is progressing the management of P’s affairs (i.e. why was this time required?)



No internal comms at all?

- 📍 Communications within the deputyship team, or between accounts colleagues etc. will generally be disallowed as detailed earlier
- 📍 However, if liaising with internal conveyancing or employment teams (or indeed any other specialist team or lawyer) this can be recovered as if you had gone external such time would be allowed
- 📍 Have just had a successful appeal re liaising with tax advisor – in-house advisor used and such attendances disallowed on assessment. Reinstated after appeal



Top Tips

Always remember the basics:



When?

Detail the date the work was undertaken



Who?

Identify who is doing the work.



What?

Detail what work was completed



Why?

Detail why this work is being done

The more information that is provided to the SCCO (and also the costs draftsman) the more information can be included in the bill and the greater the chances of recovery



Any Questions?



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