



Legal Aid
Agency

Variable Monthly Payments Guidance (Civil Legal Help, Crime Lower and Mediation contracts)

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1	01/04/13	First Release
2	11/11/13	Second Release
3	29/06/16	Third Release

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1. Overview

The Legal Aid Agency (LAA) offers providers a choice as to how they are paid for Civil (Legal Help), Crime (Lower) and Mediation work. Rather than be paid a Standard Monthly Payment (SMP) under the existing 2008 Protocol providers have been able to opt for an alternative payment arrangement, Variable Monthly Payments (VMP), since 2012. This alternative arrangement has been available for Mediation providers since 2015.

2. Existing Standard Monthly Payments Protocol

If you are happy to remain being paid by SMP then your current arrangement will continue. VMP was introduced as an alternative to offer you a choice, not to impose a change.

The SMP protocol does not meet the needs of every provider. The most common causes of discontent are:

- Underpayment: The existing protocol allows an account to become significantly underpaid before it triggers an increase to the SMP. Some providers have encountered cash flow difficulties as a result.
- Delay: Under the current protocol an account can be underpaid for a considerable period before an increase is triggered. It can then take from six to nine months for the LAA to clear the underpayment. Some providers have characterised this delay as unacceptable.
- “Dramatic” SMP Reductions: When an SMP reduction is triggered it can cause financial difficulties because of the size of the reduction that needs to be made to recover the outstanding overpayment. In extreme circumstances, where the protocol dictates that an overpayment should be recovered over three months, the financial impact can be so great as to threaten the provider’s financial stability.
- Administrative Burden: A number of providers have made the point that having to reconcile payments to claims and monitor the imbalance every month is unduly burdensome and complicates their accounting processes.

3. Variable Monthly Payments

If you choose this option:

- We will not pay you an SMP but will vary the amount we pay you each month depending on the value of your last monthly claim.
- Rather than receiving a fixed amount each month you will therefore receive a Variable Monthly Payment (VMP) for the amount of the last monthly claim we received (plus or minus any changes to previous claims since your previous payment, e.g. amendments as a result of an audit plus any escape fee case assessments). For Crime contracts, CRM7s assessed in a calendar month are paid at the same time as the corresponding monthly claim.
- In all other respects the process will remain the same:
 - Claims will be submitted in the same way and by the usual deadline of midnight on the 20th of each month.
 - The dates on which we make payments will be the same.

What are the advantages?

- Easier accounting: This arrangement does away with the need to monitor the reconciliation position on your account each month, because once the account has been balanced you will not become underpaid or overpaid.¹
- The LAA will discharge its liabilities without delay: This is a significant advantage for providers who are underpaid under the SMP Protocol. Rather than wait until your account goes out of band before we take action, the LAA will clear any underpayment on transition to VMP. Similarly, as payments are based directly on claims, any increase in claims is directly reflected in the next payment, rather than having to wait to trigger an increased SMP.
- Reduced risk to cash-flow: Many providers report that under the SMP Protocol, actions to recover overpayments can be “draconian”. In some circumstances an SMP can be reduced to zero for six months and the problem is compounded because under the Protocol, the SMP will not be restored when the account is balanced, but only when a significant underpayment accrues. Furthermore if the overpayment isn’t cleared after 6 months recoups can be made against other types of work potentially causing cash-flow problems.
Under the VMP arrangement by contrast, once an account has been balanced, claims and payments will mirror each other more closely meaning the capacity for accruing an overpayment is removed.

¹ Other than in circumstances where we have grounds to make reductions to your claims, e.g. an audit demonstrates that erroneous claims have been made and these reductions exceed the value of your most recent claim.

Are there disadvantages?

- Under the current protocol some crime providers take advantage of the 7.5% “pull forward” provision. This will not be available as it conflicts with the aim of the new arrangement to link claims and payments more closely.
- We will not provide you advanced notice of the amount we will be paying you each month (as we do when we change an SMP), because the payment we make will depend upon the value of your last submission and the value of any changes to claims since the previous payment.
- If your claim values fall for a month or two this will be reflected in payments but, conversely, an upturn in claims will also be reflected in payments.

Transitional Arrangements

If you opt to switch to VMP you move away from a set payment to one based on the value of your most recent monthly claim so there is inevitably a period of transition from one payment scheme to the other. The intention of VMP is to make a balancing payment each month so the period of transition is to achieve an account balance of zero.

If your account is underpaid on transition the LAA will discharge the liability by making a single payment to balance your account.

If your account is overpaid you can discharge your liability by making a payment to us or by requesting no payments until the balance has been cleared by claims.

In the majority of cases, however, we will recover the overpayment over a period of six months by reducing the variable payments we make to you each month by one-sixth of the overpayment value. So if your account is overpaid by £6,000 on transition to VMP we would calculate the amount of your payment each month and deduct £1,000 for the first 6 months.

Under the existing reconciliation protocol, the LAA calculates underpayments and overpayments by looking at claims and payments on an “aligned” basis, i.e. a like-for-like comparison of claims v payments with any payments made in advance of claims discounted. This approach is not taken under VMP as we factor in all payments made up to the point of transition. The aim is to move away from comparing claims and payments to making payments based directly on your most recent monthly claim.

How to opt for Variable Monthly Payments

If you wish to opt for VMP you can do so by completing the form included here (Annex 2) and returning it to our Reconciliation Team at the following email address: reconciliation@legalaid.gsi.gov.uk.

On receipt we will process your request to move your account(s) to VMP confirming the transitional arrangements necessary.

Before deciding to opt for VMP you should read the Frequently Asked Questions below (Annex 1).

- Annex 1 – Frequently Asked Questions

Will switching to VMP interrupt the monthly payment process? No, you will still receive payments each month on the published dates unless your account is so significantly overpaid that a period of no payments is required to clear the overpayment.

You say you will pay the most recent monthly claim if we opt for VMP but what are the timings? Provided your monthly claim is received by the deadline it will trigger a payment in the following month, e.g. your October claim (submitted by 20th November) will be paid in the first week of December.

We have a number of accounts. Can we opt to switch some of them to VMP but keep some under the existing reconciliation protocol? Yes, you can choose the method of payment for individual offices or different arrangements for Civil and Crime contracts if you have both.

Is there a deadline by which we have to make a decision whether or not to opt for VMP? No, you can switch to VMP at any time although the transitional arrangements may differ slightly depending on the time in the month of your request, e.g. if a claim or payment has just been made or is pending.

We wish to opt for VMP but are currently overpaid and concerned that recovering the balance over 6 months will leave us with no payments. Is there any way you would consider extending the recovery period beyond 6 months? We may consider this under exceptional circumstances. Please contact the Reconciliation Team to discuss your options.

How will the LAA pay us for escape fee claims if we opt for VMP? We will treat these claims as we do now, by crediting them to the fixed fee value on your account following assessment. If you opt to move to VMP we will pay any additional sum due allowed on assessment in the following month's payment, e.g. if an escape fee is assessed on 5th October the additional amount will be included in your November VMP.

How are CRM7s dealt with if we opt for VMP? They are assessed in the same way but will factor directly into payments, rather than your overall reconciliation position as was the case with SMPs. Once assessed, a CRM7 will form part of the monthly total with the corresponding submission, e.g. a CRM7 assessed on 5th October will be added to your October submission and paid in December.

We are a crime provider thinking about opting for VMP. Why can we not claim the 7.5% “pull forward” as we can under the existing protocol? The objective of VMP is to move away from a band position by comparing claims to payments to making payments based on the most recent monthly claim. Maintaining a “pull forward” provision conflicts with that, so it is not available if you opt for VMP.

I have heard there is another option called the “narrowed reconciliation band”. Is this option still available? Yes, but this option only narrows the 90%-100% band to 95%-105%; there are still twice-yearly reviews of the level of SMPs and the potential for significant cuts in payments or delays in increasing payments remains. We believe that VMP is the better option if you wish to achieve a zero balance with the LAA.

However if you opt for VMP we will only reinstate an SMP on an exceptional basis. Similarly, if you opt to be paid using the narrower reconciliation band we will only reinstate the wider band if there are exceptional reasons for doing so.

We have opted for VMP and just had an audit. The reductions in claims will likely mean a period without any payments. Is it possible to stagger the effect of the audit over a longer period so we still receive monthly payments?

Yes, this may be possible under exceptional circumstances via a request to the Reconciliation Team, ideally before the amendments have affected payments.

We opted for VMP but were overpaid on transition so are having deductions made to the first six payments. Claims are reducing so we are not going to cover the amount of deductions, will you recoup the remaining amounts from us? No, we won't recoup any money from you on the VMP arrangement. If you don't cover one or more of the deductions, the remaining balance will carry forward beyond the usual six deductions to month 7 then month 8, until cleared.

We opted for VMP in 2012 and have a transition debt which we want to repay. Could we do this over 12 months rather than 6? Yes, if the debt is significant in comparison with claims we may agree to repayment over a longer period than the usual 6 months. If the debt is a relatively small value we may insist it is repaid over a maximum of 6 months.

We opted for VMP in 2012 and have a transition debt which we want to repay. Could we make a one-off payment for part of the balance now and repay the remainder as and when we can afford it? Of course, we will accept repayment plans which fit your business needs.

Annex 2

Request to switch to Variable Monthly Payments

Please use this form to indicate if you would like us to switch your Civil (Legal Help), Crime (Lower) and/or Mediation accounts to Variable Monthly Payments. Please note that:

- You do not need to return the form if you wish to be paid under the arrangement now in place.
- Please read the guidance document and the Frequently Asked Questions before deciding.

Please complete the table below:

Provider Name	
Account Number(s)	
Contact at Firm	
Telephone number	
Email address	

Civil Contract: Please pay our firm for its Legal Help and Controlled Work under the following arrangement:

Variable Monthly Payments:	Yes	No
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Criminal Contract: Our firm would like to be paid for its Crime (Lower) Work under the following arrangement:

Variable Monthly Payments:	Yes	No
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Mediation Contract: Our firm would like to be paid for its Mediation work under the following arrangement:

Variable Monthly Payments:	Yes	No
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I can confirm as follows:

- I have read the guidance document.
- I am authorised to make this choice on behalf of my firm.

Signed: Print Name.....

Position in Firm:

Please return this form to our Reconciliation Team:

By email: reconciliation@legalaid.gsi.gov.uk
 By DX: Reconciliation Team, Legal Aid Agency, DX 742350, Jarrow 2
 By Post: Reconciliation Team, Legal Aid Agency, South Tyneside Office, Berkley Way, Viking Business Park, Jarrow, NE31 1SF.

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