

**Civil Contracts Consultative Group (CCCG)  
Minutes**

**19<sup>th</sup> May 2021**

Date:	Wednesday, 19 <sup>th</sup> May 2021, 3pm
Where	Video conference
Chair	<b>Lynn Evans</b> -Service Development and Central Commissioning [LAA]
Minutes	<b>Grazia Trivedi</b> – Service Development [LAA]
Present	<p><b>Adrian Vincent</b> – Bar Council  <b>Anastasia Kostaki</b> – Bar Council  <b>Ann-Marie Jordan</b> – Analytical Services [LAA]  <b>Avrom Sherr</b> – Peer Review  <b>Chris Walton</b> – Shelter  <b>Deborah McLaughlin</b> - Civil Operations [LAA]  <b>Eleanor Druker</b> – Service Development [LAA]  <b>Eve McNally</b> - Business Improvement [LAA]  <b>Fraser Clubbe</b> - Performance/Planning and Risk [LAA]  <b>George Hatfield</b> – Service Development [LAA]  <b>Helen Keith</b> - Exceptional Complex Cases Team [LAA]  <b>James Wrigley</b> - Civil and Family Legal Aid [MoJ]  <b>Jamie Niven-Phillips</b> – Association of Lawyers for Children  <b>Jill Waring</b> – National Contract Manager [LAA]  <b>Kate Pasfield</b> – Legal Aid Practitioners Group  <b>Kate Tyrell</b> – Mental Health Lawyers Association  <b>Kathryn Grainger</b> – Civil Business Improvement [LAA]  <b>Kathy Hartup</b> – Communications [LAA]  <b>Kerry Wood</b> – Central Commissioning [LAA]  <b>Laura Fernley</b> – Contract Manager [LAA]  <b>Louise Withington</b> – Business Support [LAA]  <b>Nikki Daniels</b> – Service Development [LAA]  <b>Nimrod Ben Cnaan</b> - Law Centres Network  <b>Oliver Rogers</b> – External Comms [LAA]  <b>Paddy Enright</b> – Contract Management and Assurance [LAA]  <b>Rabeya Begum</b> – Contract Manager [LAA]  <b>Richard Miller</b> – Head of Justice [The Law Society]  <b>Sally Cheshire</b> – Housing Law Practitioners Association  <b>Samantha Milton</b> - Exceptional and Complex Cases [LAA]  <b>Simon Cliff</b> – The Law Society  <b>Sonia Lenegan</b> – Immigration Law Practitioners’ Association  <b>Tom Fitzgerald</b> – Customer Service [LAA]  <b>Steve Starkey</b> – Civil Operations [LAA]  <b>Tim Collieu</b> – Central Commissioning [LAA]  <b>Tom Fitzgerald</b> – Customer Service [LAA]  <b>Vicky Ling</b> – Resolution</p>
Apologies	<p><b>Bob Baker</b> – Association of Cost Lawyers  <b>Carol Storer</b> – Access to Justice Committee [The Law Society]</p>

Chair welcomed the new Bar Council representative on CCCG, Anastasia Kostaki.

1. [Minutes](#) of the March meeting were approved and would be published.

*Action 4 [Mar]. Modelling supporting the interim payments to housing providers.* Finance colleagues at the LAA were working on producing information that could be shared with the group.

**Action 1 [Mar]**

*Action 7 [Mar] Information on inactive providers.* The Contract Management and Assurance [CMA] team were conducting a review and would provide an update once this was complete. **Action 2 [Mar]**

*Action 10 [Mar] Update on processing times of Exceptional Case Funding [ECF] cases.* See item 5 below.

2. **Family Reunion update**

H Keith said that in 2019 the LAA discovered, through the Tribunals rejecting Fee Waiver applications, that applications for legal representation were being made and funding incorrectly given to the sponsor in Family Reunion cases as they were not a party to the proceedings. The LAA raised this at the time with colleagues at the MoJ for review of Regulation 18 of the Civil Legal Aid (Merits Criteria) Regulations 2013, because consideration was being given to the legal aid funding arrangements for separated children. However, when Regulation 18 was amended in October 2019, it allowed for separated child sponsors only to be funded for legal representation and not other sponsors. Malcolm Bryant therefore raised this at CCCG in January 2020 as the LAA could not act in breach of the Regulations.

Since then, and with the arrival of Covid19, the data showed that the majority of Family Reunion cases granted (23 out of 26 last year to March 2021) had been legal help; the 3 cases since April 2021 were not impacted by this.

From December 2020 to February 2021 there had been 3 legal representation grants (which may or may not have been correctly granted to the party to the appeal). Now the issue had arisen again, and 19 cases had been rejected because the Home Office/Tribunals appeared to have started to proceed with decisions and appeals.

As these were pending applications, the ECC team were working with E Druker and colleagues in the CMA team to contact firms to alert them to the issue before any applications were rejected. Furthermore, the LAA had started to put a note on every Legal Help grant stating that in the event that further funding was needed for an appeal, that needed to be in the name of the appellant (which was not be the sponsor). The team had also reviewed the merits of each case so that they could inform the applicant that, subject to the application being made in the name of the appellant and subject to assessment of the appellant's means, the application met the other tests where that was the case. The team realises that this raised practical issues about signing forms and collecting evidence about means assessment.

S Lenegan asked why this change in practice needed to happen when the signature of the sponsor had been accepted on the Controlled Legal Representation form regardless of what was stated in the contract; this issue was going to have a major impact on some very vulnerable individuals. H Keith said that the LAA had to comply with the regulations, so when they realized that the case

workers were funding the sponsor and that Regulation 18 could not be amended, they flagged the issue with CCCG in Jan 2020, however the problem had not resurfaced in practice until recently. S Lenegan asked that the LAA give proper consideration to the circumstances these clients found themselves in; electronic signatures were not going to solve the issue.

It was agreed that a separate meeting should take place with the LAA, rep bodies and MoJ policy colleagues. Actioned for Monday, 24<sup>th</sup> May.

### 3. Commissioning Update

K Wood explained that the figures in the Commissioning report which was circulated prior to CCCG meetings were not official/authorised stats and should not be shared outside the group. They were drawn from the LAA's operational stats for the purpose of discussion at these meetings.

She said that concerns remained about provision of housing services and the difficulties encountered by housing possession providers. The LAA and MoJ continued to discuss these issues regularly and were making every effort to help these providers.

Housing provision in 14 Procurement Areas [PA] continued to be a challenge so the LAA piloted a digital service whereby the provider bidding for the contract submitted a suitable delivery plan. Delivery plans varied; in some cases, an appointment was made for the client in a different office, e.g. a CAB and the provider would meet with the client digitally. In the 14 areas, 12 contracts had been secured, 11 of which were digital only. Performance of these contracts would be closely monitored to ascertain whether it was viable and offered a good service to clients.

A number of Housing Possession providers had withdrawn from their contracts and the Commissioning team were tendering to replace services as quickly as possible. Courts had resumed housing possession hearings, but the position varied across the country.

The Education tender would close on 20<sup>th</sup> May.

K Tyrrell asked for more details to be included in the report on Mental Health. She explained that Court of Protection contracts could operate under either Community Care or Mental Health contracts and there was a concern about the lack of Mental Health providers, so it would be helpful to know whether firms with a Mental Health contract were doing just that or were also doing Court of Protection work. K Wood said that any data would be historic, based on closed matter starts, but she would look into it. **Action 3 [May]**

J Wrigley said every effort was being made to put in place a long-term plan to deal with issues relating to housing; discussions were taking place within the MoJ. K Pasfield said that HPCDS providers were panicking because there was no work. The fees model for this work had been based on high case volumes and block listing; this just wasn't viable in the current situation. Also, each Act of Assistance was taking a lot longer now because providers were sent an electronic bundle.

S Cheshire asked how quality of service would be checked in the digital 'pilot' and said it would be hard to know whether demand was being met because of clients without digital capability to access the service. In her view a digital service could never replace the face to face service that the system was designed to provide. K Wood said that most of the information would come from providers' feedback which would not deliver a comprehensive picture; however, this 'pilot' was a first attempt to see whether a digital solution could work.

K Wood agreed to share the name of the PAs where only digital services would be provided. **Action 4 [May]**

A Vincent asked whether decisions on civil legal aid and future funding would be taken by the summer to fit in with the Government spending review as was the case with crime. J Wrigley said that the civil process wasn't as formalised as crime as there was no independent review in place, but a case was being worked on with the help of ministers that would support the spending review process (which was likely to conclude in the autumn).

#### 4. **LAA Civil Operations Update.**

**Civil Applications.** D McLaughlin talked through the information in the Performance Pack that had been circulated prior to the meeting. Data on decisions had remained static with 90% of overall civil applications granted, 5% refused and 5% had been withdrawn or rejected to request further information. Data on the fixer application process showed more usage over the last two months and a reduction in incorrect requests to use the service. All issues highlighted for action and resolution were consistently fed back to caseworkers and the Case Management Business Improvement Team and trends were flagged to line managers.

A deep dive exercise had been undertaken to find out why so many document requests to providers had to be made, slowing down the process and delaying the outcome. T Fitzgerald, Operational Lea for Civil Applications, explained that he had taken a sample of 123 domestic abuse applications and found that 1/3 of these had been rejected because they didn't have all the necessary pieces of information; half of those related to a missing or incomplete Statement of Case.

T Fitzgerald also completed another deep dive into legal appeals that were reviewed internally, and he identified trends; his analysis was then shared with caseworkers and other teams. Further work would be completed on this for future packs with a focus on when internal appeals were partially or fully granted, and the same review would be completed for appeals that were sent to independent adjudicators. K Pasfield asked for a breakdown of areas of law in the appeals data [slide 12].

The intake of high cost family plans, those exceeding £25k, had increased by 33% between January and now. This caused processing times to increase from the external KPI target of 20 days to around 25. Newly recruited case planners were due to start in June.

**Civil Billing** S Starkey said that performance remained strong and in target as shown in the Performance Pack. A significant number of cost appeals were rejected [20% in March] and a lot of time was wasted because of this. The main reason (84% of rejects) coming through CCMS was that the appeal value was incorrect as this represented the entire claim instead of the value of individual items being appealed. S Starkey asked rep bodies to stress this point with their members. In the month of March, the percentage of errors made by caseworkers had been substantial, at 27% when it normally would be 3-4%. The reason behind this was that two caseworkers had returned from maternity leave and the re-training provided had proved insufficient, this had now been rectified. On the provider side, 30% of appeals had been granted because the disbursement information that was needed the first time around had been produced at appeal. Rejects remained at a constant level, with the overall return at 23%.

D McLaughlin said that all of the issues that were preventing an application or a claim to be successful when first submitted had been discussed at length with rep bodies and with providers for a long time, however there didn't seem to be much improvement in the quality of the submissions. She asked whether there was more the LAA and rep bodies could do to communicate this information to providers. K Pasfield said that LAPG kept their members informed with regular

updates but was not sure how many of them actually read these. She suggested that rep bodies meet up after each CCCG to work together on a transmission for their members with hints and tips and a selection of data from the latest Performance Pack.

S Starkey said that his team were planning to identify firms that stood out as consistently incurring a high volume of rejects and unsuccessful appeals; they would then ask their contract manager to discuss the issues with the firm. S Starkey agreed to look into and provide data on appeals against enhancements reductions **Action 5 [May]**

## 5. Exceptional and Complex Cases Team [ECCT]

**Action 5 [Mar]** H Keith updated CCCG on urgent applications [Action 5]. The Exceptional Case Funding [ECF] target had been split so that ECF applications excluded urgent cases and there was a separate shadow measure for urgent applications of 90% in 10 working days. This was being monitored internally and published in the Performance Pack.

Since April, 490 new ECF applications had been received of which 54 had been identified as urgent, plus other urgent cases that were amendments and reviews.

The team were focussing their attention on early identification of urgent cases to ensure they were allocated quickly and on early requests for additional information. As there was no process that clearly identified urgent cases, each one had to be screened and then prioritised. In March 82% of applications had been within target and in April 54%. In the first week of May, 11 out of 11 urgent applications had been processed within target and in the second week 9 out of 12 or 75%. The cases that fell outside target were missing it by just 1 or 2 days. The team were now focussing on the hand-over between means and merits. A lot of the information requests were about means and efforts would be made to cut down the time lapse between the means finishing and the merits caseworker then picking up and deciding the application.

**ECCT update.** ECCT applications target was now end-to-end like the rest of case management and this had been comfortably met for some months. The team were now going to focus on amendments (77% against a target of 90% in 25 days). H Keith invited feedback from rep bodies about any other areas they thought the team should focus on.

The ECF1 form, used for paper based, non-CCMS ECF applications was being reviewed to make it simpler and to avoid requests for duplicate information. Rep bodies were invited to become involved in the process if they wished.

H Keith flagged that a working group was looking at Court of Protection case planning; two main areas of interest had been identified as the pre-£25k and cost extension. In relation to case planning there was a need to look deeper into the data to inform next actions.

## 6. Contract Management and Assurance [CMA] Update

P Enright had circulated a written update prior to the meeting. CMA activity had picked up again since the last update in September. A question was raised about the peer review data in the paper. J Waring pointed out that it wasn't prudent to draw conclusions from the statistical data on the peer review volumes as this activity had been suspended for 6 months due to the pandemic, and volumes were very low.

Rep bodies wanted to know what the LAA were doing to deal with providers giving up their contract, due in most cases to commercial viability. P Enright explained that the LAA's system had a limited number of options as to the reasons for withdrawals from a category of law; commercial

viability could mean a lot of different things. The LAA took swift action (such as tender activity) whenever gaps in the market came to light and the situation around withdrawals was regularly discussed with MoJ policy colleagues.

## 7. Covid19 Contingency Arrangements

J Waring said that contingency arrangements were under review and that, though they were aligned with the Government Road Map, they would not fully adhere to it as some would remain in place longer to support providers. A table with all the details could be viewed on the Gov.uk website.

**Offices and supervision.** The LAA had put in place a wide contingency measure for offices and supervision at the start of the pandemic, which gave providers some helpful flexibility; however, it didn't confirm what was possible and acceptable to the LAA.

Most providers kept their CM up to date with any action taken, but there wasn't a clear picture across the provider base regarding levels of compliance with the Contract. The LAA introduced the Temporary Covid Standards, a set of standards which clarify the arrangements which were acceptable to the LAA as a direct result of COVID.

Rep bodies' members had been feeding back their concerns about what would happen when the contingency arrangements came to an end and how some of the clauses in the contract were going to be interpreted.

V Ling explained that the email from the LAA notifying their members of the Temporary Standards was perceived as threatening. Furthermore, some contract managers had told providers that file reviews had to be done face to face and that they didn't consider a Zoom/Teams meeting to be face to face. These incidents were not widespread but were causing a lot of stress when they occurred. It was unlikely that work arrangements would ever go back to what they had been prior to the pandemic so it was important to be clear about expected standards.

V Ling also pointed out that the contract didn't specify that supervisors had to be in the office when not in court or with a client. She said that sometimes practitioners wanted to work from home in order to be away from interruptions and distractions, but they were still performing their role. This way of working had been accepted before and should not be undermined now. J Waring was keen to reassure providers that the LAA didn't want to apply more scrutiny on their activities or put extra focus on audits; she accepted that this was an area of confusion and was working with colleagues to provide clarity. N Ben Cnaan agreed that this was a big issue and the tone of the LAA's email and letter of agreement had put a strain on the relationship between contract managers and solicitors.

E Druker added that discussions were going on about possible changes to the current contract and about changes to a future contract. Any such changes would be subject to a contract consultation.

K Pasfield said that as providers were planning for a return to pre-Covid ways of working, they needed clarity about whether Zoom/Teams calls qualified as face-to-face meeting, about supervision arrangements and other staff/office arrangements.

It was agreed that the LAA would keep representative bodies up to date and provide further information when available.

## 8. AOB

**Delegated Functions.** K Pasfield said that providers had been using their delegated functions in what seemed a reasonable way and yet cost extensions were being refused by caseworkers with no

explanation. She asked other representatives to send her examples of refusals/reductions experienced by their members so that she could collate them.

E McNally explained that the issues with emergency higher cost delegation were Default Costs Issues:

- On a 1 step emergency the higher delegated costs information put into the Provider User Interface did not pull through to the caseworker side and the LAA were working with digital colleagues to try and get this resolved; in the meantime solicitors would be asked to put the additional delegation costs and justification into the merits report, with comms going out to providers advising them of this. The LAA knew that this was not the ideal solution and were looking to rectify it.
- If solicitors had delegated for the higher amount but had forgotten to put it into the merits report and did not get the higher amount they should send it to [applicationfixer@justice.gov.uk](mailto:applicationfixer@justice.gov.uk) with the details/justification.
- Solicitors were reporting that caseworkers were reducing higher costs and no reason other than not justified was given. The LAA were looking into this as a priority and would invite solicitors to send any details to [applicationfixer@justice.gov.uk](mailto:applicationfixer@justice.gov.uk). It was agreed that E McNally and K Grainger would look into the issue of unjustified refusals of cost extensions and issue guidelines to caseworkers **Action 6 [May]**

**Future CCG meetings.** Since the start of the pandemic the meetings had taken place via Microsoft Teams and L Evans invited views about the format of meetings going forward. Various views were offered in the chat function in support of continuing with virtual meetings. It was agreed that the meetings would continue to be on Teams for the rest of the calendar year, and the group could have a further discussion at that point.

Actions from this meeting			
AP1 [Mar]	Modelling supporting the interim payments to housing providers.  [Finance were exploring what information could be shared with the group]	E Druker	TBC
AP2 [Mar]	Information on inactive providers.  [CMA is conducting a review and will provide an update when it is complete]	P Enright	Sep 21
AP3 [May]	Explore whether it is possible to provide details of Mental Health firms doing just mental health work (may be historic)  Post meeting note: this has been taken forward directly with MHLA by Jake Kraft.	K Wood/T Collieu	Closed
AP4 [May]	Send the <a href="#">list of PAs</a> where digital only services were provided to S Cliff.	K Wood	Closed

AP5 [May]	Look into and provide data on appeals against enhancements reductions	S Starkey	Closed
AP6 [May]	<p>Look into the issue of unjustified refusals of cost extensions and issue guidelines to caseworkers</p> <p>Post meeting note:</p> <ul style="list-style-type: none"> <li>• We have worked through a list of cases supplied by Kate Pasfield – feedback given to the individuals/team</li> <li>• Subject Matter Experts are working on guidance for caseworkers about what information is required for additional costs</li> <li>• Where we are refusing – full reasons to be given</li> <li>• Guidance to be produced for providers about what justification needs to go into additional cost requests</li> </ul> <p>All these are work in progress at the moment</p>	E McNally/K Grainger	Closed