



Legal Aid
Agency

2018 Standard Civil Contract Training

Part 2 - Category Specifications

2018





Immigration and Asylum





Legislation

- Paragraph's **24** (Special Immigration Appeals Committee), **25(1)**, **26(1)**, **27(1)**, **28**, **29**, **30(1)**, **32(1)**, **32A(1)** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **39- 41** of the 2018 Category Definitions
- There has been no change in scope in relation to victims of trafficking and modern slavery, see here:
- <https://www.gov.uk/guidance/work-out-who-qualifies-for-civil-legal-aid>

Changes to the Immigration & Asylum Category

“Asylum Screening Unit” (NEW)

Means a UKVI Location where an asylum claim can be made. Principally this will be Lunar House, 40 Wellesley Road, Croydon, CR9 2BY or at a UK border if a claim for asylum is made on immediate arrival in the UK.

“Attendance Day” (NEW)

Means the day your Senior Caseworker(s) will be required to attend the IRC to assist a DFT, DAC or NSA Client at the Substantive Interview. An Attendance Day is normally required the day after you have been advised by UKVI that such a client needs legal representation;

“Detained Duty Advice Scheme/ Detained Duty Advice Surgery” (NEW)

Means the special arrangements, which are subject to Schedule authorisation, to deliver an advice surgery at the designated IRC(s)

“Fast Track Procedure Rules” (NEW)

Means The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2017

Changes to the Immigration & Asylum Category

“IRC Procurement Area” (NEW)

Means either;
Brook House IRC
Campsfield IRC
Colnbrook IRC
Harmondsworth IRC
Tinsley House IRC
Yarl’s Wood IRC; and
Morton Hall IRC

“Reserved Matters” (NEW)

Means matters which we specify either in this Specification or in our Work Restrictions document may only be undertaken by individual who are accredited as Senior Caseworkers and above under the IAAS;

“Social Services” (NEW)

Means the social services provision by the local authority responsible for the client.

Changes to the Immigration & Asylum Category

“Stages of Accreditation”
(NEW)

Means the following IAAS stages of Accreditation:
Trainee Casework Assistant;
Casework Assistants;
Senior Caseworker;
Supervising Senior Caseworker;
Advanced Caseworker.

“Standby Day”
(NEW)

Means any day on which you are required to be on call to receive referrals of clients subject to the Detained Fast Track Scheme.

“Terrorism Prevention & Investigation Measure Orders”
(NEW)

Means an order imposed on an individual as set out in Terrorism Prevention and Investigation Measures (TPIM) Act 2011.

Changes to the Immigration & Asylum Category

“Bail”
(AMENDED)

“*Bail*” means an application or referral to the appropriate **person/court** for an individual’s release ~~from detention on~~ immigration bail when detained (or liable to be detained) under: (a) the authority of an immigration officer, (b) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal), (c) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation), (d) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal), or (e) section 36(1) of the UK Borders Act 2007 (detention pending deportation);

“Detained Asylum
Casework
Scheme”/ “DAC
Scheme”
(AMENDED)

Means the UKVI scheme used ~~operates in Harmondsworth, Colnbrook and Yar’s Wood~~ for the processing and determination of asylum claims for individuals who are detained;

“Fast Track” or
“Fast Track
Scheme”
(AMENDED)

Means the special contract arrangements subject to an ~~Exclusive Schedule Arrangement~~ authorisation to deliver services to Clients detained in relation to the **UKVI** Detained Fast Track Scheme.

Changes to the Immigration & Asylum Category

“Rota”
(AMENDED)

Means a rota ~~advice surgery at~~ for the designated **delivery of IRC(s); services which is prepared by the LAA;**

“Work
Restrictions”
(AMENDED)

Means our Work Restrictions **document** published by us on our website **which sets out Permissible and prohibited work and those matters that are reserved under various levels of the Law Society Immigration and Asylum Accreditation Scheme;**

“UASC”
(AMENDED)

Means an ~~unaccompanied~~ asylum- seeking child (~~who~~ is under 18 or claims on reasonable grounds to be under 18) applying for asylum in their own right and who is separated from both parents and not being cared for by an adult who, by law or custom has responsibility to do so;

“UKBA UKVI”
(AMENDED)

Means ~~the~~ UK Visas and Immigration, formerly known as the United Kingdom Border Agency, ~~formerly known as the~~ Immigration Nationality Directorate, Border and Immigration Agency and Home Office. Where ~~UKBA~~ UKVI is referenced it also includes Ports, Entry Clearance Offices, Consulates and Embassies; ~~and~~

Changes to the Immigration & Asylum Category

Part A- Preliminary

Para 8.8
(Section A)

(i) paragraph 32A of Part 1 of Schedule 1 to the Act (“Victims of slavery, servitude or forced or compulsory labour”) in so far as civil legal services relate to an application by the individual for leave to enter, or to remain in, the United Kingdom.

Part B- Immigration and Asylum Service Standards

Para 8.15
(Section B)

You must maintain at each office a ratio of at least one full time equivalent ~~Level 2 Caseworker~~ **Senior Caseworker** for every two ~~Level 1 Caseworkers~~ **Casework Assistants/ or Trainee Casework Assistants**



Changes to the Immigration & Asylum Category

Types of Contract Work	Level of Accreditation
Conduct of Legal Help Matters and Legal Representation	Level 1 Accredited case worker and above Senior Caseworker. Trainee Casework Assistants (who have passed the relevant examination required by the IAAS at that level) and Casework Assistants can conduct tasks delegated by the Senior Caseworker, except Reserved Matters.
Reserved Matter 1- Use of Delegated Functions to make a determination that an individual qualifies for CLR; and conduct of CLR cases	Level 2 Senior Caseworker and above
Reserved Matter 2 – All Contract Work for clients who lack capacity within the meaning of section 2 of the Mental Capacity Act 2005	Senior Caseworker and above
Reserved Matter 3- All Contract Work carried out for an a Child or a UASC	Level 2 Senior Caseworker and above
Reserved Matter 4- All Contract Work for Clients detained in IRC's	Senior Caseworker and above.
Conduct of any other Contract Work not covered above	Senior Caseworker and above

Changes to the Immigration & Asylum Category

Prev para
8.24- 8.25

The requirement on the provider to deliver 90% of their Asylum Matter Start work in the procurement area has been removed

Part C- Carrying Out Immigration and Asylum Controlled Work

Paras 8.30-
8.31

The following new paras have been inserted to clarify transferal of cases and clients between Offices in this category of law:

8.30 Where you have made a determination that a Client qualifies for Controlled Work and subsequently (at any stage of the case) the Client moves location either voluntarily or is dispersed by the UKVI and you determine that another Office within your organisation from which you are authorised to conduct Contract Work under the Immigration and Asylum Category is able to continue to represent that Client in accordance with the Contract, you may conduct the case from that Office.

8.31 Where a case or a Client is transferred to another Office under Paragraph 8.30 above, the case must proceed under the same Matter Start.

Changes to the Immigration & Asylum Category

Para 8.47

In accordance with Paragraph 8.134, where you are attending a Detained Duty Advice Surgery under a Schedule authorisation you may not make any claim for travel or waiting time. Disbursements such as travel and interpreting costs are claimable.

Para 8.48

Subject to Paragraph 8.49, the cost of the Client's travel to attend on you to give instructions are claimable as a disbursement, where at the point the Matter is started, no other more local Provider can assist the Client and the Client is either:

- (a) in receipt of support from National Asylum Support Service;
- (b) an UASC and is in receipt of other support from Social Services;
- (c) an adult or Child in receipt of support by a local authority under the Care Act 2014, the Children Act 1989 or the Immigration Act 2016; or
- (d) in the reasonable opinion of the Provider the Client is suffering from destitution."

Changes to the Immigration & Asylum Spec- Part C

Para 8.53

The cost of your travel to attend interviews in accordance with Paragraph 8.51 above is claimable as a disbursement at the rates set out in the Remuneration Regulations.

Para 8.54

Legal Representation of a Client in ~~an~~ any application (including for permission):

(a) to the Upper Tribunal; or

(b) for Judicial Review or an appeal either to the Court of Appeal or Supreme Court, including any application to the Court for permission; is paid for as Licensed Work and cannot be carried out under Controlled Work.

Prev Para 8.53

The following para has been deleted:

~~“However, where an application for permission to appeal to the Court of Appeal is made to the Upper Tribunal, the grounds of Appeal, whether drafted by you or Counsel, will be claimed as part of Controlled Work”.~~



Lots Boundaries

Lot	MS value	Delivery Plan Required	Lot Specific Quality Requirements
1	150	No	N/A
2	300 (may bid for DDA)	No	Required to undertake the full range of work
Above 2	Over 300 (may bid for DDA)	Yes	Required to undertake the full range of work
3	300 (may bid for DDA and DAC)	No	(i) Required to undertake the full range of work; and (ii) Additional accreditation required
Above 3	Over 300 (May bid for DDA and DAC)	Yes	(i) Required to undertake the full range of work; and (ii) Additional accreditation required

Changes to Access



- Two new Access Points have been introduced for the Immigration category only.
- They are:
 - Swindon (under South West England Procurement Area); and
 - City of Kingston upon Hull (under North East Yorkshire and the Humber Procurement Area).



Changes to Upper Tribunal Work

- The 2018 SCC removes the provision to pay CLR at hourly rates in relation to **an application for permission to appeal (including the initial application for to the First-Tier Tribunal) and appeals before the Upper Tribunal.**
- This work will fall under Licensed Work from 1 September 2018 and apply to any cases started after 1 September.
- **The same contingent payment rules as at present will apply; otherwise the normal Licensed Work rules apply (including the higher rates for Upper Tribunal work and ability to apply for Payments on Account).**



Upper Tribunal Work - transitional arrangements

- Cases started before 1 September 2018 will continue to be able to submit a stage claim after any FTT hearing is completed.
- Cases started on/ or after 1 September 2018 are not able to stage bill and will have to submit a completed claim for work. The ability to make a stage claim for CLR claims opened on/or after 1 September has been removed.
- This does not impact the use of the Stage Disbursement Claim during legal help or CLR

Changes to Upper Tribunal Work - codes



Matter Type 1 Code

IACA	Asylum - Stage 2a (CLR)
IACB	Asylum - Stage 2b (CLR)
IAXC	Asylum - CLR Work Not Subject to the Standard Fee Scheme
IMCA	Immigration- Stage 2a (CLR)
IMCB	Immigration- Stage 2b (CLR)

Exception to this rule:

Where the matter relates to the Matter Type 2 code “IBAI”- Bail Hourly Rates, a provider can continue to stage claim under CLR. The code combination that should be used in this circumstance is:

MT1: IMXC “ Immigration - CLR Work Not Subject to the Standard Fee Scheme” +

MT1: IBAI- “Bail Hourly Rates”

New proceedings codes are in place to report against this type of work, i.e.

IM030/IA031/IH028/IO30- to be represented on an appeal or review to the Upper Tribunal against a decision of the First—Tier Tribunal



Changes to Upper Tribunal Work- remittals

- The Upper Tribunal has the power to remit the whole or part of a case back to the First Tier Tribunal (FTT). Where this occurs the FTT work should be claimed as Controlled Work, i.e. claimed as an hourly rate as opposed to the Standard Scheme.
- A new Matter Type 2 reporting code (**IREM**) has been developed in CWA to enable the LAA to identify remittal cases. From 1 Sep 18 any remittal to the FTT must be reported using IREM
- The IREM code can only be used with the following 2 Matter Type 1 codes:
 - IAXC; and
 - IMXC
- The new code will not be date dependant and providers will be able to use it for any remittal regardless of the case start date
- Costs are still at risk if permission is not granted by the FTT/UT

Changes to the Upper Tribunal Work - Rates

Remuneration rates for Immigration and Asylum Upper Tribunal Work

Following the transfer of Upper Tribunal appeals from Licensed Work to the Upper Tribunal the following rates for solicitors fees are now payable for this work:

Applications to the First-Tier Tribunal for permission to appeal to the Upper Tribunal	Applications for permission to appeal to the Upper Tribunal and the substantive appeal
Preparation and attendance - £55.08 per hour	Routine letters out - £6.75 per item
Routine letters out/telephone calls - £3.96 per item	Routine telephone calls - £3.74 per item
Attending tribunal or conference with counsel - £29.30	Preparation and attendance - £71.55 per hour (London) and £67.50 per hour (non-London)
Advocacy - £62.64 per hour	Attendance at court or conference with counsel - £33.30
Travel and waiting time - £27.27	Advocacy - £67.50 per hour
	Travel and waiting time - £29.93



Changes to Travel and Waiting

- New limits to claiming travel and waiting if attending a Detained Duty Advice Surgery under an Schedule authorisation have been introduced

8.47 In accordance with Paragraph 8.134, where you are attending a Detained Duty Advice Surgery under a Schedule authorisation you may not make any claim for travel or waiting time. Disbursements such as travel and interpreting costs are claimable.

- Changes will be made to matter type 2 code IDAS to ensure that:
 - No claim for travel time and waiting time can be made in relation to this code; and
 - Any claim for travel time and waiting time must not be included within price calculations.



Changes to the IRC specification

- Part E is no longer a separate Specification and sits in the Immigration and Asylum Specification.
- Providers delivering Immigration Removal Centre (IRC) work under the 2018 SCC will be required to hold a Schedule Authorisation in order to deliver this work.
- Several new provisions have been added to this part of the Specification.
- There are only 7 IRC's. The Verne closed as an Immigration Removal Centre on 31st December 2017.



Changes to the IRC specification

Para 8.103

All Contract Work undertaken for a Client detained at an IRC is a Reserved Matter.

Para 8.105

If you have Schedule authorisation to deliver Contract Work under an IRC Rota you must deliver that Contract Work. If, for whatever reason, you are unable to meet your obligations under an IRC Rota, you must inform us immediately.

Para 8.117

You must ensure the client is given adequate information in a written format at the end of the Detained Duty Advice Surgery whether or not the matter requires further investigation. This information should sufficiently address the outcome of the Detained Duty Advice Surgery with details of the name of the Caseworker who has advised the client.

Changes to the IRC contract

Para
8.118

If you have Schedule authorisation to deliver a Detained Fast Track Scheme/Detained Asylum Casework Scheme you must throughout the Contract Period Employ an Advanced Caseworker who must be available on Standby Days, Attendance Days and as otherwise reasonably required to provide any support, advice and assistance required to any Senior Caseworkers advising a Client at a DFT Scheme or DAC Scheme at an IRC in accordance with your Rota obligations. Such person (or each such persons) must be either a sole principal, one of your employees or a director of or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively) and must at all times during their working hours (except as required for the proper performance of their role (such as attending court and/or Clients)) work from one of or any combination of your Offices. If you cease to meet the requirements of this Paragraph 8.118 your Schedule authorisation to deliver any such DFT Schemes or DAC Schemes will cease. Any breach of this Paragraph 8.118 shall be a Fundamental Breach.

Changes to the Immigration & Asylum Spec- Part E

Temporary Advanced Caseworker Absence

Paras
8.119-
8.120

“8.119 If an Advanced Caseworker is for any reason temporarily unavailable you may for a period of up to 6 weeks either:

- (a) nominate another experienced Senior Caseworker to provide support, advice and assistance required to any Senior Caseworkers; or
- (a) nominate an external Advanced Caseworker.”

“8.120 If you estimate that your Advanced Caseworker may be unavailable for more than 6 weeks, or following completion of the 6-week temporary period the Advanced Caseworker is not able to resume, you must immediately inform your Contract Manager who will decide at their reasonable discretion what you must do to comply with the Contract. This may include:

- (a) extending the use of your nominated experienced Senior Caseworker for a further limited period;
- (b) by written notice specifying that you must put in place another employed Advanced Accredited Caseworker by such period as the notice specifies; or
- (c) applying a Sanction.”



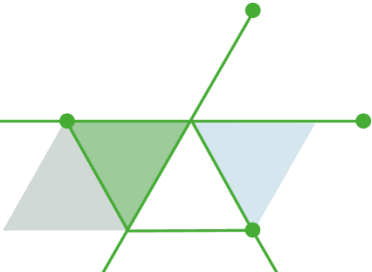
Changes to Access – IRC procurement areas

- 4 additional fields have been added to the IRC procurement area fields in CWA.
- The first of the new fields is a “IRC Surgery” where need to enter Y/N. Will only need to enter Y if they are submitting a claim for the costs of attending the surgery, not for matters opened as a result of the surgery. Where the box is checked the provider must fill out the following mandatory boxes:
 - Surgery Date;
 - Number of clients seen at the Surgery;
 - Number of Surgery clients resulting in a legal help matter opened.

Refer to the Guidance for reporting Controlled Work as there should be an expanded note on this in there.



Mental Health





Legislation

- Paragraph's **5** and **9** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **42-44** of the 2018 Category Definitions

Mental Health Fee Scheme

THERE ARE NO CHANGES TO THE REMUNERATION LEVELS IN MENTAL HEALTH. THEREFORE PAYMENT IS THE SAME AS AT PRESENT:

Mental Health Tribunal Cases

Where an application to the MHT takes place providers are paid one or more of the following fixed fees depending on the work carried out:

- **Level 1** (Mental Health Proceedings) Fee (£129) – Initial Advice: This covers the work done in making an initial visit to the client and follow-up work such as making the application to the tribunal
- **Level 2** (Mental Health Proceedings) Fee (£321) – Negotiation & Preparation – This covers negotiation with third parties (such as doctors and hospital managers) and preparation for the MHT hearing
- **Level 3** (Mental Health Proceedings) Fee (£294) – Representation before the MHT – This primarily covers the act of representing the client at the MHT and any aftercare services.

These fees cover all work carried out in a “Period of Eligibility” (namely, the period covering a patient’s right to apply to the tribunal). Therefore, any Mental Health work carried out in that period “rolls-up” into the fees due.

Non-Mental Health Tribunal Cases

All Non-MHT cases are paid under a single fee of £253.



Financial Eligibility

Non-Means Tested Cases

Some cases in Mental Health are provided without reference to a client's financial eligibility. In these matters the provider does not have to carry out a means test. The cases are:

- Legal Help and Controlled Legal Representation on an application (or contemplated application) to a Mental Health Tribunal
- Legal Representation on an application under section 21A of the Mental Capacity Act 2005 to challenge a deprivation of liberty authorisation

If a Controlled Work case starts off on a non-means tested basis then there is no requirement to carry out a financial eligibility test if other means-tested work is rolled-up into that matter.

Means Tested Cases

Other Mental Health cases are means-tested. However, recognises that due to the client condition it may not always be possible to obtain evidence of means. Providers should, however, always make at least a reasonable attempt to establish the financial position.



Changes to Mental Health under 2018 SCC

The amendments that have been made to the service requirements in the Mental Health category for the 2018 contract are:

- New lots sizes and associated quality requirements
- A limit on the number of firms/offices/procurement areas a supervisor can supervise
- Changes to the supervisor standards (including the creation of a brand new standard)
- A power to introduce additional requirements for Court of Protection work
- The creation of “Designated Accredited Representatives”
- The transfer of certain rules on financial eligibility from guidance into the contract
- Clarification on the rules for opening a new matter for a reapplication after a withdrawal
- Minor clarification on the scope of the Level 1 (Mental Health Proceedings) Fee
- Clarification on work required to trigger the Level 2 (Mental Health Proceedings) Fee
- Small changes to the rules on payment for work in, or applying to, the Upper Tribunal

Changes to Mental Health under 2018 SCC

Providers will have been allocated a specific amount of NMS in each Procurement Area in the tender:

- Lot 1: 100 NMS
- Lot 2: 300 NMS
- Lot 3: 500 NMS
- Above Lot 3: 500 + NMS

Lots
(Schedule)

Providers can self-grant an additional 50% NMS. However, they must meet the minimum quality requirements for the lot they move into.

The requirements that a provider must meet in each Procurement Area are:

- 0-100 NMS: Must have 1 FTE accredited by the Law Society
- 101-300 NMS: Must have 2 FTE accredited by the Law Society
- 301-500 NMS: Must have 3 FTE accredited by the Law Society
- 500 + NMS: Must have 4 FTE accredited by the Law Society

Changes to Mental Health under 2018 SCC

The current requirements in the contract will remain in place:

- Each contract holder must have at least 1 FTE supervisor
- There must be at least ½ FTE Supervisor supervising work in each Procurement Area
- 1 FTE Supervisor can supervise no more than 4 FTE caseworkers (in general or in each Procurement Area)

Supervisor
Limits (Para
9.6)

In addition to the above, a new requirement is being added:

- An individual Supervisor is not permitted to supervise any more than:
 - 2 offices within the same firm
 - 2 separate firms
 - Work arising in 2 Procurement Areas

Changes to Mental Health under 2018 SCC

There are now two supervisor standards in Mental Health:

- One designed for Supervisors who predominately supervise work under the Mental Health Act; and
- One designed for Supervisor who supervise a mixture of Mental Health Act and Mental Capacity Act work

Supervisor Standards

Mental Health (Para 9.18 -9.23)

- Member of Law Society MH Accreditation Scheme
- Representation at 10 MHTs (or representation at 5 MHTs and 5 cases where preparation has been completed/conduct of other case in the scope of category)
- 2 Non-MHT cases from list

Mental Health and Mental Capacity (Para 9.24 – 9.31)

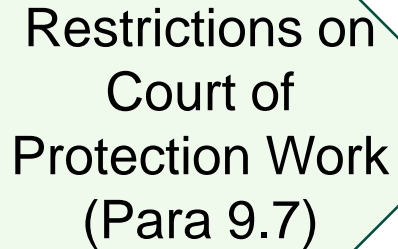
- Member of Law Society MH Accreditation Scheme
- Representation at 5 MHTs (or representation at 3 MHTs and 2 cases where preparation has been completed/conduct of other case in the scope of the category)
- 5 cases files involving under the MCA (including at least 2 CoP applications)
- 2 Non-MHT cases from list (can include MCA cases)

Each type of supervisors can supervise any type of Mental Health work. However, to qualify for the second route individuals must have supervised or conducted at least 10 Mental Capacity Act 2005 cases prior to applying.



Changes to Mental Health under 2018 SCC

- The 2018 Contract now includes a clause that states that the LAA may implement further restrictions on providers carrying out MCA work in the Court of Protection.
- These will only be introduced with the express agreement of the Consultative Bodies and providers will be given 12 months notice
- Discussions on the exact nature of the restrictions will begin shortly. They will, however, be based on the Law Society's new accreditation scheme for Mental Capacity (Welfare) Cases.
- The Mental Capacity (Welfare) Cases accreditation scheme was published in early 2017, with the first members becoming accredited in October 2017. Details can be found here: <http://www.lawsociety.org.uk/support-services/accreditation/mental-capacity/>



Restrictions on
Court of
Protection Work
(Para 9.7)

Changes to Mental Health under 2018 SCC

- Providers will now have to keep a list of “Designated Accredited Representatives”.
- These are practitioners that providers primarily rely on to undertake advocacy in the MHT and must be:
 - Members of the Law Society’s Mental Health Accreditation Scheme
 - Carry out at least 14 hours per week Contract Work for that provider
- DARs must be used for 50% of all hearings carried out in a schedule Period. Providers will be required to state whether they used a DAR on each MHT Level 3 claim in CWA and management information reports will be available to monitor usage.
- Non-DARs can be used in the remaining 50% of hearings. However, third parties such as agents/counsel should have experience/knowledge of Mental Health law and have properly acquainted themselves with the client’s case.

Designated
Accredited
Representatives
(Para 9.9 –
9.12)

Changes to Mental Health under 2018 SCC

The rules on when a provider can open a non-means tested matter for contemplated proceedings before the tribunal where the application is never actually submitted have been moved from guidance into the contract. As at present, they state:

- The client must be eligible to apply to the MHT (or the supplier could not have reasonably discovered either before or during the first attendance they were not)
- Advice given on the MHT application must satisfy the Sufficient Benefit test
- There must be a reasonable expectation on behalf of both the client and provider to pursue an application to the MHT (notwithstanding where a client subsequently changes their mind and decide not to apply); and
- The circumstances in which the means assessment was dis-applied and reasons for doing so must be fully evidenced on file; and,
- Where the client has capacity to do so, they must have instructed the provider to give Tribunal advice.

Financial
Eligibility
(Para
9.34)

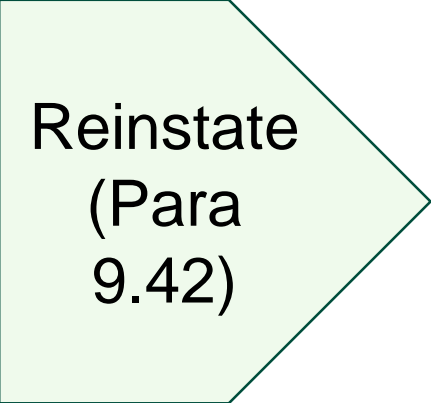
Changes to Mental Health under 2018 SCC

- The rules on when it is permitted to start a new matter for a reapplication after a withdrawal within the same “period of eligibility” have been amended, reflecting the way these claims are assessed in practice.
- The contract now allows a new matter start to be opened in the following circumstances:
 - The withdrawal and subsequent re-application were carried out in good faith and were made with the Client’s consent and/or in their best interests; and,
 - The provider has noted the reasons for the withdrawal and reapplication clearly on the case files, including details of their discussion with the client on this decision.

Withdrawal
(Para 9.41)



Changes to Mental Health under 2018 SCC



Reinstate (Para 9.42)

A new Matter Start cannot be opened where an application is reinstated. Where it would have been possible to apply for an application to be reinstated but the provider decided instead to reapply they must justify why this decision was taken.

Changes to Mental Health under 2018 SCC

- The scope of the Level 1 (Mental Health Proceedings) Fee level has been clarified to address areas of common confusion.
- It now specifies that the fee “covers the work done in making an initial visit to the Client, including all advice and assistance provided to the client at your first attendance, and follow-up work such as:
 - a) preparing and sending initial letters of instruction;
 - b) making the application to the MHT if none has been made; and/or
 - c) applying to withdraw an existing MHT application if this is agreed as part of the initial advice (e.g. at the first attendance or as part of the immediate follow-up work).
- The last paragraph means that providers cannot trigger the Level 2 Fee using work carried out helping to withdraw an application already made by the client if this action is agreed at the outset of the case.

Level 1 MHT
Fee
(Para 9.77)

Changes to Mental Health under 2018 SCC

Level 2
MHT Fee –
30 Minutes
(Para 9.79
- 9.83)

- We have clarified the scope of the work that can be used to trigger the Level 2 (Mental Health Proceedings) Fee after Level 1 work has come to an end.
- The Level 2 Fee can only be claimed where “substantial legal work has been carried out on the Client’s application or reference to the MHT or dealing with any Non-MHT issues that are payable under this fee”
- We have also clarified that “substantial legal work” means either one of the following:
 - an additional 30 minutes of preparation or advice; OR
 - separate communication with other parties on legal issues.



Changes to Mental Health under 2018 SCC

Upper
Tribunal
(Para 9.101)

- We have removed the provisions allowing for providers to claim for work carried out on an application for review to the First-Tier Tribunal to be claimed retrospectively on a certificate issued for an appeal to the Upper Tribunal.
- Conversely, providers can now claim an additional Adjoined Hearing Fee if they manage to persuade the First-Tier Tribunal to grant permission to appeal to the Upper Tribunal.
- We have removed the rules purportedly setting out conditions on when a certificate to the Upper Tribunal can be applied for as this is already adequately dealt with under the Procedure Regulations and Merits Criteria Regulations.

Family





Legislation

- Paragraph's **1,9, 10, 11, 12, 13, 15, 16, 17** and **18** Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **33- 36** of the 2018 Category Definitions and also paragraph **15** in relation to Damages under the Human Rights Act 1998 . This sets out:

Finally, some cases are included within both the Family Category of Law and the Public Law Category. These are claims for damages brought under the Human Rights Act 1998 where the breach, or alleged breach, of a Convention right relates to an act, decision or omission of a local authority in relation to the care, supervision or protection of a child. Such claims may also fall into the Claims Against Public Authorities Category where the proceedings are described by paragraph 20 to 21 below:

<https://www.gov.uk/government/news/civil-news-statutory-charge-care-costs-and-the-human-rights-act>



Minor changes

7.10 – clarification that where claiming 2 fees in respect of a single matter e.g. a level 1 and level 2 private family children then it should still be reported as single matter start.

7.35 – makes clearer what the trigger is for a level 2 payment in public proceedings and at 7.35 (b) that these proceedings can relate to an unborn child.

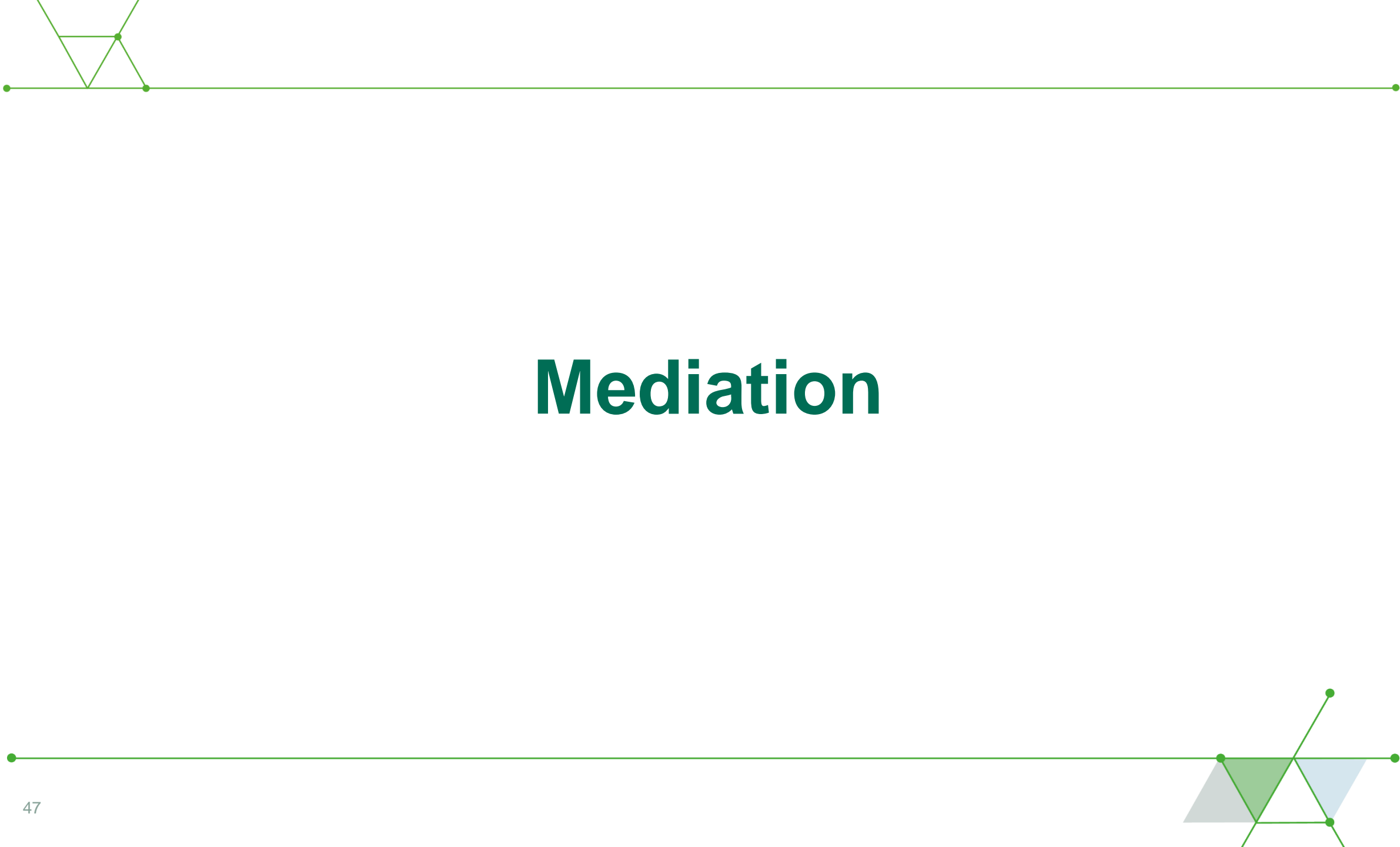
7.46 - the definition of related proceedings has been clarified. **“Related Proceedings” are proceedings which are being heard together with Public Law Children Cases, or in which an order is being sought as an alternative to an order in such proceedings. An example is contact and residence proceedings which are being considered by the court, together with care proceedings. Proceedings can only be Related Proceedings if there are existing Public Law Proceedings under paragraph (1)(1) of Part 1 of Schedule 1 of the Act. Proceedings will not be deemed to be Related Proceedings where an order is being sought which may have avoided the need for Public Law Proceedings to be issued in the first place.**

Changes to Access



- The procurement areas in London have been reduced to three – East, Central and West London. These mirror the 3 court areas for care proceedings in London.

Mediation





Key changes

The General Specification does not apply to family mediation. All of the requirements in relation to family mediation are set out in the Family Mediation Specification. This is the same position as now.

Additional provisions from the General Specification are now included in the Family Mediation Specification such as the new provisions on the use of interpreters.

The Mediation Quality Mark (MQM) will no longer exist from 1 September. The key quality provisions are now set out in the Quality Annex to the Family Mediation Specification.



Mediation definitions

Key changes:

“All Issues Mediation” means a Family Mediation where all issues pertinent to the legal and financial aspects of separation or divorce are considered in the Mediation. This must include **substantive consideration** of:

- (i) an issue in relation to the division of family assets and other financial arrangements, property and pensions; and
- (ii) an issue in respect of any arrangements to be made for the child/ren of the family.

“*Mediator*” means an individual who is **employed and holds current Family Mediation Council Accreditation (FMCA status) or holds any other form of accreditation that we may specify from time to time.**



Specification

Para 2.21

We may specify further requirements for performing Contract Work in this Category at any point during the Contract Period and will give you at least six months' notice of the date any such requirements will take effect. Any such further requirements will be based on any relevant accreditation scheme introduced by a representative body recognised by us and will only be implemented following consultation with Consultative Bodies.

Para 2.22

A Mediator must conduct MIAMs and mediations. Mediators must follow the Family Mediation Council Code of Practice and any other standards of practice that we may specify on reasonable notice from time to time.”

Para 2.26 – use of co-mediation

Whilst you do not need our prior authority to use Co-Mediation, we would expect Co-Mediation to be used in exceptional circumstances only and any decision to use Co-Mediation will need to be recorded on the file including, where appropriate ...



Specification

Mediators will no longer need to apply to the LAA to use Skype

3.9 - You may, except in relation to the requirements set out at Paragraph 3.7(b) above, provide services to a Client remotely (including, for example, video conferencing facilities). Any work conducted in accordance with this Paragraph 3.9 must be done in accordance with the Family Mediation Council Code of Practice and any guidance that either we or the Family Mediation Council may issue.

Para 3.26 – 3.28 clarifies the situation when a client transfers to a different mediation provider before the mediation has concluded.

Para 4.11-4.13 – clarifies the situation where only one client is eligible but payments can be claimed for both parties attending the MIAM and first session.



Specification

Para 4.22 – clarifies how the cost of disbursements incurred during mediation should be funded

Where only one party is eligible we will pay the full costs of any disbursements incurred during a MIAM and the initial Mediation session. In respect of any subsequent Mediation sessions which may be required, where only one party is legally aided and the disbursement in question is for the benefit of both parties (for example the cost of an interpreter where neither party speaks English) then we will only pay half the cost of the disbursement. Where the disbursement is purely for the use of the legally aided Client (for example the Client does not speak English but the other party does) then we will reimburse the full cost of the disbursement.



New quality requirements

Annex 2.1

Business plan must also include ...**Details of the risk assessment and safeguarding the needs of children policy.**

Annex - 3.1

The need for signposting will usually arise when the individual first provides information about the type of legal problem they have, and you realise they require a service that you cannot provide e.g. **you may identify that the Clients could benefit from participation in Separated Parents Information Programme (“SPIP”) before they participate in Mediation and Mediators should have good contacts with their local SPIP providers, and be able to encourage service users to engage with and benefit from the service. Often this will be when they make their first contact with you to seek help, though sometimes it may become apparent only after an initial diagnostic interview/appointment.**



New quality requirements

Annex – 7.5 - You must have a process in place to consider whether Clients have a need for specific complementary services and provide information on the following as appropriate:

- Relationship counselling, whether this is aimed at assisting in sustaining a relationship, easing the emotional impact of the separation, or assisting with the parents emotional adaptation to co parenting;
- A financial adviser;
- A child counselling service;
- The Separated Parent Information Programme (“SPIP”) which is available across England;
- An organisation with a Contract with us to provide legal advice in the Family Category of Law;
- Organisations accredited with the National Association of Child Contact Centres to deliver supported or supervised contact;
- A parenting plan including the on line services aimed at helping parents to learn new behaviours to make contact work better for their children.



Housing and Debt & Welfare Benefits

Housing

- Paragraph's **33, 34, 35 and 36** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **37 and 38** of the 2018 Category Definitions

Debt

- Paragraph **33** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **27 and 28** of the 2018 Category Definitions

Category Definition 2018 – Welfare Benefits

**Para's 46-49 -
Legal Help in
relation to...**

Appeals on a point of law in the Upper Tribunal, Court of Appeal and Supreme Court for all welfare benefits ((as described in paragraph 8 of Part 1 of Schedule 1 to the Act)

Legal Help in relation to appeal on a point of law relating to a council tax reduction scheme (as described in paragraph 8A of Part 1 of Schedule 1 to the Act)

Legal representation for appeals to the Court of Appeal and the Supreme Court on a point of law in relation to all welfare benefits (and appeals on a point of law relating to a council tax reduction scheme to the Court of Appeal and Supreme Court (as described in paragraphs 8 and 8A of Part 1 of Schedule 1 to the Act).



Controlled Work Fees

Standard Fees (Table 1, Part 1, Schedule 1)

Housing:

- Standard Fee: £157
- Escape Fee Threshold: £471

Debt:

- Standard Fee £180
- Escape Fee Threshold £540

Standard Fees (Table 7, Part 1, Schedule 1)

Welfare Benefits:

- Standard Fee: £208
- Escape Fee Threshold: N/A



Changes to Housing & Debt and Welfare Benefits

Providers will only be able to hold a Welfare Benefits contract if they also hold a Housing and Debt contract. This will be a requirement for the duration of the contract.



Presence

As Housing and Debt providers must have a permanent presence the same requirement will also now apply to the Welfare Benefits category.

Changes to Housing & Debt and Welfare Benefits

Supervisor Standard

- An individual who is a Supervisor in the Housing and Debt Category may also be a Supervisor in the Welfare Benefits Category of Law. However, the provider is required to employ a Supervisor on a FTE basis per week for Housing and Debt and a PTE basis per week for Welfare Benefits (this is not a change).
- If the same individual is Supervisor in both categories then requirement 4 in table 2 of the Welfare Benefits Supervisor Standard, requiring the individual to have the ability to recognise a possible contravention of the rights and freedom expressed in the ECHR, does not need to be met for Welfare Benefits.

Changes to Housing & Debt Categories

Authorised Litigator

Those providers who were awarded a contract under Lot 2 (more than 101 Matter Starts in the Housing Category of Law) you must employ an Authorised Litigator who is **based at and regularly working at the Office** to which the Matters Starts are allocated for at least 17.5 hours per week. (NB: this will be set out in the Providers Schedule, if applicable.)

Housing Possession Court Duty Scheme

The Housing and Debt Specification no longer includes the Housing Possession Court Duty Scheme.



Changes to Welfare Benefits

Fees

Paid fixed fee of £208 per case, with no escape fee mechanism.

Delivery

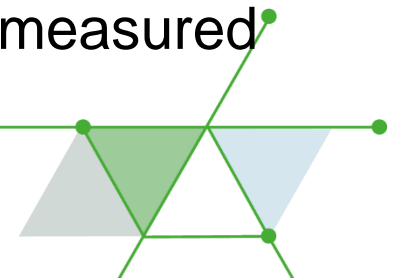
Providers don't need to deliver in specific delivery locations, can deliver across the whole procurement area and undertake remote advice. Providers may only deliver outside their procurement area where they have instructed the client of other available providers within the clients procurement area and the provider has written agreement from the client to take on the case.

Supervisor Legal Competence

Supervisors will now need to undertake the minimum number of cases within a 12 month, rather than 18 month period in order to meet the Supervisor competence standards.

Supervisor Case Involvement

Supervisors must meet a minimum case involvement standard of 56 hours over defined periods. If working part time then the Supervisor must have undertaken a total of 280 hours over the last 5 years (measured from the contract start date).





Changes to Reporting – Welfare Benefits

- A new outcome code (**WS**) introduced into CWA for Welfare Benefits. It indicates that a ‘successful appeal’ has taken place.
- This code should only be used where the outcome of the case is a successful appeal in either:
 - The Upper Tribunal (Administrative Chamber);
 - Court of Appeal; or
 - The Supreme Court
- Amendments have also been made to CWA to ensure that providers are able to transfer cases regardless of Schedule date.



Community Care





Legislation

- Paragraph's **6, 7 and 9** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **25 and 26** of the 2018 Category Definitions

Changes to Quality

Minor amendments

Court of protection
(New paras)

- Minor amendments have been made to wording in paragraphs 11.1- 11.5.

- 11.6 – Supervisors undertaking Mental Capacity Act (MCA) 2005 work must have been **directly involved in at least 10 new cases 12 months immediately preceding submitting form to be supervisor.**
- 11.7- Sets out the meaning of “**directly involved**”.
- 11.8- Supervisors are required to **provide advice and assistance regarding the MCA (2005) in minimum of 2 cases that have gone to the Court of Protection (CoP).**



Claims Against Public Authorities



Legislation

Paragraph's **3, 21, 22 and 39** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.

Paragraphs **20, 21 and 22** of the 2018 Category Definitions.

Key Aspects- Quality

PTE Supervisor Requirements

Employ a Part Time Equivalent supervisor in this category of law.

Para 13.13 of the 2018 Standard Civil Contract (Claims Against Public Authorities), allows a PTE supervisor in this category of law to supervise in another category of law but only to the extent that any such individual does not work more than full time equivalent working hours (i.e. 5 days a week and 7 hours on each such day).

Authorised Litigator

Employ a Part Time Equivalent Authorised Litigator in this category of law. (See para 2.8 of the 2018 Standard Civil Contract Specification (General Provisions 1-6))

Key Performance Indicators (KPIs)

KPI 6- Quality: Legal Representation Outcomes

This KPI applies to all Licensed Work in the Clinical Negligence and Claims Against Public Authorities Categories only. The minimum volume of cases to be taken into account is 10 files.

You must achieve a Substantive Benefit for the Client in at least 30% of cases.

KPI 7- Quality: Post Investigative Success

This KPI applies to Licensed Work in the Clinical Negligence and Claims Against Public Authorities Categories in cases which proceed beyond investigation. The minimum volume of cases to be taken into account is 10 files.

**You must achieve a Substantive Benefit for the Client in at least the following proportion of cases:
Claims Against Public Authorities 50%**

Public Law



Legislation

Paragraph's **19, 20, 21 and 22** of Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.

Paragraphs **45** of the 2018 Category Definitions.

Employ a Part Time Equivalent supervisor in this category of law. (para 14.6)

PTE Supervisor Requirements

Para 14.7 of the Public Law Specification, allows a PTE supervisor in this category of law to supervise in another category of law but only to the extent that any such individual does not work more than full time equivalent working hours (i.e. 5 days a week and 7 hours on each such day).

Authorised Litigator

Employ a Part Time Equivalent Authorised Litigator in this category of law. (See para 2.8 of the 2018 Standard Civil Contract Specification (General Provisions 1-6))



Clinical Negligence





Legislation

- Paragraph **23** Part 1, Schedule 1, LASPO- Matters in Scope of Legal Aid.
- Paragraphs **23 and 24** of the 2018 Category Definitions.



Accreditation



Supervision

A supervisor must be a panel member of either:

- (a) The Law Society's Clinical Negligence Accreditation Scheme; or
- (b) The Action against Victims of Medical Accidents (AVMA) Clinical Negligence Panel; or
- (c) The Association of Personal Injury Lawyers (APIL) Clinical Negligence Accredited Specialist Panel.

Employ a Part Time Equivalent supervisor in this category of law.




Changes to Clinical Negligence

The following minor amendments have been made



Authorised Litigator

Removed the requirement on the provider to employ an authorised litigator. This is on the basis that the majority of work under the contract is certificated and requires the work to be delivered in court by a representative.



PTE Supervisor Requirements

Para 15.8 of the 2018 Standard Civil Contract (Clinical Negligence), allows a PTE supervisor in this category of law to supervise in another category of law but only to the extent that any such individual does not work more than full time equivalent working hours (i.e. 5 days a week and 7 hours on each such day).

Key Performance Indicators (KPIs)

There are 2 category specific KPIs that apply to all Licensed Work in Clinical Negligence and Claims Against Public Authorities

You must achieve a Substantive Benefit for the Client in at least 30% of cases.

KPI 6- Quality: Legal Representation Outcomes

**You must achieve a Substantive Benefit for the Client in at least the following proportion of cases:
Clinical Negligence 60%**

KPI 7 – Quality: Post Investigation Success