

Procurement of Civil Legal Aid Services in England and Wales from Autumn 2019: Civil Legal Advice Frequently Asked Questions

Many questions will be answered by the information given in the Information for Applicants document (IFA), which is available on the Tenders pages of our website:

<https://www.gov.uk/government/news/civil-legal-advice-services-from-september-2019>

The deadline for questions about the IFA or the tender was **5pm on 21 June** (note this is referred to as the “End date for supplier clarification messages”) on the e-Tendering system. We are therefore unable to answer questions received after that deadline.

Questions that we consider to be of interest have been collated and answered centrally in writing to ensure that all interested parties have equal access to information in the answers. These questions and answers will be published in this FAQ document.

Technical Questions on how to use the e-Tendering system

There is a Helpdesk to provide technical support to Applicant Organisations using the e-Tendering System. However, the Helpdesk is **unable** to assist with problems with your own computer hardware or systems - for these types of issues; you should contact your usual IT support.

Questions should be emailed to the following email address: help@bravosolution.co.uk . Alternatively, the telephone number for the Helpdesk is 0800 069 8630 (lines are open from 9am to 6pm Monday to Friday).

The Helpdesk remains open until the tender closes. However, we recommend that you start to complete your tender early so that you identify any areas where you need technical help as soon as possible, as the Helpdesk is likely to be very busy in the days leading up to the tender deadline and cannot guarantee that queries received close to the tender deadline will be dealt with in time.

The deadline for receipt of Tenders is 9am on 10 July 2019.

1. We understand (from the flow diagram at p. 7 of the IFA) that the CLAOS will assess scope and eligibility and then refer the client to a CLA telephone provider. The CLA telephone provider is then to assess: "... 2. Whether services should be provided by face-to-face or telephone advice (in accordance with Lord Chancellor's Guidance)." This is similarly clarified at para. 1.6 of the IFA which explains: "all potentially eligible clients seeking help in Education or Discrimination, will now have greater freedom to access Face to Face Advice, having discussed the suitability of the options available to them with the CLA Specialist Telephone Advice providers."

The LC's guidance (para. 8.10) explains: "In most cases it is anticipated that the Gateway will be able to provide the client with legal help over the telephone/email/post. However, in certain cases the Gateway may determine that the case is such that it is not suitable for advice by telephone/email/post and that face to face advice may be required. In these circumstances, the Gateway will inform the client that they may seek advice from a face to face provider and will allocate the client a CLA Reference Number confirming that they have been assessed and are eligible for face to face advice."

We cannot find an explanation of how "certain cases" is to defined. Please can you assist. What we are trying to understand is how the CLA telephone provider is to determine whether or not to issue the client with a CLA Reference number in order to achieve the policy aim of clients being able to "now have greater freedom to access Face to Face Advice, having discussed the suitability of the options available to them with the CLA Specialist Telephone Advice providers." If a client says that their preference would be to access a face to face service, will that be sufficient to enable the CLA telephone provider to issue a CLA reference number?

We note that para. 1.11 of the CLA IFA states: "From 1 September 2019, Clients may express a preference to receive Remote Advice via the CLA Service or Face-to-Face Advice from a provider holding a Face-to-Face Advice contract. The Client's wishes are to be given particular emphasis when the determination on how services are to be provided is made." This would suggest that if a client expresses a preference for face to face service, then the CLA telephone provider should accede to that request and make the determination accordingly. Please can you clarify in what circumstances would it be appropriate for a CLA telephone provider to make a determination that remote advice should be provided where a client has expressed a preference for a face to face service.

In summary, our questions are:

a. What is the definition of "certain cases" as referred to at para. 8.10 of the LC's guidance?

The Lord Chancellor's Guidance relating to determinations on Gateway Work has been updated with changes that take effect from 1 September 2019. The update can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807983/Civil_Legal_Advice_CLA_September_2019_changes.pdf

Paragraph 8.10 that is quoted above no longer forms part of the amended Lord Chancellor's Guidance.

From 1 September 2019, determinations undertaken by CLA telephone providers (on behalf of the Director of Legal Aid Casework) specifying whether services should be provided as face-to-face advice or specialist telephone advice will need to follow the position set down in paragraphs 8.8 to 8.10 of the Lord Chancellor Guidance (as amended). These paragraphs are as follows:

8.8 When the Director determines that an individual qualifies for Gateway Work, that determination must specify whether the services are to be provided by a specialist telephone provider or a face-to-face provider. In carrying out that determination for all categories of Gateway Work the Director should consider the following factors, taking into account any service adaptations or reasonable adjustments that are reasonably available to the client:

(a) whether the provision of remote advice can be expected to enable the provider to understand and act on the individual's instructions;

(b) whether the client is able to understand and act on any advice given.

8.9 In carrying out that determination for Gateway Work in the categories of discrimination and education, the Director should also consider the following factors:

(a) whether the individual has expressed a wish for services to be provided by a face-to-face provider; and

(b) the location of the face to face providers nearest to the individual or the client's wish to be assisted by a specific face-to-face provider;

8.10 This determination should only be carried out after the individual has been given a chance to make their views known on matters relevant to the determination. In making the determination, particular emphasis should be placed on any wish expressed by the individual for services to be provided by a face-to-face provider.

b. Where a client expresses to a CLA telephone provider that their preference is for a face to face service, will that be sufficient to enable the CLA telephone provider to issue a CLA reference number?

The Specification to the 2018 CLA Contracts (as amended) ("CLA Contract") for Discrimination and Education will provide that:

"1.9 You must have an appropriate procedure in place to assess whether, taking into account all Service Adaptations and Reasonable Adjustments that are reasonably available to be implemented in respect of the relevant Client, the provision of the Remote Advice can reasonably be expected to enable:

(a) you to understand and act on the Client's instructions; and

(b) the Client to understand and act on your advice.

- 1.9A *You must also have an appropriate procedure in place to enable a Client to make an informed preference for either Remote Advice or Face-to-Face Advice. This preference should be given particular emphasis when you determine how services are to be delivered. To assist the Client to compare the two methods of delivery you should:*
- (a) briefly set out the service that you will be able to offer the Client through the provision of Remote Advice, including any Service Adaptations and Reasonable Adjustments you can provide; and,*
 - (b) identify the three closest Face-to-Face Advice Providers to the Client and outline the referral and application process they will need to go through if they are referred to such a Provider.*
- 1.10 *If after carrying out the procedures set out in Paragraphs 1.9 and 1.9A you determine that the Client should receive Face-to-Face Advice, then you must refer the Client to a Face to Face Provider in line with Paragraphs 4.34 to 4.43 below. You must ensure the client is given the CLA reference number allocated to the Case (until such time that we advise you in writing that you no longer need to comply with this requirement)."*

If a determination, in accordance with the procedures in Paragraphs 1.9 and 1.9A of the CLA Contract Specification, has been made that a client should receive face-to-face advice, providers awarded a CLA Contract under this process must follow the specific referral and signposting rules set out at Paragraphs 4.34 to 4.43 of the CLA Contract Specification when referring a client to a face-to-face provider (which permits self-referrals in certain circumstances). While the mandatory telephone gateway is in place, clients will need to be given the CLA Reference Number whenever they are referred to a face-to-face provider.

c. In what circumstances would it be appropriate for a CLA telephone provider to make a determination that remote advice should be provided where a client has expressed a preference for a face to face service?

Under the terms of the CLA Contract for Discrimination and Education, CLA telephone providers will need to determine whether services are to be provided via face-to-face or remote advice on a case-by-case basis in accordance with the factors set out in the Lord Chancellor's Guidance. Providers should only determine that services are to be provided by a specialist telephone provider in accordance with the factors that are set out in the Lord Chancellor's Guidance.