



Legal Aid
Agency

Standard Civil Contract 2018 – Discrimination and Education Unacceptable Behaviour Guidance

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Interpretation

Client	A User for whom it has been determined that they qualify for the provision of advice in the Discrimination category of law and a Provider is performing or has performed a Service.
Complaint	Any expression of dissatisfaction with the level of service provided where a remedy in respect of some inconvenience, distress or loss is being sought or could be provided. This might include an apology or general service improvement.
Complainant	A Client who is making or has made a Complaint about the Service.
Operator Service	Means any call centre operation appointed by the LAA or any online system developed by us, or on our behalf, to receive initial contact from a member of the public in respect of the Service.
Potential Client	Is a Client for whom it has been determined that they may qualify for the provision of advice in the Discrimination or Education category of law and are awaiting confirmation of this from a Provider.
Provider	Any organisation that holds a Standard Civil Contract in the Discrimination or Education category with the LAA for the provision of services to Users, Clients or Potential Clients.
Service	Is the service provided to a User or Client or Potential Client under the Standard Civil Contract 2018 in the Discrimination or Education category of law
Staff	Any individual involved in the management, operation or delivery of the Service working for either the LAA or Providers, whether employed on permanent or temporary contracts, secondments or other flexible working arrangements or on an agency basis

User

Any individual who requires, receives or has received Services from a Provider, including via another legal-aid funded service such as the Civil Legal Advice (CLA) service.

Introduction

The Legal Aid Agency (LAA) is committed to providing a fair, consistent and accessible service for its Users and Clients.

But we also have a responsibility to ensure that Staff can work in a safe environment and can carry out their duties in an efficient and effective manner.

On occasion, the behaviour of a User or Client or Potential Client may be considered to be unacceptable or unreasonable.

In these circumstances, Providers can seek to manage such behaviour to protect Staff and maintain the overall effectiveness of the Service.

Equality and diversity considerations

CLA recognises that, in some circumstances, Users, Clients and Potential Clients may have a disability, including some mental health problems that can make it difficult for them to express themselves or communicate clearly and/or appropriately.

Extra care should be taken to ensure that, where behaviour is considered to be unreasonable or unacceptable, Staff explore whether there may be any underlying reasons.

Wherever possible, consideration will be given to the individual needs and circumstances of that User or Client or Potential Client and Staff before deciding on how best to manage the situation.

Purpose and Aims

The purpose of this policy is to provide a clear framework for all Providers so that:

- Unacceptable Behaviour is handled fairly and consistently across the Service;
- The roles and responsibilities of all Staff are clear and, with appropriate training and support, all Staff can understand how to apply this policy.

It should be used in conjunction with the:

- Providers' own complaints policies and guidance; and
- Providers' own Equality & Diversity policies

Where there is any conflict between a Provider's own policies, procedures or guidance, this policy will always take precedence in relation to the delivery of the Service.

Roles and Responsibilities

All Staff share the responsibility for meeting the commitments in this policy.

All Staff will:

- Take responsibility for understanding the role they play in the application of this policy; and
- Ensure they can explain the application of the policy, where required or if asked to.

Providers will:

- Ensure that Staff will abide by the policy during the course of their employment within any function of the Service; and
- Ensure that any breach of the policy is reported to the appropriate person within the Provider's own organisation and the LAA.

Legal Aid Agency will:

- Maintain and review this policy, at least annually;
- Ensure that any new Providers have the capability to deliver this policy;
- Monitor the application of this policy; and
- Take action where they consider that a Provider is not abiding by this policy.

Defining unacceptable behaviour

What is deemed to be unacceptable behaviour will often differ depending upon the individual(s) involved and their particular circumstances. Examples of unacceptable could include:

<p>Aggressive, abusive or offensive language or behaviour</p>	<ul style="list-style-type: none"> • Threats of physical violence • Swearing • Inappropriate comments about a protected characteristic or any other view that is or could be considered to be discriminatory • Rudeness, including derogatory remarks • Or other behaviour or language (written or spoken) that may cause Staff to feel distressed, threatened or abused.
<p>They may make unreasonable demands that can affect the service that we can provide to them or other Users.</p> <p>The method or tone in which these communications are received may not in itself be unreasonable.</p> <p>Persistently continuing to place unreasonable demands on the</p>	<ul style="list-style-type: none"> • Demanding responses within an unreasonable timescale; • Repeatedly contacting or insisting on speaking to a particular member of staff who is not directly dealing with the matter or is not available; • Excessive telephone calls, emails or letters • Sending duplicate correspondence requiring a response to more than one member of staff; • Persistent refusal to accept explanations; • Persistently disagreeing with the action or decision taken in relation to their case • Continuing to make repeat contacts without presenting new and relevant information

service could also be considered to be unacceptable.	
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Behaviour may be considered to be unacceptable due to:

- One or two significant incidents of unacceptable behaviour; or
- Unreasonably persistent behaviour which may be an accumulation of incidents over a long period of time or numerous incidents that can be time-consuming to manage and interfere with a full consideration of an underlying complaint.

Extreme Behaviour

Some behaviour may be so extreme that it threatens the immediate safety and welfare of Staff.

We take any threat to Staff very seriously. In such circumstances, the matter must be immediately reported to a line manager or supervisor who will work with the Staff member to ensure that all necessary steps to ensure their wellbeing are taken.

We may also consider other options, for example reporting the matter to the police or taking legal action.

Responding to unacceptable behaviour

General Principles

Any action taken must be proportionate to the nature and frequency of the unacceptable behaviour, taking into account the personal circumstances of the User or Client or Potential Client, including the possibility that their behaviour may be linked to a disability.

Where the behaviour of a User or Client or Potential Client is considered to be unacceptable, they must be informed of this at the time or as soon as practicably possible. A clear explanation must be given of:

- The unacceptable behaviour, giving clear examples
- How the behaviour needs to be adapted

If the unacceptable behaviour continues, action may be taken to restrict contact.

Attendance at the Provider's office

Where unacceptable behaviour occurs but is non-threatening, the User or Client must be given the opportunity to adapt their behaviour.

Where the behaviour continues and remains non-threatening, Staff may issue the User or Client with a warning and may wish to restrict their contact with the Service.

Where the behaviour continues and Staff have issued a warning, or where the behaviour becomes threatening or unpredictable, Staff may decide to take proportionate action, such as reporting the matter to the police. When making such a decision, Staff must recognise their duty of care towards any individual who may be affected by this behaviour.

Any such instances whereby Staff experience unacceptable behaviour from a User or Client at the location of their office must be recorded and reported to their LAA Contract Manager.

Telephone calls

Where unacceptable behaviour occurs, the User or Client must be given the opportunity to adapt their behaviour.

Where the behaviour continues and Staff have issued a warning, they may place the User or Client on hold or end the call.

Where a call is terminated by a member of Staff, this must be recorded, including reasons for why the decision was taken. The matter should also be reported to their immediate manager in order to ensure fairness and consistency of approach.

You should offer to communicate with the User or Client at an alternative time or via another means of communication.

Emails and letters

Where unacceptable behaviour occurs via emails, letters or other forms of written communication, the User or Client must be warned that the content of their communication is considered to be unacceptable, offensive or unreasonably persistent.

Where there is a legitimate request for information or advice contained within a communication containing unacceptable or unreasonable content, irrespective of the language used, the information should still be provided.

Where no legitimate information is being requested, Staff do not have to respond in detail to an email or letter that is abusive or unreasonable.

It is appreciated that some Staff may feel uncomfortable responding to abusive emails and letters. If this is the case, they should refer the matter to their line manager who may take matters forward on their behalf.

Follow up Communications once a case has been closed

Where any ongoing communication relates to a case that has been closed by a Provider or a Complaint that has been resolved or fully investigated, you may decide to inform the User or Client that future correspondence will be read and placed on the file but not acknowledged, unless it contains material new information.

A designated member of staff should be identified who will read future correspondence.

Restricting Contact

In the unusual situation where a User or Client's behaviour continues to be considered to be unacceptable in subsequent contacts, you may consider implementing one of the following options including:

- Offering a restricted time slot for necessary calls;
- Refusing to register and process further contacts or Complaints about the same matter;
- Placing a limit on the number and duration of contacts with staff per week or month;
- Limiting the User or Client to one medium of contact (telephone, letter, email, etc); and;
- Requiring that the User or Client communicate only with one named member of staff.

When choosing how to respond to unacceptable behaviour you must have regard to the specific needs of the User or Client.

Process for decision to apply restricted access

You must have a clear process for applying restrictions to access within your organisation. As a minimum, this must include details of:

- When and how you will apply restricted access.
- Named individuals within your organisation who will be authorised to sign off such a decision. We would expect this should be a senior member of staff within your organisation and your LAA Contract Manager must be notified.

Where restricted access is being considered you must ensure that the User or Client has previously been warned that their behaviour is unacceptable given the

circumstances and that if the behaviour continues, the User or Client must be advised that contact restrictions may be applied.

The decision to apply any restriction on access should be based on an assessment of the individual circumstances of the User or Client and their case.

It should be considered as a last resort and care must be taken to ensure that you continue to meet your equalities duties and the User or Client can access the service in some way. e.g. giving the User or Client a specific access number or contact name for a specific individual or restricting the times that the User can make contact.

When a decision is taken to apply restricted access, you must inform:

- All Staff within your own organisation
- Your LAA Contract Manager
- The User or Client in writing, explaining:
 - why the decision has been taken
 - what it means for his or her contacts
 - how long any restrictions will last
 - details of how and when the User or Client can have this decision reviewed

If the User or Client contacts the Service again using the form of access that has been restricted, the member of Staff should respond by confirming that the restricted access is in place and remind the User or Client of the alternative method of communication available.

Further contact from the User or Client must still be checked to pick up any significant new information.

Reviews and Appeals

Where restricted access has been applied, the User must be able to request a review of that decision.

Where a review is requested, this should be no later than **three months** from the point when it was requested or **six months** from the point when the restriction was originally applied.

When conducting a review, factors that should be considered include the:

- tone of any recent correspondence/communication
- whether the User or Client has an open CLA case or Complaint

Restrictions should be lifted and relationships returned to normal, unless there are strong grounds to extend the restrictions.

The User or Client should be informed of the outcome of the review. If restrictions are to continue, they should be told what the reasons are for this and given the date when the restrictions will next be reviewed.

A User or Client may appeal a decision to restrict contact where all forms of contact have been restricted. Such an appeal should be raised via the LAA's complaints process and, if exhausted, referred to the LAA Contract Manager in the first instance.

Terminating Cases and Transfers to other CLA Providers

When speaking to a Client for the first time, Staff should take steps to make them aware that they will not usually be transferred through to a new Provider, except in exceptional circumstances.

In exceptional circumstances, where a Client has an open case and the unacceptable behaviour is extreme or does not improve following a clear warning, the Provider may be justified in withdrawing a determination and terminating the case on the basis that they will no longer meet the Merits Test, in particular 11(6) of the Civil Legal Aid (Merits Criteria) regulations 2013.

(6) An individual or legal person may qualify for civil legal services only if the Director is satisfied that it would be reasonable to provide those services in the light of the conduct of that individual or legal person in connection with—

- (a) any civil legal services made available under Part 1 of the Act;
- (b) any application for civil legal services under Part 1 of the Act; or
- (c) any civil proceedings for resolving disputes about legal rights or duties.

In such circumstances, the case should not usually be transferred to another Provider and a new case started or the same case re-opened, unless it is a new legal problem which is separate or distinct.

The following exceptions apply within paragraph 5.27 of the Contract Specification:

- 6 months have elapsed since the claim was submitted;
- there has been a material development or change in the client's instructions **and**;
- a period of at least 3 months has elapsed since the claim was submitted

Or where the individual has reasonable cause to be dissatisfied with the services provided under the initial determination according to 23 (4) of Civil Legal Aid (Procedure) Regulations 2012.

If those circumstances apply, then the new Provider must be made aware that greater justification will be required and the obligation is on the new , Provider to:

- confirm the reasons for the termination of an existing retainer (the retainer being formed at the point instructions are received and accepted by the first Provider)
- obtain the relevant file and then (unless the case is urgent) assess whether the requirements of the Merits Regulations, Financial Regulations and the Procedure Regulations have been complied with, in order to allow the new Provider to continue to take the case forward