



Legal Aid  
Agency

# 2018 Standard Civil Contract Training

## Discrimination

August 2019





# Overview

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- This training sets out information on the new Discrimination face-to-face contract.
- This contract comes into force on 1 September 2019 and is based on the terms of the 2018 Standard Civil Contract.
- Therefore, you should read these slides in conjunction with Legal Aid Agency (LAA) training on the Standard Civil Contract 2018 that is available on our website, in particular on the following contract documents:
  - Standard Terms
  - General Specification
- This training sets out any differences in the new contract from the rules in the Standard Terms and General Specification as well as outlining the category specific rules for Discrimination.



# Scope

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- The scope of the Discrimination Category of Law covers civil legal services provided in relation to contravention of the Equality Act 2010 or a previous discrimination enactment
- Legal representation is available to provide advocacy in the civil courts and some appellate tribunals (e.g. Employment Appeal Tribunal). It is not generally permitted in first-instance tribunals, in particular for advocacy before an employment tribunal
- Discrimination matters can be dealt with by providers with a Discrimination contract or a contract in the category relevant to the subject matter of the advice/proceedings.
- For example, discrimination in the provision of housing can be undertaken by a provider with a contract in Discrimination or Housing.



# Mandatory Telephone Gateway

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- At present, most discrimination cases fall under the mandatory telephone gateway. Individuals must apply for legal aid for legal help for such cases via the Civil Legal Advice (CLA) and should be directed to CLA
- CLA specialist telephone advice providers will determine whether the client should receive telephone or face-to-face advice in line with statutory guidance
- The guidance is clear that particular emphasis should be placed on any wish expressed by the client for services to be provided by a face-to-face provider
- The CLA specialist will be able to refer the client to one of the closest face-to-face provider or a provider of the client's choice where face-to-face advice is required. The CLA specialist will give the client his/her CLA Reference Number
- Where a provider receives a client through CLA they **must** record the client's CLA Reference Number on the legal help application form



# Mandatory Telephone Gateway - Exceptions

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- There are some cases in the Discrimination category of law that do not need to go through the mandatory telephone gateway. These are:
  - Licensed Work cases
  - Cases which also fall within one of the following categories: Claims against Public Authorities; Clinical Negligence; Community Care; Family; Housing; Immigration and Asylum; Mental Health; Public Law; or Welfare Benefits
- In addition, face-to-face providers can directly take on a client that is defined as an “**exempted person**”, namely an individual who:
  - has been deprived of their liberty;
  - is a child; or
  - is a previously assessed person with a linked problem to the original matter they received face-to-face advice on in Discrimination
- Where a provider takes on a legal help case directly because the client is an exempted person they should record the reasons why the client is exempted on the legal help application form in the relevant box.



# Mandatory Telephone Gateway - Removal

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- The Government has committed to removing the mandatory telephone gateway by Spring 2020
- This will require repealing the requirement in legislation requiring clients to apply via the gateway
- Once the necessary legislative changes have been made, face-to-face providers will be able to take on all Discrimination cases without first referring clients to CLA

# Procurement Areas/Presence



- There are four Procurement Areas in the Discrimination Category of Law:
  - London and South East
  - Midlands and East
  - North
  - South West and Wales
- In order to hold schedule authorisation in a Procurement Area providers must have at least a **Part-Time Presence** in that area
- Providers will be allocated **100 NMS** in each Procurement Area where they successfully bid. This allocation can be increased during the contract as per the normal rules on supplementary matter starts



# Supervision - Overview

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- All Discrimination contract holders must have at least one **Part-Time Equivalent Supervisor** (i.e. working 17.5 hours per week)
- Each Part-Time Equivalent Supervisor can supervise no more than 2 Caseworkers.
- There are two routes to becoming a Supervisor in the Discrimination Category of Law:
  1. By meeting the “normal” Discrimination Supervisor Standard; or
  2. By meeting the Transitional Discrimination Supervisor Standard





# Supervisor Standard - Overview

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- In order to qualify under the “normal” Discrimination Supervisor Standard, an individual must:
  1. Meet the Discrimination Legal Competence Standard
  2. Meet the Discrimination Case Involvement Standard
  3. Meet the Discrimination Supervisory Skills Requirements

# Supervisor Standard - Legal Competence Standard

- To meet the Legal Competence Standard individuals must demonstrate evidence of having carried out the cases in Tables 1 and 2 in the last 12 months:

**Table 1**

<b>Discrimination</b>	7 case files (of which 4 must relate to discrimination at work)
Cases involving arguments about reasonable adjustments.	2 case files

**Table 2**

Advice and assistance on preparing an appeal/claim, or advice on a potential appeal/claim, to an employment tribunal (ET) or the County Court	2 case files
Advice to Client about the merits of a review/appeal to the EAT or review of an ET decision.	1 case file
Consideration of procedural points, for example: 1. Application for discovery; 2. Representation at a preliminary hearing; or 3. Request for further and better particulars or written answers to questions.	1 case file
Advice to the Client about enforcing an award.	1 case file



# Supervisor Standard – Case Involvement Standard

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- The Case Involvement Standard for the “normal” Discrimination Supervisor Standard is the same for most civil categories of law
- All Supervisors must meet a minimum Case Involvement Standard of 350 hours in each of the last three years.
- There are minimum and maximum allowances by which Supervisors can meet the 350 hours (e.g. minimum of 235 hours direct (personal) casework)
- If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 1050 hours over the last five years. This requirement is also subject to minimum and maximum allowances (adjusted pro-rata).



# Supervisor Standard – Supervisory Skills

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- The supervisory skills standards for the “normal” Discrimination Supervisor Standard are the same for other civil categories of law
- All Supervisors must have experience of at least one case where they have demonstrated their ability to recognise the possibility of a contravention of convention rights under the Human Rights Act 1998
- They must also have met one of the following:
  - have supervised in the relevant Category of Law at least one full time Caseworker (or equivalent) for at least one year in the previous five year period;
  - completed training covering key supervisory skills in the previous 12 month period;
  - completed the Level 3 or higher National Vocational Qualification (NVQ) standard (or any replacement from time to time) in supervising in the previous five year period.



# Transitional Supervisor Standard – Overview

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- The Transitional Discrimination Supervisor Standard has reduced qualifying requirements.
- It allows Supervisors to build up the subject-matter expertise and supervisory skills over the course of the contract.
- The LAA only intends to have the Transitional Discrimination Supervisor Standard in place for this contract. It will not be a route to becoming a Supervisor in subsequent Discrimination contracts
- In order to qualify under the Transitional Discrimination Supervisor Standard, an individual must:
  1. Meet the Transitional Legal Competence Standard
  2. Meet the Transitional Case Involvement Standard
  3. Meet the Transitional Supervisory Skills Requirements



# Transitional Standard - Legal Competence Standard

- To meet the Transitional Discrimination Legal Competence Standard individuals must have carried out the cases in the following Table in the last 12 months:

Table	
Discrimination	3 case files
Cases involving arguments about reasonable adjustments.	1 case files



# Transitional Standard – Case Involvement Standard

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- The Case Involvement Standard for the Transitional Discrimination Supervisor Standard is lower than for the “normal” Discrimination Supervisor Standard
- All Supervisors must meet a minimum Case Involvement Standard of 56 hours in each of the last three years.
- There are minimum and maximum allowances by which Supervisors can meet the 56 hours
- If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 168 hours over the last five years. This requirement is also subject to minimum and maximum allowances (adjusted pro-rata).



# Transitional Standard – Supervisory Skills

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- There are bespoke supervisory skills standards for the Transitional Discrimination Supervisor Standard. The Supervisor must meet one of the following requirements:
  - Have supervised at least one Caseworker who regularly undertook work in the Discrimination Category of Law for at least one year in the previous 8 year period;
  - Have completed the Level 3 or higher National Vocational Qualification (NVQ) standard in supervising in the previous 8-year period; or
  - Have completed training covering key supervisory skills in the previous 12-month period.
- If the Supervisor **does not meet any of the above requirements**, the provider may nominate another individual in the firm to assist the Supervisor. This fee earner must:
  - Have completed the Level 3 or higher National Vocational Qualification (NVQ) standard in supervising in the previous five year period; and
  - Actively assist the Supervisor in carrying out the functions of a Supervisor in the Contract Specification. They do not, however, have to have experience in the Discrimination category.





# Delivering the Service – Changes from June 2020

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- From 1 June 2020, Discrimination providers will be required to offer clients two ways of accessing services:
  - Remote Advice
  - Face-to-face advice in person
- Providers should carefully read paragraphs 17.19 to 17.33 to understand what service the LAA will be expecting from this date onwards, in particular, the requirements on caseworkers to receive specific training on delivering remote advice.
- The LAA will monitor the number of cases where the client does not attend the provider in person using the information submitted on claims in CWA about “postal applications”. The LAA may choose to investigate if that proportion exceeds 50% of cases.



# Decline for Good Cause

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- Under the Discrimination contract, there are stricter rules than normal setting out when a provider can refuse to take on a case that is in scope and meets the eligibility tests
- Where a client is resident in a Procurement Area where the provider has schedule authorisation, the provider can only refuse to take on a case where:
  - the provider lacks appropriate Matter Starts under their Schedule to take on the case
  - the provider does not have the capacity to take on the case
  - the provider does not have the necessary skill or expertise to take on the case; or
  - there are other professional conduct reasons such as actual or potential conflict of interest
- The provider must record the reason for declining such a client and these records must be available for the LAA to view on request.



# Unacceptable Behaviour

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- The Discrimination contract includes a new provision requiring providers to have regard to our Unacceptable Behaviour Guidance in dealing with clients who act unreasonably (e.g. aggressive, abusive or offensive language or behaviour)
- This guidance is modelled on Annex 7 to the Civil Legal Advice Contract 2018 and will be published on our website in advance of the Contract Start Date
- This guidance will ensure that any unreasonable client behaviour is handled in a fair and consistent way across all contracts



# Remuneration

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- Payment for all Discrimination Controlled Work is by way of hourly rates. The rates are set out in Table 7(e) of Part 2 of Schedule 1 to the *Civil Legal Aid (Remuneration) Regulations 2013*:

<b>Activity</b>	<b>London Rate</b>	<b>Non-London Rate</b>
Preparation, Attendance and Advocacy	£46.53 per hour	£43.88 per hour
Travel and Waiting Time	£24.62 per hour	£24.62 per hour
Routine Letters Out and Telephone Calls	£3.60 per item	£3.47 per item

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- Where profit costs exceed £700 (including counsel costs but exclusive of VAT and disbursements) providers need to have the case assessed by the LAA before they can be paid for costs above this threshold. CWA will limit unassessed claims to £700.
- The claim should be sent to the LAA's Escape Cases Team using a CIV EC-CLAIM1 Form

# Remuneration – Licensed Work

- Licensed Work in the Discrimination category of law is paid via the hourly rates in Table 10(a) of Part 3 of Schedule 1 to the *Civil Legal Aid (Remuneration) Regulations 2013*:

<i>Activity</i>	<i>Higher Courts</i>	<i>County Court/Magistrates' Courts</i>
Routine letters out	£6.75 per item	£5.94 per item
Routine telephone calls	£3.74 per item	£3.29 per item
Preparation and attendance	£71.55 per hour (London rate) £67.50 per hour (Non-London rate)	£63.00 per hour (London rate) £59.40 per hour (Non-London rate)
Attendance at court or conference with Counsel	£33.30	£29.25
Advocacy	£67.50 per hour	£59.40 per hour
Travelling and waiting time	£29.93 per hour	£26.28 per hour

- Providers can apply for an “enhancement” to these rates in the circumstances set out in paragraphs 6.12 to 6.17 of the Specification to the 2018 Standard Civil Contract.



# Controlled Work Claims – Contingency

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- Amendments to LAA's Controlled Work and Administration (CWA) system allowing providers to submit claims electronically will not be ready until the end of October
- Therefore, if providers complete any cases in September they will need to wait until their November submission to claim for this work **or** follow the following **contingency arrangements**:
  - Send the total value of their claims for 1 to 30 September to [Reconciliation@justice.gov.uk](mailto:Reconciliation@justice.gov.uk)
  - Claims received will be either paid manually or added to the provider's monthly payment script
  - if a provider overestimates the value of their claims for September, this will be corrected in future payments.



# What To Expect From Your Contract Manager

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- To assist implementation of these new contracts, providers should expect to be contacted by their Contract Managers as follows:
  - **Within 1 month:** Providers should receive an introductory e-mail highlighting key provisions and any training available
  - **Within 2 to 3 months:** Providers should receive an onsite visit to confirm that they meet the presence requirements (if necessary) and the Supervision arrangements. Contract Managers may conduct a review of open/closed files available.
  - **By 6 months:** Contract Managers will conduct a review of controlled work claims made in the first 6 months.



# Further information

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- Standard Civil Contract (Education and Discrimination) 2018:  
<https://www.gov.uk/government/publications/standard-civil-contract-2018>
- Lord Chancellor's Guidance on CLA from September 2019:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807983/Civil\\_Legal\\_Advice\\_CLA\\_September\\_2019\\_changes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807983/Civil_Legal_Advice_CLA_September_2019_changes.pdf)
- Civil Legal Aid Services From September 2019 (Tender Pages):  
<https://www.gov.uk/government/news/civil-legal-advice-services-from-september-2019>