



The Law Society



Legal Aid Agency

Civil Contracts Consultative Group (CCCG) Minutes v2

11 September 2019

Date:	Wednesday, 11 September 2019	
Where	102 Petty France, London SW1	
Chair	Jo Fiddian-Service Dev. and Commissioning [LAA]	
Minutes	Grazia Trivedi – LAA	
Present	Avrom Sherr – IALS Bob Baker – ACL Carol Storer – A2J Chantal Beedell – Commissioning {LAA} [TC] Chris Walton – Shelter [TC] Claire Blades – CAB [TC] David Thomas-Contract Management/Assurance [LAA] Eleanor Druker – Service Development [LAA] Eleanor Solomon-HLPA Ellie Cronin – Policy Adviser [TLS] Francesca Green – Flexible Operating Hours [LAA] Jake Kraft – Service Development [LAA] Jamie Niven-Phillips [ALC] Jane Robey – Family Mediation Council Jasbir Chahal – FOH [MoJ] Kate Pasfield – LAPG	Kathryn Grainger – PET [LAA] [TC] Kathy Wong - BC Kerry Wood – Commissioning [LAA] [TC] Malcolm Bryant – ECC [LAA] Marzena Lipman – Head of Justice [TLS] Nicole Mason-Nat Contract Manager [LAA] [TC] Nimrod Ben Cnaan - Law Centres Network Paddy Enright- Area Contract Manager [LAA] Paul Tyrer – Civil Ops [LAA] Rebecca Woodward – EU Exit [MoJ] [TC] Russell Barnes – Communications [LAA] Simon Cliff – TLS Sonia Lenegan – ILPA [TC] Stuart McMillan - BC Vicky Ling – Resolution
Apol	Steve Starkey – Civil Ops [LAA]	Noel Arnold - ALC

Minutes and actions. See item 5.

1. EU Exit

R Woodward said that the Legal Services EU Exit Team had been working with the Legal Services Regulators and professional bodies to ensure that the legal sector understood the implications of a no-deal Brexit and made the necessary preparations.

In terms of legal practise, the impact of a no deal exit meant that the current arrangements whereby British lawyers could practise in the EU and vice versa, would no longer apply. As such, at the beginning of the year, the MoJ passed legislation through Parliament revoking the current statutory framework enabling EU lawyers to provide regulated legal services in England, Wales and NI under their home state professional title, in the event of a no deal exit from the EU, subject to a transitional period running until the end of December 2020. Similar legislation was also passed in Scotland. This means that, should the UK leave the EU without a deal, EU lawyers would be treated in the same way as lawyers qualified in other third country jurisdictions, save for the transitional arrangement. There were separate arrangements for Swiss lawyers agreed under the UK-Swiss Citizens Rights Agreement. Swiss lawyers who were Registered European Lawyers before exit, and stayed on the register, could continue to provide services as they did now after exit.

A number of guidance documents were available on the [Gov.uk](https://www.gov.uk) website, including one specific to the legal sector, and on [The Law Society](https://www.lawsociety.org.uk) website. The Legal Services EU Exit team had worked together with the Law Society to run 8 EU Exit events in Sep and October on *No-Deal Readiness*. R Woodward offered to meet rep bodies again to discuss any issues they might have about a no deal Brexit. R Woodward to circulate the guidance¹ specific to the legal aid sector. **Action 1** [Sep] Closed

2. Education and Discrimination contract.

The tender had been successful with contracts placed in both categories in all four areas as follows:

Education contracts	10 in London and South East 5 in the Midlands 4 in the North 2 in South West Wales	Discrimination contracts	11 in London and South East 7 in the Midlands 2 in the North 2 in South West Wales
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Some firms were still going through the verification process, once this was completed the names of all the firms with a contract would be published.

J Kraft explained how the process had changed for Education and Discrimination cases following the Government's announcement earlier in the year of its intention to remove the mandatory telephone gateway from legislation by Spring 2020.

In advance of these changes, the Legal Aid Agency [LAA] has introduced new face-to-face contracts in both categories. Currently, individuals (other than "exempted persons") still needed to call the Community Legal Advice [CLA] operator service to access legal aid in cases that were defined as



“gateway work”. The operator service would carry out an initial assessment of scope and financial eligibility and, if it appeared that the individual qualified, they would be transferred to a CLA telephone specialist in the relevant category of law. As part of their initial assessment of the case, the CLA specialist would determine whether the client ought to receive face-to-face advice or remote advice. This assessment needed to be carried out in accordance with guidance issued by the Lord Chancellor, which, amongst other things, placed emphasis on the client’s preference to receive face-to-face advice:

[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)

Detailed training slides for face to face providers were published in advance of the new contracts coming into effect:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827219/2018 Standard Civil Contract Training - category specific rules education .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827219/2018_Standard_Civil_Contract_Training_-_category_specific_rules_education_.pdf)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827220/2018 Standard Civil Contract Training - category specific rules discrimination .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827220/2018_Standard_Civil_Contract_Training_-_category_specific_rules_discrimination_.pdf)

In addition, a briefing note was provided to the operator service and CLA specialists. However, some teething problems had occurred at the beginning of the new process, particularly around assessment and referrals to face-to-face advice, so further guidance was given to the operator service and the CLA specialists. LAA staff had been on hand to respond to queries from individual providers and representative bodies during implementation; LAA staff had also spent time with the operator service to ensure they understood and followed protocol.

N Ben Cnaan said that there was an inbuilt disincentive for a telephone specialist provider who had already assessed the case to refer the client to a face to face adviser even though it might be the client’s preference; he said that there were discrepancies between the guidance and its interpretation which the LAA should clarify. J Kraft and P Enright said that major changes had taken place in a short space of time and felt that these were very early days into the new contract so it was understandable if some providers might not fully understand certain parts of the process. Rep bodies had welcomed the introduction of face to face advice in these areas of law; issues would be dealt with one by one as they came to light, contract managers would speak to providers and the message would spread quickly.

The LAA had been receiving anecdotal feedback on this but planned to obtain management information on a structural level. J Kraft clarified that in cases of face to face referrals the adviser was obliged to follow the Lord Chancellor’s guidance and the legal aid contract, which had specific rules about taking into consideration client preference and by the proximity of the provider when carrying out an assessment/referral. He also said that the CLA specialist got a determination fee when they referred the case onto a face-to-face provider.

C Storer said that there seemed to be a conflicting of interest between providers with a new contract and the operator service. J Kraft said that it was too early to know whether this was a theoretical/practical problem or not. Once the gateway was properly removed in Spring 2020 clients would be free to decide whether they wanted telephone advice or face to face; if this matter was to become an issue it would be only in the interim.

C Storer asked for MI on the number of calls received by CLA and referred onto specialist advice.

Action 2 [Sep]

3. Civil Legal Advice (CLA) telephone operator service.

D Thomas said that over the coming months the LAA were going to change the supplier behind the CLA telephone operator service as the existing contract was coming to an end. To ensure continuity of service there would be a phased transition in October between the current and new operator and the new operator had already begun training staff. Whilst the LAA didn't anticipate any technical issues, following the recent Defence Solicitor Call Centre changeover and challenges during the IT cutover, they were working with their suppliers to ensure the handover and launch process for CLA was a smooth one. He asked to let him know whether anyone was interested in visiting the call centre in operation.

N Ben Cnaan asked about forward planning for the supervisor standards for the next face to face discrimination contract; he said that the spec for the supervisor standard was pegged on the old employment requirements so what would happen if the bulk of discrimination work was not about employment. How could expertise in other areas of discrimination, for instance disability, be safeguarded. The LAA stated that the supervisor standards would be looked at when the next set of contracts was developed using the established processes.

4. Flexible Operating Hours [FOH]

F Green said that information about [pilot] participation fees had been [published](#) on Gov.uk. The pilot, to test whether courts could operate outside the usual 10-4 timeframe, had started, for civil cases only, on 2 September at Brentford County Court [early part of the day from 8am] and Manchester Civil Justice Centre [later part of the day till 7pm]. Listings for these hearings had started months earlier. Listings for Family cases [Manchester only] had commenced and hearings would start in Nov/Dec. If a legal representative agreed to appear in court during the extended hours the case would be heard sooner; if the legal representative was unable to be in court during the extend period the case would be relisted for a later date. Participation fees were paid to both solicitors and barristers.

An independent evaluator would look at all the evidence produced during the pilot, including the impact of legal advisers declining to attend court during the extended hours, even though their clients would have preferred it. In some such cases, clients that didn't want their case to be relisted for a hearing at a much later date decided to represent themselves instead. The pilot Evaluation Advisory Group [EAG] were well aware of these issues; Rep bodies asked for the list of people on the advisory group **Action 3** [Sep]

The pilot team had ascertained via stakeholder groups in each geographical area that firms were going to send legal advisers to court for out of hours hearings and specified that they were all males.

5. Actions.

Action 1[Jul]. *Give details of what was required from volunteer fee earners willing to take part in the [CCMS] performance monitoring exercise.* Jo Fiddian apologized to the group as this action had not been dealt with and suggested that rep bodies ask Z Topping directly at the next day's Quarterly Digital meeting so that they could contact their members to find volunteers [Action 2].

Action 5 [Mar] *Collect demographic data on the legal aid provider base.* The LAA's view was that asking contract managers to collect the data during their annual visits to firms was not a good use of their time as they already had a lot of work to cover during the audits. Also, any data collected would simply give a snapshot in time and would change very quickly. The best way to collect this information was undoubtedly by electronic survey with someone responsible for managing the data, statistically validate it and make an analysis. The LAA and colleagues at MoJ analytical services did not at present have the resource to take this on. Rep bodies reiterated that it was necessary to get a demographic profile of the legal aid workforce to ascertain service sustainability. E Druker said that sustainability was a concern for the LAA and was high on MoJ's agenda since it came through strongly in the Post Implementation Review. The LAA were starting to think about the future and what needed to change to make sure that the next contracts were sustainable. Discussion had started about supervisors, the new contracts and the impact they might have on the workforce. A Sherr and N Ben Cnaan said that the Law Society ought to do the survey if MoJ and LAA could not. It was agreed that this action should be closed and the matter brought back for discussion if/when the Law Society found a way of gleaning the information from the accreditation schemes.

Action 12 [Jul] Update on *Trainee scheme*. Discussions were ongoing with the Government Legal Department to work out how the scheme would be managed. E Druker to update at or before the next meeting. **Action 4 [Jul]**

Action 14 [Jul] *Feedback on Interpreters Fee Guidance*. B Baker said that no feedback had been received on the guidance so the action could be closed.

Action 10 [Jul] E Cronin thanked E Druker for getting the published Family work data-set split between Private and Public.

6. LAA Updates

6.1 Processes Efficiency Team [PET]

K Grainger talked about the work done by the team since the start of the year². The Terms of Reference and attendees of PET had undergone a review, with the following people currently in the group: Carol Storer, Jenny Beck, Dawn Wilson, Caroline Makin, Chris Minnoch, Simon Gardner, Beverley Watkins. CCCG members were invited to flag issues relating to civil processes and how improvements could be made by emailing PETqueries@justice.gov.uk; the two groups could touch base every six months. The Resolution member on PET felt that PET had been prorogued with no meetings till November and thus felt out of the loop on the Apply service and Beta testing. K Grainger said that a live demonstration was going to be undertaken the following day at the digital meeting to which all PET members were invited; for this reason the September meeting had been cancelled. K Grainger to arrange another PET meeting before the November one. **Action 5 [Sep]** closed



Adobe Acrobat
Document

6.2 Operations

P Tyrer spoke about the main points in the report and said that performance continued to be very good. Following reports that it could not be printed, the CW1 form had been uploaded again onto the website, however rep bodies said that the problem was continuing. P Tyrer would go back to the business improvement team to check whether it was an issue relating to the browser.

Rejects. He informed the group that since introducing the new process to reduce rejects on civil billing, the overall rate of returns due to insufficient evidence/information had reduced from 47% in April to 30% in September. The top reason for rejects continued to be missing or incomplete disbursement vouchers.

Post meeting note the issue with the CW1 form has been resolved; the LAA uploaded the form again and another print check was done on Friday, 14th Sep. To date [23rd Sep] the issue has not been raised further by the providers so we can only assume this problem was short-lived. If any providers are still having issues printing the CW1 form they can get in touch directly with Paul.Tyrer@justice.gov.uk, Steve.Starkey@justice.gov.uk or Anthony.Evans@justice.gov.uk who will take it forward.

C Storer asked for clarification of what was meant by civil applications rejects and said that additional narrative with each table would be useful and desirable.

M Bryant said that an application was rejected only if it was not compliant and therefore the LAA was unable to make a determination. Sometimes rather than rejecting the LAA would request further information/documentation in an attempt to make the application compliant. Requests for further information would not result in a reject, however if the provider didn't respond at all within a specified time frame e.g.14 days, the application would then be rejected.

The quarterly stats published by the LAA clearly separated refusals from rejects; a reject did not require a decision because it was non-compliant but a refusal was the result of a decision taken by the LAA with a right of review in Exceptional Case Funding [ECF] cases or in-scope with a right of appeal.

Rep bodies asked for more narrative within the tables and if possible more detailed analysis to be able to better understand their members' concerns about refusals and rejects.

Carol Storer said that she would expect more applications in Family to be granted than Public Law and this should be evidenced in the published data. M Bryant to speak to analytical services to check. **Action 6** [Sep]

6.3 Exceptional and Complex Cases

M Bryant said that a case relating to what was in scope of legal aid and involving the LAA was currently going through the courts and was known as Liberty V Director of Legal Aid (DLAC) . Update at the next meeting **Action 7** [Sep]

The ECC team had received queries about a change of approach in relation to Contingency Fee Arrangements (CFA) in Claims Against Public Authority; M Bryant said that there had been no change in policy, however the LAA had to always ensure that each case was determined on a case by case basis to ensure it met the legal aid merits criteria including the one relating to CFA.

There was a backlog of work in Clinical Negligence cases due to staff shortages but this was going to be rectified when a new member of staff started on 23rd September.

A High Cost Case planning review in Family was starting at the end of September; following that review the ECC team would look into incorporating if possible some of the family improvements into case plans within the other categories of law.

Some CCCG members were going to attend the Exceptional Cases Funding [ECF] workshop on the 12 September which was part of the Legal Aid action plan to simplify ECF. The group operated in a similar way to PET in that it asked for practitioners' views into improving the process. The current workshop was on non-inquest ECF cases but there would be an inquest workshop the following month

Any Brexit related civil legal applications were going to be dealt with by the ECC team. Contingency plans were in place and additional staff was in place for this purpose.

6.4 Commissioning

Housing Possession Court Duty Scheme C Beedell said that current contracts had been extended by 12 months to 30 Sep 2020. Some providers had informed the LAA that they didn't want to continue undertaking the work so a procurement process had been launched in Somerset and Shropshire and linked to those two HPCDS were Taunton and Yeovil and Telford with contracts beginning in November.

Over the previous few months MoJ had been developing a package of new proposals taking into account stakeholder feedback. They were now preparing this for a public consultation and, subject to the current political uncertainty, they would be able to share more information with rep bodies very shortly.

Supervisor standards K Wood said that some rep bodies had attended a workshop to discuss what might make the contracts more commercially attractive in areas where supply was scarce. The main topic of discussions had been supervisors which had a big impact on the contracts. K Wood planned to arrange another meeting to continue discussions on this topic with a view to implementing changes in the next contracts. She was however keen to meet with rep bodies very soon to discuss the current situation in hard to reach areas where staff recruitment was an issue. Rep bodies agreed to have a meeting as they felt that recruitment and retention of staff were problems in all geographical areas and in all categories of law. Rep bodies to let G Trivedi know within 5 days whether they wished to be involved. **Action 8 [Sep]**

7. AOB

- J Fiddian informed the group that her job-share partner, Laura Wensley, would be back from maternity leave at the end of September.
- J Fiddian said that at a couple of pre-CCCG meetings she'd had with co-chair, M Lipman and C Storer, there had been discussion on how to make the most of CCCG meetings; they also agreed that the Terms of Reference were out of date. She asked whether a more thematic focus at each meeting might work better and whether links to other groups such as PET might be strengthened to make the work more effective. J Fiddian to email the group with some outlines for members to think about before discussion at the following meeting **Action 9[Sep]**. E Solomon asked for less use of acronyms. C Storer suggested a break halfway through the

meeting to give those on the phone a pause and asked that the Chair check regularly with colleagues on the phone whether they were able to follow.

Actions from this meeting		Owner	Deadline
AP 1 [Sep]	Share the guidance on no-deal Brexit specific to the legal aid sector	R Woodward	Closed
AP 2 [Sep]	MI on number of calls received by CLA and referred onto specialist Post meeting note: the data is not ready for the November meeting and will be picked up at the next meeting in January	J Kraft/P Enright	Jan 2020
AP 3 [Sep]	Share the list of people on the FOH advisory group	F Green	Closed
AP 4 [Jul]	Update on trainee scheme	E Druker	13 Nov
AP 5 [Sep]	Arrange a PET meeting before the November one.	K Grainger	Closed
AP 6 [Sep]	Find out if a more in-depth analysis could be done on the reasons for rejects and refusals in civil applications.	M Bryant	13 Nov
AP 7 [Sep]	Update on the DLAC case going through the courts	M Bryant	Closed
AP 8 [Sep]	Inform G Trivedi whether they wished to be involved in a meeting about supervisors	Rep Bodies	Closed
AP 9	Email the group outlining what could be done to make the meetings more effective	J Fiddian	