

Civil Contracts Consultative Group (CCCG) Minutes v2

13 November 2019

Date:	Wednesday, 13 November 2019	
Where	The Law Society, 13 Chancery Lane, London W1	
Chair	Chris Minnoch - LAPG	
Minutes	Grazia Trivedi – Service Development [LAA]	
Present	Annemarie Joyce – Contract Management [LAA] [TC] Bob Baker – ACL Charles Bishop - ILPA Chris Walton – Shelter [TC] Cindy Barnes – Peer Review [LAA] [TC] Eleanor Druker – Service Development [LAA] Ellie Cronin – Policy Adviser [TLS] Jane Robey – Family Mediation Council Jo Fiddian-Service Dev. and Commissioning [LAA] John Cooksey – Service Development [LAA] [TC] Kate Pasfield – LAPG	Kathy Wong - BC Kerry Wood – Commissioning [LAA] [TC] Malcolm Bryant – ECC [LAA] [TC] Nick Lewis - - MHLA Nimrod Ben Cnaan - Law Centres Network Paddy Enright- Contract Manager [LAA] [TC] Russell Barnes – Communications [LAA] [TC] Simon Cliff – TLS Steve Starkey – Civil Ops [LAA] [TC] Vicky Ling – Resolution
Apol	Somia Siddick – ALC Carol Storer – A2J Kathryn Grainger – Process Efficiency Team [LAA]	Avrom Sherr – IALS Richard Miller – TLS

1. [Minutes](#) and actions.

E Cronin requested that item 6.1 in the minutes describe in more details the work of the Process Efficiency Team [PET]. Chair suggested that an updated version of the spreadsheet with PET's work strands and progress against objectives would be ideal. E Druker offered to take this forward. **Action 1 [Nov]**

N Ben Cnaan asked for an update on the number of Discrimination and Education contracts. K Wood said that there had been some firms where further clarification had been necessary to verify the contracts. These had now been resolved and the list of providers with a contract had been [published](#) .

[Action 2 \[Sep\]](#) The Management Information on the number of calls received by CLA and referred onto a specialist provider was not yet available. **Action 2 [Sep]** to be taken forward to January.

[Action 4 \[Jul\]](#) E Druker would update CCCG on the training scheme at the January Meeting
Action 3 [Jul]

[Action 6 \[Sep\]](#) M Bryant had spoken to the LAA lead statistician and confirmed that an in-depth analysis on the reasons for rejects and refusals in civil applications had already been done. C Storer had said at the September meeting that she'd expect there to be more public law grants, however he pointed out that public law covered many categories. M Bryant suggested that rep bodies send specific questions to G Trivedi; alternatively, he could invite a LAA statistician to CCCG after the publication of the next set of stats [for period ending Dec 19] to answer questions.

Chair said that rep bodies were interested in the reasons for rejects and refusals rather than numbers. M Bryant reiterated that an application that was non-compliant would be rejected while a compliant bid would be refused if not compliant with the criteria [exceptional case fund criteria, financial criteria, merits criteria]. Chair suggested that a parallel may exist between the reasons for refusing escape fees [see item 5] and those for applications. He suggested that rep bodies endeavor to be more specific with their requests for information and that they give reasonable time to the LAA to respond.

[Action 7 \[Sep\]](#) M Bryant explained that the Director of Legal Aid Casework [DLAC] case that had recently concluded in the Court of Appeal had been brought by an individual in relation to a local authority, involving homelessness and housing in Poole. The LAA had determined that the case was not in scope for funding because the individual bringing the case would not benefit personally from the action brought by the judicial review. The Courts agreed and the Court of Appeal refused to grant permission to appeal, bringing the case to an end.

[Action 8 \[Sep\]](#) there had been limited interest about holding a meeting on supervisors and so the meeting had not taken place. Chair asked for the action to be reopened however K Wood asked for this to be discussed during the Commissioning update. [Item 4.3]

2. **HMCTS digital pilot for immigration appeals**

J Cooksey said that HMCTS were reforming the asylum appeals system. The objective was to speed up appeals and avoid a hearing when a strong case was submitted.

The new process front-loaded work for providers, particularly in relation to the appeal skeleton argument which was submitted to the Home Office; the Home Office then decided whether to withdraw or hold a hearing.

When the LAA mapped the remuneration regulations onto the new process, concerns were raised by providers' representatives around the fee structure.

The LAA and MoJ were analysing the current fee structure to find a way of recognising that more work, which might involve instructing Counsel, was now done earlier in the case.

HMCTS would be opening the new process to public beta in January however providers would still be able to appeal decisions using the old process if they wished.

Any change to the remuneration regulations was subject to an impact assessment and required approval by ministers.

C Bishop said that some of ILPA's members had decided to withdraw from the pilot over concerns about remuneration.

E Druker said that if a financial change to the actual fee was opted for, the remuneration regulations would need to be changed; if the rule of what fee could be attainable was opted for, the contract would need to be changed following a consultation.

C Bishop said that ILPA's members were in favor of the proposed reform but were concerned about the timescales. The planned national rollout left little time for issues to be discussed and resolved. He asked to be included in these discussions and E Druker agreed to keep ILPA in the loop. The Law Society and ILPA advocated a delay in the national rollout especially in view of the limited parliamentary availability over the coming weeks. E Druker confirmed that the pilot was currently run in certain geographical areas and was in the private Beta stage; it would enter the public [national] Beta stage in January and at some point after that it would become mandatory.

3. Peer review procurement

C Barnes had circulated a paper informing CCG that the LAA were planning to recruit more peer reviewers in family, housing and immigration.

4. LAA Updates

4.1 Operations.

The operations report showed that performance in civil applications and bills processing remained very strong. Rep bodies wished to understand how the data was put together and what the graphs meant so that they could share the LAA's successes with their members [see action 7 below]. S Starkey said that thanks to the rep bodies' assistance the level of overall Claim returns had fallen considerably; providers had done a lot of work to help the LAA by providing the necessary information initially to enable more claims to be processed first time. The LAA's objective was to reduce not just 'claim reject levels' but the 'overall claim return levels'. The top 10 reasons for rejects¹ had been provided following the July meeting and further updates would be provided in the following months.



S Starkey confirmed that by far the greatest cause for claim returns was insufficient evidence being provided. If the overall return level was to be reduced further (and it was clearly beneficial to all parties that it did) a concerted effort was required to ensure all relevant evidence was submitted along with appropriate explanations.

Chair said that members had complained about repeated requests for documents even when they had already been submitted. S Starkey said that if a provider felt that a claim had been rejected incorrectly or that a document request was invalid, they should challenge the decision through Civil Claim Fix. Data was readily available on the outcome of challenges received. Rep bodies asked S Starkey to share this information. **Action 4** [Nov] Rep bodies were interested to see the split of Claim Reject challenges. i.e. whose mistake had led to a reject that had subsequently been overturned when challenged. **Action 5** [Nov] Rep bodies also asked to see data on Immigration exceptional cases **Action 6** [Nov].

J Fiddian suggested that time be allocated at the January meeting to discuss what data was available to share and how it could be shared **Action 7** [Nov]

4.2 Exceptional and Complex Cases [ECC]

M Bryant said that performance across the ECC team, not broken down into areas of work, was 88% on target. The operations report included High Cost Cases [HCC] in family but a breakdown into types of work within each category could be produced for future meetings if rep bodies wanted, however numbers would be small and perhaps not statistically significant.

At the September meeting M Bryant had said that workshops were going to take place to look for ways of simplifying the Exceptional Cases Funding [ECF] process. These had taken place however, due to the pre-election period of purdah, this work had now been put on hold.

With regards to extending the HCC planning review to other categories of law (after family) by the Process Efficiency Team [PET], this work would be considered but data about family was required before extending to other categories including immigration [see item 4.4 below]. The matter would be up for discussion at PET and decisions would be fed back to this group.

4.3 Commissioning

K Wood said that civil schedules had been issued in the summer and no problems had been reported. Due to the new arrangements for providers to self-grant [matter starts] and the lots sizes in the 2018 contract, it was noticeable that there had been a significant reduction in the number of providers needing to come to LAA to request more.

The 2018 tender contained provision for providers to request matter starts in the Miscellaneous category to deal with compensation claims for human trafficking and modern-day slavery. Out of 250 firms that had requested an allocation only 9 had started any work and none had been completed. Central Commissioning would continue to keep this under review.

With regards to capacity the only critical area was immigration in the access point of Plymouth where providers could not cope with the amount of work so the LAA were looking for ways to increase supply.

As for access, there were 5 areas where there was no provision of services in the category of Housing. Historically, in 3 of these areas there had only ever been 1 or 2 providers with contracts while in other areas providers with contracts had not done any work. The commissioning team had been considering making changes to the supervision requirements in these areas to try and make the contract more attractive to providers. K Wood had previously suggested that rep bodies and LAA might like to have a workshop to consider barriers to holding contracts in Housing in low volume areas but had received only a limited response to this. She suggested that a way to progress the matter might be to consider it as two issues:

1. the discrete issue of
 - whether the financial burden of employing a supervisor in areas where the volume of work was unlikely to outweigh the cost and
 - whether the LAA ought to consider disapplying the requirement for a separate FTE supervisor in certain circumstances to make Housing contracts more financially attractive and achievable for providers of other categories.
2. Continuing the theme from a previous workshop as to the issues relating to supervision for future contracts.

S Cheshire suggested that K Wood send an email with a message that rep bodies could send to members asking for their views. C Walton asked to be involved in the discussion as Shelter had had first-hand experience of the situation in Cornwall. K Wood asked hypothetically whether allowing a supervisor to cover more than one area of law would resolve the problem for areas such as Cornwall. She acknowledged that maintaining a supervisor in a low volume category might be cost prohibitive, however no one wanted the quality of service to decline by relaxing the supervision requirements, as had transpired from the workshop attended by rep bodies in October 2018. A balance was needed between making a contract more viable and the risk of diluting the quality of work in firms with high volume of family work.

N Lewis said that mental health practitioners were already in a position to have to choose between a family contract and a mental health one so he advocated a change in the requirement across family. K Wood said that this was a change to be considered for a future contract. The current crisis was in Housing; there had not been a reduction in mental health contracts. K Pasfield said that even if the changes were to apply only to the current tender it was worth doing as it would inform future decisions.

E Cronin said that firms used to be able to have a supervisor for two categories but then the LAA changed the interpretation of supervision of more than one category, which caused a problem in getting supervisors into legal aid firms. The caseworker hours applied within contract allowed for two categories to be supervised. As long as that person could maintain the caseworker hours, they were meeting the standard. The impact of the LAA's approach to supervision had caused some providers to give up a category because they could not afford another supervisor. K Wood had heard this however she reiterated that supervision remained a key part of the quality framework which could not be compromised. Any adjustment to supervision requirements could not be applied in every place and every category of law.

K Wood said that it was important to decide the circumstances in which the change would apply. It was agreed that K Pasfield and others would send their views to K Wood within the next few days **Action 8 [Nov]** and K Wood would incorporate those into an email to rep bodies outlining what the LAA was seeking to do.

Chair asked for an update on the HPCDS tenders in Taunton, Yeovil and Telford; K Wood to action. **Action 10 [Nov]**

Post meeting note: The Taunton and Yeovil scheme was awarded to Shelter who commenced delivery on 1 November. We did not receive any bids for the Telford scheme. As the approach we took for this tender round did not result in any bids, we are currently considering options for securing provision as it's unlikely that using the same approach again would be successful in identifying a new provider. We'll update the group when we have more information

4.4 Process Efficiency Team [PET]

E Druker said that PET was going to meet the following week and she would update CCCG at the next meeting. One of PET's priorities was to look at the non-family VHCCs in Immigration and Court of Protection. The team were waiting for the first report on the Family case plans to see if there were any lessons learned or any issues before moving onto immigration and court of protection. Membership of the team would be updated to include individuals with that expertise to assist from the provider perspective. E Cronin would email M Bryant with names of individuals that had expertise in those areas of law. **Action 11 [Nov]**

5. Escape Fee Appeals

Rep bodies had submitted a series of questions ahead of the meeting and S Starkey had circulated a report with the answers:

a) *Q - The [KPI] target for processing times on escape fee appeals across the board.*

A - There was no official KPI target but the team aimed to process Escape Cases Appeals within 40 calendar days.

b) *Q - The actual processing times*

A - Times in the first quarter [April-June 2019] were, on average from start to finish, 34 days or just under 5 weeks. 73% of appeals were processed within the 40 days target and 27% were not.

c) *Q - The percentage of decisions overturned on appeal and reasons for refusing escape fees*

A - S Starkey explained that all appeals went to an independent caseworker [1st stage] for review. Of the 312 appeals received in the first quarter, 51% had been granted. The reason for most of the grants in the 1st stage was nearly always because the required information had been provided on appeal. If the independent caseworker was not satisfied that they had all the information they needed to confirm the outcome, the case was referred to an external Independent Cost Assessor – ICA [2nd stage]. Of the 128 appeals referred to an ICA in this period, 22% had been granted in full, 7% had been part-granted and 41% had been upheld. The main reason for refusing escape claims was insufficient evidence such as means evidence or evidence for the assessment itself.

S Starkey said that the LAA relied heavily on having sufficient numbers of ICAs in the required specialisms. The last recruitment round had been difficult especially because additional requirements had been brought in. A recruitment round was planned for the middle of 2020 and he asked rep bodies to encourage their members to apply.

d) Q - The main reasons for refusing escape fees and whether successful appeals relate to certain decisions

A - S Starkey shared a full breakdown that showed the process in the first quarter. ²

e) Q - In the last full year, the number of Immigration and Asylum controlled work claims where an escape fee is claimed.

f) Q – In the last full year, the number of Immigration and Asylum controlled work claims where the escape fee is allowed.

A - e) and f) – below

Year	Number of Escape Cases Claimed	Number of Escape Cases Rejected	Number of Escape Cases Allowed*
	1,349	472	718
	1,485	533	804

* The cases allowed were either authorised as claimed or subject to a reduction upon assessment but an Escape Case payment was still authorised

S Starkey also provided the YTD position by category in relation to the initial independent caseworker decision, below.

5th April 2019 – October 2019

Category	Number of Claims Processed	Claims nil assessed	Claims Rejected	Reduced to fixed fee	Paid in Full	Reduced but still Escape Fixed Fee
Civil	3,885	307	619	54	2,348	557
Mental Health	947	29	117	7	618	176
Asylum and Immigration	679	18	195	5	415	46
Total	5,511	354	931	66	3,381	779
		6.4%	16.9%	1.2%	61.4%	14.1%

Some of the above claims would be subject to appeal and the numbers would change once the appeal had gone through.

Chair thanked S Starkey for providing the data at short notice. S Starkey confirmed that an independent caseworker was a caseworker not involved in the original decision. He also confirmed that the term 'Excessive Preparation', the second most common reason for Initial Assessment, referred generally to a provider making a claim without giving an adequate description/explanation for the amounts claimed.



Rep bodies asked for a detailed breakdown of the reasons for initial assessment by category.

Action 12 [Nov]

Chair explained that the rep bodies wanted to identify the areas where their members needed to improve and the areas where improvements were necessary within the LAA. For example, a member of LAPG had waited 6 months for an ICA decision to overturn the original determination thus having a financial impact on the firm. Another had stapled the means information to the CW1 form but the caseworker had missed it. Chair pointed out that the way in which the problems were categorised in the tables seemed to suggest that all the fault resided with the providers. If 73% of appeals were granted [51% at the initial assessment and 22% by the ICA], there was scope to know how many of them were the result of caseworkers' errors.

Rep bodies didn't want to send a message to their members which put all the blame on them and gave the impression that the LAA were not looking internally at their own processes. S Starkey said that when a case was referred to an ICA, incurring additional expense, and the initial decision was overturned, feedback was given to the caseworker that had assessed the bill in the first place and that sometimes flagged up a caseworker's error. S Starkey to talk at the next meeting about how the team performance was reviewed and how feedback worked **Action 13 [Nov]** Chair also asked whether guidance could be issued to help providers to understand common issues **Action 14 [Nov]**

S Starkey suggested that rep bodies visit one of the LAA civil processing centres [Liverpool or South Tyneside] so that they could see for themselves how the team operated; caseworkers could also explain how the LAA's internal control systems functioned.

6. The Recent Education and Discrimination Contract Tender

Rep bodies had asked a series of questions relating to the tender in advance of the meeting. K Wood asked if there were specific issues about the contract and N Ben Cnaan said that several providers had flagged issues relating to the way the contract was working.

a. Q - What were the LAA's KPIs for a) the new face-to-face contracts and b) telephone discrimination contracts, and how were they performing against them? That is, what did success look like in this category of legal aid?

A – K Wood said that the KPIs were specified in the contract. Chair asked whether there were other ways to see whether or not these contracts were working and whether the LAA were meeting their organisational objectives. [covered in the answer to question b below]

b. Q - What was the LAA's assessment of these new contracts so far and specifically of the way that CLA, telephone specialists and face-to-face contract holders were working together? Were there particular issues to be aware of?

A – A Joyce said that since the start of the contract, issues had emerged in relation to referrals from CLA specialists to face to face providers in a handful of cases. These had been managed and resolved on an individual basis. K Pasfield had received feedback from a provider with an education contract who said clients were struggling to get through the gateway and were not offered the option of face to face advice even when they asked for it. A Joyce asked for the details of specific cases to be sent to her directly. K Wood said that this contract had been designed to address the fact that there had not been many face to face providers willing to undertake this work over the last couple of years because of the

mandatory aspect of the gateway. Providers now had the opportunity to build their expertise over time and performance could not be assessed so soon, after just two months of activity.

N Ben Cnaan reiterated his concerns about there not being sufficient time after the end of the mandatory gateway for the discrimination contract to comply with the supervisor criteria for the next tender because the cycle would be two years instead of three. K Wood said that this would be given consideration when developing the new contract.

- c. *Q - How many new discrimination cases were started since 1 September by a) telephone specialist providers (grouped), and b) face-to-face providers (grouped)?*

A – K Wood said that it was too early to get any useful data on this. Chair asked for this question to be on the January agenda. **Action 15 [Nov]**

- d. *Q - Have there been any changes to providers (new, withdrawn etc.) since 1 September?*

A – the verification process had taken longer with one provider but this had been resolved.

- e. *Q - What assessment has been made of face-to-face coverage so far? Are there plans for supplementary commissioning?*

A – contracts had been placed in all procurement areas. Further procurement might be undertaken when the mandatory aspect of the gateway had stopped.

- f. *Q - What proportion of face-to-face contract supervisors have met the traditional standard, and what proportion only the transitional supervisor standard?*

A – 59% had met the traditional standard in discrimination and 55% in education.

- g. *Q - What data does LAA plan to routinely publish on the performance of these parts of legal aid?*

A – Data would be published with all the other categories of law, however because this was a new contract and would be emerging in the face to face category, it would be included in the commissioning review and K Wood would report on that as the contract progressed.

N Ben Cnaan said that the data relating to clients going through CLA, such as how many got through to a telephone specialist provider and how many cases were determined, was no longer published and would not be replaced since there wouldn't be a telephone provider. He asked for the data to be published again. E Druker to contact the stats team **Action 16 [Nov]**

E Druker reported that the transfer from one CLA service provider to another had been completed, there had been no issues and was going well.

7. AOB

7.1 CCCG Terms of Reference and Improvements

J Fiddian asked CCCG for their views on the paper circulated beforehand with ideas for improving the meetings and an updated ToR document. About the proposal to focus on a specific category of law at each meeting, the general view was that all categories were

interconnected and it was important for everyone to be involved and up to date with all processes, issues, pilots etc.

There was discussion about adopting a 'task and finish' approach on issues such as supervisors by setting up a sub-group to meet out of committee and find solutions, before bringing the outcome back to CCCG. Also, if an issue was discussed that was recognised as being in the remit of another focus group such as PET, CCCG should pass it onto that group for resolution and, equally, PET might come across an issue that was more in the policy domain and would pass it onto CCCG.

Digital was a vast topic that needed to be covered in separate meetings rather than CCCG, however a digital update might be kept on the agenda until regular quarterly digital meetings were set up. Luke Crosby, head of digital at the LAA and Zara Topping had moved to new roles so Katherine O'Doherty, senior product manager for digital and technology, would be covering Zara's role.

N Ben Cnaan said that the group should consolidate their current activities via correspondence, by sharing more substantive information, setting up virtual groups, creating drop boxes to store documents. The downside of this was that members of the group with very busy inboxes might miss communications and be left out of the loop.

Chair said that the main problem for CCCG was that there were too many matters to cover in one meeting. It was agreed that rep bodies would send their comments on the ToR by 22nd November. **Action 17 [Nov].**

Rep bodies had in previous meetings expressed an interest in having a representative from the LAA assurance and contract management team so J Fiddian had asked D Thomas to attend the January meeting.

It was agreed that rep bodies would endeavour to hold their pre-CCCG meetings 3 weeks before CCCG and G Trivedi would circulate a draft of the minutes within 3 weeks.

7.2 E Druker said that the LAA were planning to publish more detailed provider information.

Post meeting note: The updated dataset can be found here:

<https://www.gov.uk/government/publications/directory-of-legal-aid-providers>

7.3 Apply for Legal Aid update

A written update had been circulated beforehand. V Ling asked whether it could be shared externally. Post meeting note: the update can be shared externally

Rep bodies asked for the names of providers that were involved in the private Beta testing of the system. Post meeting note: the providers' names are:

National Legal Service	Bastian Lloyd Morris	Ayreswaters	Barnes & Partners
Bowling & Co	MI Banks	Copper Stone Solicitors	
Makin Dixon	Sills & Betteridge	BG Lawyers LLP	

7.4 V Ling said that she had not been able to read all the papers that had been circulated before the meeting because they had been sent at very short notice.

Actions from this meeting		Owner	Deadline
AP 1 [Nov]	Describe in more details the work and achievements of PET such as an updated spreadsheet of progress against objectives.	E Druker	15 Jan
AP 2 [Sep]	Management Information on the number of calls received by CLA and referred onto a specialist provider	P Enright	31 Dec
AP 3 [Jul]	Update on training scheme	E Druker	15 Jan
AP 4 [Nov]	Provide information on the outcome of Claim Fix challenges. i.e. whose mistake had led to a reject that had subsequently been overturned when challenged	S Starkey	Closed
AP 5 [Nov]	Provide a breakdown of Stage 1 Appeals (caseworker Review) i.e. whose mistake had led to the original assessment reduction that had subsequently been overturned when challenged on appeal Post meeting note: only one case shows as a caseworker error. This does seem on the low side so we have asked the teams to be extra vigilant in their recording when they undertake appeal reviews moving forward	S Starkey	Closed
AP 6 [Nov]	Provide data on Immigration exceptional cases	M Bryant	Closed
AP 7 [Nov]	Allocate time on January's agenda to discuss how/what data can be shared and explain the graphs on the operations report.	G Trivedi	Closed
AP 8 [Nov]	Send views on quality supervision requirements changes to K Wood	Rep bodies	31 Dec
AP 9 [Nov]	Email rep bodies with LAA's proposals for changes to the quality supervision requirements	K Wood	31 Dec
AP10 [Nov]	Update CCCG on the HPCDS tenders in Taunton and Yeovil and Telford	K Wood	Closed
AP11 [Nov]	Email M Bryant with suggestions for individuals with the expertise on immigration and court of protection VHCCs to assist PET	E Cronin	Closed
AP12 [Nov]	Provide a detailed breakdown of the reasons for initial assessment in civil escaped cases for Immigration cases.	S Starkey	Closed
AP13 [Nov]	Explain how caseworkers' performance is reviewed	S Starkey	Closed
AP 14 [Nov]	Find out whether there is guidance on escape claims to help providers to understand common assessment issues to help reduce volume of unnecessary appeals	S Starkey	Closed
AP 15 [Nov]	How many new discrimination cases were started since 1 September by a) telephone specialist providers (grouped), and b) face-to-face providers (grouped)? Post meeting note: Of the 23 Face to Face Providers, 5 have reported starting work in this category over the 3-month period and collectively they have reported 15 cases as being started.	K Wood	Closed

	We are waiting confirmation from CM on the CLA provider starts and will bring this to the meeting.		
AP 16 [Nov]	Find out form the stats team if data could be published on the number of people going through CLA	E Druker	See AP2
AP 17 [Nov]	Send comments on the ToR to G Trivedi	Rep bodies	Closed