



The Law Society



Legal Aid
Agency

Civil Contracts Consultative Group (CCCG) Minutes v2

13 May 2020

Date:	Wednesday, 13 th May 2020	
Where	Video conference	
Chair	Jo Fiddian-Service Development and Commissioning [LAA]	
Minutes	Grazia Trivedi – Service Development [LAA]	
Present	Adrian Vincent - BC Ann-Marie Jordan – Analytical Services [LAA] Avrom Sherr – Peer Review Bob Baker – ACL Carol Storer – A2J Chris Walton – Shelter Chris Minnoch - LAPG Claire Blades – CAB Eleanor Druker – Service Development [LAA] Elizabeth Gibbs – Service development [LAA] Ellie Cronin – TLS [TC] Jake Kraft – Service Development [LAA] James Wrigley-Civil and Family legal aid [MoJ] Jo McHale – Finance [LAA] Kate Pasfield – LAPG	Kathryn Granger – PET [LAA] Kerry Wood – Commissioning [LAA] Malcolm Bryant-Exceptional Complex Cases [ECC] Nick Lewis – MHLA Nimrod Ben Cnaan - Law Centres Network Paddy Enright – Contract Management [LAA] Phoebe Clapham – Means Test Review [MoJ] Paul Henson – Finance [LAA] Richard Miller – Head of Justice [TLS] Rohini Teather - LAPG Russell Barnes – Communications [LAA] Sally Cheshire – HLPAs [TC] Simon Cliff – policy adviser [TLS] [TC] Somia Siddiq - ALC Sonia Lenegan – [ILPA] Steve Starkey – Civil Ops [LAA] Vicky Ling – Resolution
Apol	Kathy Wong - BC	

1. [Minutes](#) and actions.

- Minutes of the March meeting were approved and would be published.
- Action 3 was taken forward: N Ben Cnaan to Email Ed Druker his views on CLA stats **Action 1 [Mar]**
- Action 5 [Mar] See item 13 below.
- Action 11 [Mar] Anthony Evans was looking at the option of extending the higher initial costs limits for non-family suppliers and would update on progress **Action 2 [May]**
- Action 12 [Mar] was taken forward: Look into the feasibility of publishing FOI requests/responses **Action 2 [Mar]**
- Action 13 [Mar]. The LAPG housing survey follow up had been discussed at the Process Efficiency Team meeting the previous week and actions were agreed.

2. **Housing Possession Court Duty Scheme [HPCDS], Immigration and Domestic abuse - policy update**

HPCDS: HPCDS providers were encouraged to utilise the support packages administered by HMT and HMRC where appropriate. Although not specific to HPCDS providers, the MoJ had announced a support package for not-for-profit advice providers which would be administered by the Law Centres Network and the Access to Justice Foundation.

Domestic abuse: rather than an immediate change being made to the means test for urgent applications in domestic abuse, this issue would be considered as part of the longer-term Means Test Review. The department was instead working on alternative measures to support victims of domestic abuse which would be announced in due course.

Immigration: A new fixed fee would be introduced for immigration appeals using the new HMCTS process at the First-tier Tribunal. Asylum appeals would be paid a fee of £627 and for immigration appeals £527; these were appeals where an appeal skeleton argument was required. The fee would be in place for 12 months while further evidence was gathered to determine a fixed fee in the longer term. This work would be done in collaboration with rep bodies and would include a full public consultation.

R Miller said that moving straight to a fixed fee, which he deemed too low in the circumstances, guaranteed that the evidence needed to demonstrate what the actual cost was of doing this work would not be provided. He said it would have been better to set an hourly rate to start with so that firms would provide information at every stage of the appeal. J Wrigley conceded that it would be harder to collect evidence in that position but efforts would be made to collect feedback, including qualitative evidence, on how long the new stage in the appeal process was taking. R Miller said that anecdotal evidence was usually rejected as being unreliable and it was no surprise that the level of scepticism among the profession about the good faith of MoJ was very high at the moment. It was agreed that as the fee was temporary there was a chance for consultation and collaboration between policy makers and the profession.

E Druker said that the consultation on the contract amendments for the new Immigration fee would commence the following Monday once the Statutory Instrument [SI] had been laid. The revised claiming guide would be published as soon as the digital changes had been implemented.

C Minnoch asked when the means test review was going to resume; P Clapham said that work would resume in 2-3 weeks' time. He suggested that as the review might lead to an opening of financial eligibility to a wider section of the population, a review of sustainability of the provider base ought to be considered too. An update on timescales for both reviews would be provided in due course. **Action 4 [May]**

3. Update on [Regulations Changes](#). J Kraft talked about:

- 1) the removal of the mandatory telephone gateway from legislation for education, discrimination and debt cases. From 15th May clients could access face to face legal advice rather than going through the telephone gateway. Changes had to be made to contracts, guidance, forms. Rep bodies asked that education and discrimination face-to-face providers be reminded that they could now take on legal aid clients directly. **Action 5 [May] – Post meeting note:** all relevant Contract Managers have been asked to make providers aware of the news story.
- 2) the change to the rules on mediation so that a client no longer had to attend the mediator's office in person
- 3) Changes that allowed the LAA to backdate determinations for a waiver of the mean test in inquest cases. This included applications made prior to 15th May but determined after that date (which could in principle be backdated to before the 15th). The inquest provider pack would be updated.
- 4) Changes to the domestic violence evidential requirements

E Druker said that the domestic violence guidance had been updated following the SI being laid and that and the regulations in relation to mediation had been updated in line with other categories to say that an application for mediation services did not have to always be made in person. There had been a contract consultation on this.

4 Commissioning update

K Wood said that the commissioning team and contract managers would work together to identify any access issues that may arise when lockdown restrictions ended. Covid 19 related activity may have an effect on the commissioning timetable and work was ongoing to identify the extent on contract-end dates. It was hoped that more information would be available at the next CCCG meeting.

C Minnoch asked when block listing would resume; whether contingency measures were in place if housing scheme providers were not available on certain days for cases covered by the scope of the scheme; whether a contract change might be necessary. K Wood said that the current survey was going to inform planning for future activity. She said that housing possession scheme providers had not been contacted yet because the situation remained unclear. It was possible that things might vary from court to court and accordingly providers would be contacted at the appropriated time.

In response to questions, J Wrigley said that MoJ still planned to extend the Possession Duty Scheme contracts but no details were available at this time; he would update CCCG on how HMCTS planned to facilitate safe distancing in duty scheme cases once the suspension ended; rep bodies were concerned that there would be an impact on financial viability for providers if they were forced to see less clients due to lack of space. **Action 6 [May]**

5. Interim payments for controlled work in Mental Health and Asylum

E Druker said that there were two issues: one in relation to disbursements and the other about profit costs. Agreement had been reached to reduce the timeframe for billing of disbursements from 6 months to 3. A formal announcement had not been made about this yet because an implementation timetable had not yet been set. This work would be done after the digital changes to the CLA gateway and the immigration appeals and would not take long to do.

The LAA were also looking at the feasibility of staged billing of profit costs for Mental health, Immigration and for inquests. A paper was being prepared which looked at all the different impacts and what measures could be put in place to help. K Pasfield said that the issue was at what point in a case a bill could be submitted especially in cases that took a long time to complete and where a claim could not be submitted till the case was finished. E Druker said that immigration, asylum and mental health were the areas being considered first because on CLR there were specific points at which a bill could be submitted. A paper would be ready for internal view in a few days. E Druker was asked to update CCCG on both items. **Action 7 [May]**

S Cheshire said that there was a danger that providers might not take on any new homelessness review cases, which ran into thousands of pounds, and took a long time to complete.

6. Civil Taxed Bills

M Bryant said that a proposal was currently with HMCTS and the judiciary; a decision was expected by end of following week. One aspect of the proposal was the transfer of civil, including family, bills to the LAA. A contract consultation would follow a decision to agree how to make it work. Rep bodies were concerned about the current problem of unassessed bills stuck in the court system. M Bryant said that the LAA were only involved with legal aid aspect of the bills, both the ones that were potentially to come and those already in the court system. CCCG to be updated **Action 8 [May]** It was suggested that providers should be allowed to request payment of a bill on account.

7. Finance update

P Henson said that the LAA had received and paid 20% more civil representation bills than in the pre-Covid19 period. In crime higher, after an initial spike in payments, volumes remained the same as in the pre-Covid19 financial forecast. There had been no significant change on payments for controlled work. R Miller asked whether the 20% increase in civil representation bills included the new provisions for Payment on Account [POA] and the additional promoted POA opportunities. P Henson said that the increase started prior to the Covid19 provisions; during the previous few weeks providers had been submitting more final bills and there had also been an increase of POA claims.

8. Estimates of work that can be claimed

J McHale said that based on data of live cases on the system at 31st March, it was estimated that the value of billable POA's was £165m; this sum was the additional fund made available for POAs over and above what would be paid in normal pre-Covid19 conditions. A POA could

be when a live case was 3 months in, and then twice in every 12 months. 82% of live cases [127,00] on the system were eligible to claim a POA at 31st March. The non-eligible 18% were cases that had already submitted a claim according to the rules and the majority of these would be eligible for another claim in 2 months' time. A work-in-progress model based on live cases was used to estimate the value of a POA by averaging historic values relating to that type of case. A work-in-progress model based on closed cases was used to estimate final bills and this amounted to £80m, on top of £165m. The model used historic averages and profiles of how POAs had been submitted to work out what a case might bill for.

J McHale explained that the model made a calculation based on all the available live cases and determined which case was eligible by applying the rules for POA's. It worked out how much had been paid since the start of the case in order to determine the amount to be paid on account during the life of a case. If a case was 12-month-old and a POA had never been submitted, then the POA would be larger. J McHale agreed to provide a written note about the model and POAs **Action 9 [May]**.

In response to a question, J McHale said that although each case was determined individually, the model could not take into account a provider's rational, commercial decisions such as waiting to submit a request until a large piece of work was done so that the amount that could be claimed on account would be enhanced. Equally, a discount could not be given in cases where a POA could be submitted but the claim would only be for just £100 or £200 and the cost of submitting it would be disproportionate to its value therefore the provider would decide not to make the claim. R Miller believed that some providers chose not to claim now and risk bankruptcy when they knew that they would need the money in a couple of months' time to pay salaries. Each provider had to decide how to deal with the current cash flow issues in light of a complete lack of assurance from the government that support would be available in a couple of months' time, and lack of guarantees of a rescue plan down the line. Assurances from the government that there would be further support would change providers' attitudes towards claiming now. J McHale said that scheme take up had been surprisingly low and conceded that these commercial decisions could be a driving factor.

LAPG members had reported that they had claimed the maximum allowed whenever they could. J McHale was asked to give information on the take up of the scheme broken down by category to find out providers' behaviour across the different contract areas. There was also concern that a large part of the fund was locked in the family category which could be detrimental to the smaller categories and explain why some providers were not claiming.

Action 10 [May]

C Storer asked the LAA to do some work with providers to help them understand how POA's worked and find out why POA wasn't being used. **Action 11 [May]**

9. Flexibility on Standard Monthly Payments

The LAA were working with providers who wished to move from Variable Monthly Payment to Standard Monthly Payment. The case for more flexibility on the SMP approach was being explored for Ministers.

10. Payments On Account

LAPG members had reported that they claimed the maximum allowed whenever they could and wished to understand the rationale behind the twice-a-year rule. C Minnoch asked why firms couldn't claim more often during a crisis when they said they needed to. P Henson said that the LAA needed to understand the reasons stopping providers from claiming during the Covid19 crisis. The LAA believed that the measures in place were fit for purpose; only 18% of certificates were up to date with claims and 82% were eligible to submit further claims. He would take an action to look into this **Action 12 [May]**

Post meeting note [01/06/20]: the LAA will shortly be starting a consultation on changes to the 2018 standard civil contract to allow solicitors to increase the number of Payments on Account (POA) they can claim a year from 2 to 4. Similar provisions on POA in relation to barristers are being considered by the policy team as those requirements are set out in Regulation.

V Ling said that Resolution members would like to claim for Family Advocacy Scheme [FAS] fees on the same basis as counsel could; a workaround on CCMS was possible. E Druker said that the Processes Efficiency Team [PET] had worked on this the previous year and had discussed it again at the last meeting. PET had agreed that the adjustment would have a significant impact on the fund and operational costs. V Ling pointed out that PET members were told that CCCG were dealing with specific issues and vice versa and that objectives were becoming lost between the two committees.

11. Data on impact of covid19 on applications and bills

A-M Jordan said that the impact of the current situation on stats wouldn't be reflected in the National Statistics series until September when the April-June data is published. Rep bodies were invited to make specific suggestions on the type of breakdown/granular information they were most interested to see e.g. weekly or monthly breakdowns **Action 13 [May]**. The Jan-March data, due for publication on 25 June, may include a forward look of April's figures to give an indication of high level trends where possible.

12. Case Management - Exceptional and Complex Cases Team

- Operations. M Bryant said that ECCT intakes had fallen but not as dramatically as in some other areas. The reduction in intakes allowed for good and sustained performance. In January M Bryant said that the team were going to measure end-to-end times for all but ECCT cases however as providers had requested flexibility on time limits, it was not appropriate to consider this work now and would continue to measure caseworker time for this period.
- Case plans: 136 out of 142 case plans were in week 1 or week 2 (96%).
- ECC in general: 98.3% of all work was in target.
- Public law: ECCT would deal with any appeals against restrictions of liberty imposed by Coronavirus Act but no applications had been received so far. ECCT would continue to deal with any public law challenges, including Covid19. There was no new guidance. The same regulations would be applied: section 4 of the Lord Chancellor Guidance for in scope cases or the Lord Chancellor ECF guidance for out of scope cases.

13. Case Management – Operations

- Action 5 [May] At the last meeting S Starkey had been asked to look into the LAA's soft reject approach in relation to claims. A detailed post meeting note had been added to the March minutes explaining the LAA's position; if rep bodies were happy with this approach

the LAA would introduce it. Rep bodies were asked to feedback the proposal to their members and get back to S Starkey with the outcome. **Action 14 [May]**

- Operations: Most applications and bills were currently being processed within 5 days of receipt. On the finance side intake had been fairly normal except for court assessed bills that had gone down from an average of 480pw to 290pw in the past 3-4 weeks and even lower in the 2 weeks before that. Intake of applications had gone down by 20%-30%. A Shadow Pack had been circulated which included additional information on intakes, work in progress and legal help escaped cases. C Minnoch said that the Shadow Pack was very useful and user friendly and asked if it could be shared with members; S Starkey agreed and said he would be happy to take requests for more information to be included.

14. Contract Management

Providers' survey. The LAA were still working through the responses so did not have an analysis to share with rep bodies. D Thomas said that a small number of firms' response had been that their rep bodies had already provided information and so there was no need for them to do as well. However, the LAA wanted to hear from them and wanted as much granular information as possible in order to strengthen the case for any intervention in addition to the existing support. Rep bodies were asked to contact their members to relay this message and ask them to be more helpful. The contract management team wanted a dialogue with providers and wanted to know about their experiences, issues, views and suggestions. **Action 15 [May]**

15. Costs for remote hearings

E Druker had drafted a FAQs on the cost of setting up a hearing and was discussing the costs with HMCTS to decide where they should rightly fall. She'd share the outcome as soon as all points had been finalised. She asked rep bodies to send her any queries from providers about what was funded by the LAA so she could take them into account when writing the guidance and FAQs. **Action 16 [May]**

16. Civil and family cashflow workshops with MoJ

As the meeting was running out of time J Fiddian said she'd ask J Wrigley for an update and share with CCG. **Action 17 [May]**

17. Changes within the LAA's Executive Leadership Team

J Fiddian said that D Thomas, Deputy Director of Contract Management and Assurance, was going to commence 6 months paternity leave at the end of May and his role was going to be covered by Hannah Payne, currently head of the Agency Transformation Programme. J Fiddian would take up that role as Lynn Evans was back from maternity leave to reprise her job share with Laura Wensley as Deputy Director of Service Development and Commissioning.

18. AOB [1]

It was agreed that a follow up meeting would be scheduled **Action 18 [May]** closed– **[see below]** to discuss the remaining agenda items:

- i. Approach to audit post covid19
- ii. Guidance to practitioners
- iii. Summary of changes
- iv. Communications: Gov.uk and suggestion for FAQs

Follow up meeting-27th May

Action 18 [May] The follow up meeting took place on Wednesday, 27th May at 12:30 by video conference. Attending: Jo Fiddian-LAA [Chair], Richard Miller-TLS, Vicky Ling-Resolution, Bob Baker-ACL, Russel Barnes-LAA, David Thomas-LAA, Paddy Enright-LAA, Kathy Wong-BC, Kate Pasfield-LAPG, El Druker-LAA [first half], Nick Lewis-MHLA, Chris Walton-Shelter, Grazia Trivedi-LAA [minutes].

i. **Approach to Audit Post Covid19**

P Enright said that the current approach to Contract Management and Assurance activity would stop at the end of June. Plans for resuming core assurance activity in July using digital tools were being discussed and would be discussed with rep bodies and the profession; it was unlikely that onsite visits would resume any time soon. C Walton said that Shelter had started to plan for a return to services post-lockdown restrictions and conceded that it wasn't easy; he understood the LAA's cautious approach to resuming audit activity. Feedback from LAPG members was mixed with some firms planning to return to the office but not others. The LAA had received feedback from some providers that wished to continue with the digital audit activity adopted during lockdown. R Miller said that the LAA and firms needed to ascertain whether/how they could comply with Public Health England guidelines. Firms also had to ascertain whether it was practical/possible to access the information they needed for a digital audit process to take place. Firms might be keen to undergo audits at this time when there was little client work rather than later when work would return to normal levels. The LAA also had to consider how to react when they sought to recover overpayments; if this was done in the short term it could bankrupt a firm.

ii. iii. **Guidance to Providers and Summary of Changes**

P Enright said that Jane Edwards was leading on the update of the guidance, consolidating the different guidance issued during the lockdown period and clarifying the position going forward. V Ling said that E Druker had responded to two specific enquiries from Resolution which she expected to be included in a FAQ document. She explained that rep bodies passed the information given by the LAA onto their members, however such information had to be endorsed in a published LAA document. One of the queries was whether providers could claim for taxi fares to court while the government was advising against using public transport. The second query was whether the £45 deduction from employment expenses could be applied to clients on furlough, to which E Druker gave a very helpful and technically detailed answer. Another query from LAPG was about the costs associated with virtual ways of working, like a provider having to rehearse for a remote Court of Appeal trial with the barrister via video link. These were matters of policy so it was important to see them sanctioned in an official document. P Enright said that all the information and feedback that was coming into the LAA from various sources was incorporated into the guidance but would take a little time before it was seen in the published document. P Enright would discuss the feasibility of a FAQ document with Jane Edwards and update CCCG. **Action 19 [May]**

iv. **Communications**

R Barnes said that the [guidance](#) was first published on GOV.UK to keep providers informed on the changes implemented by the LAA following the lockdown restrictions. As more Q&As got

through and were cleared by Number 10, they were added to the document. A lag of several days was incurred between receipt and publication due to the need to get clearance. A few Q&As were still coming through and would be included before the new final document from J Edwards was published. The guidance would make clear when the changes were applied and when they ended. K Pasfield said that the published guidance was brilliant and it was very easy to find what one was looking for, quickly.

AOB [2] K Pasfield asked for an update on Housing Possession Court Duty Solicitor [HPCDS] scheme and how it was going to interact with possession lists in the face of social distancing restrictions. Many courts were only listing telephone hearings, however the contract required face to face hearings. J Fiddian said that the LAA were working with HMCTS and the policy team to find a solution to the issue. K Pasfield asked the LAA to give a steer as soon as possible as this was causing a great deal of anxiety. C Walton reiterated that clarity was needed urgently. One of Shelter’s members had indicated that duty solicitors would no longer be involved. **Action 20 [May]** C Walton to give details on this to J Fiddian

V Ling asked when rep bodies would be given the opportunity to feed into proposals for transferring the assessment of court bills from HMCTS to the LAA. J Fiddian said that discussion was progressing and rep bodies would be updated soon. **Action 21 [May]**

Post meeting note [01/06/20]: The majority of this work will be moving to the LAA. We are agreeing a date for transfer when no further claims shall be sent to HMCTS for assessment. The LAA will publish operational guidance for solicitors on how this will operate including detailed CCMS guidance. HMCTS will retain responsibility for assessing any contested Inter Parties claims. Appeals against assessment will continue to be dealt with by the assessing authority. For clarity, this means solicitors will not appeal LAA assessments with HMCTS, nor will they appeal a court’s assessment with the LAA.

Actions from this meeting		Owner	Deadline
AP 1 [Mar]	Send El Druker his views on CLA stats	N Ben Cnaan	7 June
AP2 [May]	Update on progress made in relation to extending the higher initial costs limits for non-family suppliers	A Evans E Druker	TBC
AP 3 [Mar]	Consider the feasibility of publishing FOI requests/responses	H Tabita	TBC
AP 4 [May]	Update on timescales for <ol style="list-style-type: none"> 1. means test review [PC] and 2. provider base sustainability review [JW] Post meeting note [08/06/20]: MoJ have started work considering civil legal aid sustainability. Over the coming weeks we will be commencing stakeholder engagement, including deep dive meetings on individual areas within civil legal aid.	P Clapham J Wrigley	Closed
AP 5 [May]	Communications to providers affected by the removal of the mandatory gateway. Post meeting note: all relevant Contract Managers have been asked make providers aware of the news story now that it is up	J Kraft	Closed

AP 6 [May]	<p>Inform CCCG on how safe distancing would be facilitated in courts</p> <p>Post meeting note: The extension to the stay on possession work has been extended for a further two months. The Master of the Rolls has established an working group led by Mr Justice Knowles to look at how possession cases will be listed once the stay is lifted. The LAA is represented on this Group as are the various representative groups. One of the issues the working group is considering is how the Duty Solicitor scheme will operate moving forward and the options for doing this. HMCTS is working with the group and one of the issues to be considered will be ensuring that there is safe distancing for duty solicitor schemes.</p>	Simon Vowles- DD Civil - HMCTS	Closed-09/06/20
AP 7[May]	Update CCCG on timetable for interim payments in both disbursements and profit costs	E Druker	
AP 8 [May]	<p>Update CCCG on the Civil Tax Bills decision.</p> <p>Post meeting note: Additional CCCG on 6th June 2020</p>	M Bryant	Closed
AP 9 [May]	Provide a note summarising the way POAs worked	J McHale	Closed 20-05-20
AP10 [May]	Provide a detailed analysis of POA claims by category	J McHale	Closed 20-05-20
AP 11 [May]	Organise some engagement with providers to help them understand how POAs work.	J McHale	Closed
AP 12 [May]	Look into the possibility of relaxing the twice a year rule for submitting POAs. Post meeting note: the LAA will shortly be starting a consultation on changes to the 2018 standard civil contract to allow solicitors to increase the number of Payments on Account (POA) they can claim a year from 2 to 4. Similar provisions on POA in relation to barristers are being considered by the policy team as those requirements are set out in Regulation.	P Henson	Closed-01/06/20
AP 13 [May]	Send specific suggestions about what information/breakdown-of-data the September stats publication should include to G Trivedi	Rep Bodies	
AP 14 [May]	Feedback to members S Starkey's proposal on soft rejects and let him know about the outcome	Rep bodies	
AP15 [May]	Contact members to ask them to respond to the providers' survey in a meaningful way	Rep Bodies	
AP 16 [May]	Send queries from members about what costs were covered by the LAA in relation to remote hearing	Rep bodies	
AP 17 [May]	Update CCCG on Civil and Family cashflow workshops with MoJ	J Wrigley	
AP18 [May]	Follow up meeting	G Trivedi	Closed-27/05/20

AP 19 [May]	Update CCG on FAQ document complementing the guidance to providers	P Enright	
AP 20 [May]	Send details of the Clerkenwell statement about duty solicitors being phased out	C Walton	Closed-0/06/20
AP 21 [May]	Update rep bodies on the transfer of assessment of court bills from HMCTS to the LAA. Post meeting note: The majority of this work will be moving to the LAA. We are agreeing a date for transfer when no further claims shall be sent to HMCTS for assessment. The LAA will publish operational guidance for solicitors on how this will operate including detailed CCMS guidance. HMCTS will retain responsibility for assessing any contested Inter Parties claims. Appeals against assessment will continue to be dealt with by the assessing authority. For clarity, this means solicitors will not appeal LAA assessments with HMCTS, nor will they appeal a court's assessment with the LAA.	E Druker	Closed-01/06/20