



The Law Society



Legal Aid Agency

## Civil Contracts Consultative Group (CCCG) Minutes

15<sup>th</sup> July 2020

Date:	Wednesday, 15 <sup>th</sup> July 2020	
Where	Video conference	
Chair	<b>Richard Miller</b> – Head of Justice [TLS]	
Minutes	<b>Grazia Trivedi</b> – Service Development [LAA]	
Present	<p><b>Ann-Marie Jordan</b> – Analytical Services [LAA]  <b>Avrom Sherr</b> – Peer Review  <b>Bob Baker</b> – ACL  <b>Chilli Reid</b> - Advice UK  <b>Chris Walton</b> – Shelter  <b>Chris Minnoch</b> - LAPG  <b>Eleanor Druker</b> – Service Development [LAA]  <b>Ellie Cronin</b> – TLS [TC]  <b>Hilary Tabita</b> – PS to CEO [LAA]  <b>James Wrigley</b> - Civil and Family legal aid [MoJ]  <b>Jamie Niven-Phillips</b> - ALC  <b>Jane Edwards</b> – Financial Stewardship [LAA]  <b>Joe McHale</b> – Finance [LAA]  <b>Kate Pasfield</b> – LAPG  <b>Kathryn Grainger</b> – Civil Business Improvement [LAA]  <b>Kathy Wong</b> – BC  <b>Kathy Hartup</b>- Communications [LAA]  <b>Lynn Evans</b>-Service Development/Commissioning [LAA]  <b>Malcolm Bryant</b>-Exceptional Complex Cases [ECC]  <b>Nimrod Ben Cnaan</b> - Law Centres Network  <b>Paddy Enright</b> – Contract Management/Assurance [LAA]  <b>Russell Barnes</b> – Communications [LAA]  <b>Sally Cheshire</b> – HLPAs [TC]  <b>Simon Cliff</b> – policy adviser [TLS] [TC]  <b>Sonia Lenegan</b> – [ILPA]  <b>Steve Starkey</b> – Civil Ops [LAA]  <b>Sue Antell</b> - MHLA  <b>Vicky Ling</b> – Resolution</p>	
Apologies	Kerry Wood – Commissioning [LAA]	Carol Storer – A2J

## 1. [Minutes](#) and actions from the previous meetings.

- Minutes of the May and June meetings were approved and would be published.
- Action 2 [May] higher initial costs limits for non-family suppliers.
- Action 3 [Mar] feasibility of publishing FOI requests/responses. To be carried forward  
**Action 1** [Mar]
- Action 7 [May] timetable for interim payments in both disbursements and profit costs. E Druker said that a decision was expected the following Wednesday on a package of proposals that had been put forward. She'd inform CCCG of what proposals would be taken forward. **Action 2** [July]
- Action 13 [May] Remind SPG to send specific suggestions about what information/breakdown-of-data the September stats publication should include to G Trivedi **Action 3** [May]
- Action 14 [May] Feedback to members S Starkey's proposal on soft rejects and let him know about the outcome. Taken forward **Action 4** [May]
- Action 16 [May] Costs of remote hearings. E Druker said that queries were still coming through; the LAA were in discussion with HMCTS to agree a position on funding and process. E Druker to update CCCG on progress **Action 5** [July]
- Action 19 [May] FAQ document. E Druker to get an early draft published the following week. **Action 6** [July]
- Action 4 [May] Timescales for Means Test Review. E Druker said that Work on the MTR was going on internally and engagement with external facing elements was planned for September. MoJ was about to propose the revised timeline to Ministers for publishing the review and would update stakeholders on this as soon as possible.

## 2. Provider training online event

K Hartup said that the LAA planned to run some practical provider training online in the autumn and asked rep bodies for their help with format and content of the events, plus some volunteers to feedback on scripts and materials. The current proposal was to have eight 30-minute webinars, one per week and to focus on guidance, processes and subject specific topics like domestic abuse. V Ling said that 30 minutes might not be enough time to get into the finer details of the subject at hand; Resolution said they'd ask their members and feedback. K Hartup agreed to share a list of initial ideas and a list of training packages and events that rep bodies already offered their members to avoid duplication. **Action 7** [July] All webinars would be recorded and available online for providers to watch any time. Rep bodies to send their views on the training by end of July **Action 8** [July]

## 3. Cashflow measure to address Covid-19

Jane Harbottle, CEO, had sent a letter to rep bodies outlining the LAA's payments proposals and announcing the forthcoming consultation on increasing the Payment on Account limit from 75% to 80%. C Minnoch wished to know why there was a lag of 3 months before a POA could be claimed; he felt this should be reduced to help providers returning from furlough, housing providers returning to court and to compensate for the time between the start of new work

and income being generated. He also asked for the rationale behind the consultation to increase the percentage of POAs that could be claimed from 75% to 80%. E Druker said that a note would be sent out to rep bodies the following week outlining the factors that the LAA considered. **Action 9** [July] K Pasfield asked for more details on the inclusion of enhancements in a POA claim to avoid it being rejected or incurring problems later with a recoupment. V Ling added that under previous iterations of the contract providers were forbidden from including enhancements to a claim. E Druker said that the Electronic Handbook would be updated to include clarification on enhancements and the new/amended sections would be highlighted to make them easily identifiable. K Pasfield pointed out that the case management system did not allow enhancements to be added on so a workaround solution would have to be found for CCMS. E Druker to flag the issue **Action 10** [July]

As stated in the letter, the new POAs arrangements would be implemented for six months initially, then a review would look at providers' take up, the impact of this on providers' submission of final bills, the impact on the fund and any other outcome. The review would inform further decisions.

R Miller asked the LAA for a monthly report on the number of contract holders in each category as there were concerns about firms folding. L Evans to see if this was possible **Action 11** [July]

#### **4. Interim Payments for Controlled Work**

M Bryant said that the Bar Council had suggested that they, LAA and solicitor representatives meet on 27<sup>th</sup> July to discuss this further. He asked rep bodies to email G Trivedi the names of their members who wanted to discuss this issue with the Bar Council and LAA. The categories of law to be discussed included Immigration/Mental Health/Inquests **Action 12** [July]. Due to limited resources the LAA has only started financial modelling in Immigration, Mental Health and Inquests where there was longer-time frame for controlled work. However, the same modelling could be done in other categories.

#### **5. Exceptional and Complex Cases [ECC]**

Performance remained strong. Some providers had been submitting emergency applications when they were challenging various policies and some had been refused because they were not an emergency under the regulations.

#### **6. Transfer of Court Assessed Bills from HMCTS to LAA**

M Bryant had circulated a note earlier stating that providers had been given notice that the transfer would take place on 17<sup>th</sup> August. On and from that date all court bills would have to be submitted to the LAA. During the voluntary period approximately 200 bills had been submitted to the LAA. M Bryant confirmed that bills submitted to the courts before 17<sup>th</sup> August would be processed by the court offices but all subsequent ones would be returned.

In the consultation response the LAA had stated that a number of issues had been raised by the rep bodies that did not relate to a change in the contract and M Bryant had indicated that these would be responded to in more detail. M Bryant to action. **Action 13** [July]

In relation to concerns about the stability of CCMS and its ability to cope with the additional intake, M Bryant said that contingencies were in place to deal with outages. S Starkey said that the recent outage was not load related so the additional claims would not affect the stability of the system. The team had worked over the weekend to catch up on outstanding work and were back to processing claims on day 4. The shadow pack with additional stats on claims would be

circulated within a week and it would show the added intake. So far, feedback from practitioners that had submitted court claims had been positive and encouraging. The LAA would undertake an operational review in 6 months with statistical evidence to back it up. Rep bodies were encouraged to forward their members' feedback.

#### **7. Contract Management & Assurance activity**

Core audits had recommenced at the start of July and further activity would start on 1<sup>st</sup> August. J Edward expressed her gratitude to providers that had sent in their files to be audited.

Contract managers [CM] were preparing for the next stage of Contract Management activity whilst bearing in mind each provider's situation and the practicalities of files exchange. Prior to 1<sup>st</sup> August CMs would be contacting providers that had been inactive to see how they were doing. In addition, CMs would be focussing on specific housing and immigration providers to understand further the impact on them and ability to deliver services, particularly where the number of providers was low.

Recoupment activity would resume at some point. Where the LAA needed to make recoupments CMs would discuss individual circumstances to understand the impact and take into account where possible.

Peer review audits would also resume on 1<sup>st</sup> August with firms that had scored 4 at the initial review and that were due for a second review. A Sherr said that there had not yet been any procurement activity for additional peer reviewers. Currently, there was sufficient capacity to carry out reviews apart from Immigration. As it took two years to get a peer reviewer ready to carry out reviews, it was necessary to commence procurement ahead of time. For example, in Discrimination and Education a new panel would have to be set up and specialist providers would have to be consulted on the approach and criteria to be adopted. It was agreed that work on this would have to start soon so that reviews could start in 18 months' time. P Enright agreed to find out what the position was in relation to Discrimination and Education **Action 14** [Jul]. The LAA planned to start a procurement round early the following year.

#### **8. Civil Operations Update**

S Starkey said that the team were catching up on the additional bills that were coming in following the system outage and were planning to work over the weekend to return to pre-outage levels. On the legal means side a similar recovery had taken place with the team working with finance and contracting colleagues on the numerous contingency applications, resulting in all payments been made on time. R Miller asked what was the percentage of bills that would have gone to the courts but had instead been submitted to the LAA during the voluntary period. S Starkey said that the LAA had always processed for payment all the claims sent to the court, on average 475 came through CCMS each week. S Starkey estimated that a total of 7,000 claims could be expected to arrive after mandation date but the more claims that came prior to 1<sup>st</sup> August the better it would be for a smooth transition to LAA. After the initial surge the number of claims would return to an average of 475 per week.

S Starkey agreed to check whether it was possible to add physical volumes data to percentages by category of law in the operational update. **Action 15** [July].

#### **9. Review of Independent Cost Assessors Panel Membership**

The LAA were seeking to extend membership of the Review Panel to cost lawyers. A paper circulated beforehand set out the proposal and criteria. B Baker thanked S Starkey for considering ACL for membership. Resolution said they would support the proposal. S Starkey said that one of the issues raised in the response to the consultation on the transfer of court work was independence, so the LAA asked rep bodies to encourage their members to apply for

membership. Cost Assessors could not serve more than two terms, 10 years, so recruitment of new members was a necessity. The LAA formally asked for rep bodies' approval of the proposal and feedback on specifics that needed to be modified. **Action 16** [July]

#### **10. HPCDS - Duty Providers Readiness to Re-start Work**

E Druker said that the current HPCDS contract would be extended and providers would be contacted with the offer of an extension. The contract would also have to be amended to take into account the work of the judicial working group headed by Mr Justice Knowles. As soon as a framework was agreed the contract amendments would be put out to consultation. A tender for services in areas where there was a procurement gap was going to be launched shortly and further tender activity in areas where practitioners turned down the offer of an extension. Rep bodies wanted to know how flexible the methods of delivery would be in the forthcoming tenders. E Druker to meet with the commissioning team and update rep bodies **Action 17** [Jul]

C Minnoch said that because of the uncertainty around the way the duty schemes were going to operate, it was difficult for providers to know whether they would be prepared to do the work from 23 August. The LAA were aware of the tight timeline and had strongly reiterated the urgency at the working group meetings but ultimately, they had to wait for a decision from HMCTS and the judiciary. The LAA were committed to helping providers by making the contract as attractive as possible within existing restrictions; they intended to be as flexible as possible to make the new arrangements work. An amended contract would be put out for consultation as soon as the amendments had been agreed; it would be a short consultation out of necessity.

When the current situation, caused by the pandemic, came to an end, new contracts would be issued: lessons learned would be taken into account and arrangements that were put in place on 23 August might be kept if found to be helpful. This would depend on HMCTS and the judiciary.

N Ben Cnaan asked the LAA to keep in mind that 2/3 of providers doing this work were small not-for-profit firms and asked them to keep under review the impact that these big changes were having on their finances, their clients and their advisers' behaviour.

#### **11. Flexible Operating Hours [FOH]and remuneration for out of hours working**

J Wrigley said that HMCTS would decide who to include in the FOH and the position was unclear. On the civil side they seemed to be focussing on areas that didn't attract legal aid. It was more of an issue for crime rather than civil. J Wrigley offered to regularly update CCCG on FOH. **Action 18** [July]

#### **12. CCMS Outage**

K Grainger said that the digital team had been working round the clock to fix the problem and they continued to monitor the system. They were also looking at ways to be less dependent on CCMS in its current form. C Minnoch asked whether the LAA had considered updating the Costs Assessment Guidance [CAG] to allow providers to claim for time spent submitting claims and applications using the contingency processes. L Evans explained that the LAA's executive team had decided not to amend the CAG, as had been the position previously. Rep bodies felt strongly that this was unreasonable as each time the system crashed providers spent many hours working around it. Although compensation could be claimed by submitting a complaint, this was not worthwhile because the process was complex and time consuming. L Evans would feed back the rep bodies' concerns to Jane Harbottle, but confirmed the position. V Ling knew of several members who had successfully claimed for time spent submitting a complaint but said the process was not straightforward.

### 13. Legal Aid Statistics

Rep bodies wished to know how the LAA were using the data collected during lockdown, when there had been a huge drop in workload, combined with the information from the recent survey of providers, to determine the impact on provision and sustainability of legal aid. H Payne said that this work was in progress and the outcome would be shared with CCCG. In light of the extreme nature of the current situation rep bodies were keen to get stats on a monthly basis rather than having to wait for the quarterly published report, even if it was less quality controlled. Information on the volume of claims would give the opportunity to identify crisis points. C Minnoch said that the LAA's unwillingness to pay for time spent on workarounds during CCMS outages made them appear uncooperative to providers and their aversion to release useful information made them seem less than transparent. H Payne offered to find out what could be shared with the group on a regular basis **Action 19** [July]

### 14. AOB

- K Wong asked whether limited companies could be paid by the LAA. E Druker would find out and write to her about it separately as well as update CCCG. **Action 20** [Jul]
- J McHale said that some providers had asked whether they could pay back contingency payments received from CCMS during the outage. **Action 21** [Jul]
- N Ben Cnaan said that some judges had objected to duty solicitors wearing masks in court even though HMCTS policy stated that court users could wear them if they wanted. L Evans to follow up with HMCTS. **Action 22** [Jul]
- E Cronin explained that at the start of the pandemic rep bodies had asked for workshops to discuss ways of helping practitioners during the crisis and these didn't happen. It was agreed that the issue had been addressed in several other ways.

Actions from this meeting		Owner	Deadline
AP 1 [Mar]	feasibility of publishing FOI requests/responses	H Tabita	16 Sep
AP2 [May]	Inform CCCG of what proposals would be taken forward in relation to interim payments in both disbursements and profit costs.	E Druker	Closed - Meeting on 27/07
AP 3 [May]	Send specific suggestions about what information/breakdown-of-data the September stats publication should include to G Trivedi  <b>Post meeting note:</b> LAPG has made requests for breakdown by areas of law. We would like to see stats broken down by category of law and in relation to different levels of courts and tribunals	SPG	Closed
AP 4 [May]	Feedback to members S Starkey's proposal on soft rejects and let him know about the outcome	V Ling	Closed - 15 Aug
AP 5 [May]	Update CCCG on costs of remote hearings	E Druker	16 Sep
AP 6 [May]	Get an early draft of the FAQ document published	E Druker	16 Sep
AP 7 [July]	Share a list of initial ideas	K Hartup	Closed - 16 July
AP 8 [July]	Send views on proposals for providers' training to K Hartup	SPG	Closed - 10 Aug
AP 9 [July]	Send a note outlining the financial risks of increasing the limit of PoAs	E Druker	Closed - 20 Jul
AP10 [July]	Flag the issue of claiming for enhancements on CCMS  <b>Post meeting note:</b> The civil electronic handbook was updated in August to include amongst other things the update on enhancements. Here is the <a href="#">link</a> :	E Druker	Closed
AP 11 [July]	Consider the feasibility of providing a monthly report on the number of contract holders in each category.  <b>Post meeting note</b> - The Central Commissioning team in the LAA will provide updates on the number of contract holders in the different categories of law at future CCCG meetings	L Evans	Closed
AP 12 [May]	Send names of practitioners willing to attend the meeting on interim payments for controlled work on 27 <sup>th</sup> July to G Trivedi	SPG	Closed - 27 July
AP 13 [May]	Share with CCCG the outstanding issues raised in the transfer of Court assessed bills consultation	M Bryant	20 July Closed 24 July
AP 14 [July]	Find out what capacity there is to carry out peer reviews in Discrimination and Education.	P Enright	16 Sep
AP15 [Jul]	Check whether it is possible to add physical volumes data to percentages by category of law in the operational update.	S Starkey	Sep CCCG
AP 16 [July]	Feedback to S Starkey on the proposals for independent cost assessors. <b>Post meeting note:</b> SPGs agree with Steve Starkey's proposal re independent costs assessors	SPG	Closed - Sep CCCG

AP 17 [July]	Update CCCG on how flexible the tender's parameters would be. <b>Post meeting note.</b> Will be Covered in Commissioning update	E Druker	Closed
AP18 [Jul]	Regularly update CCCG on Flexible Operating Hours [FOH]and remuneration for out of hours working. <b>Post meeting note:</b> no updates at this time	J Wrigley	Closed - Sep CCCG
AP 19 [Jul]	Find out what stats can be shared with CCCG on a regular basis	P Enright	16 Sep
AP 20 [Jul]	Update CCCG and K Wong on the issue of payments to Ltd companies.	E Druker	16 Sep
AP 21 [Jul]	Find out how providers could pay back contingency payments <b>Post meeting note</b> all contingency payments were made and we didn't have to accept repayments once the full process was explained.	J McHale	Closed
AP 22 [Jul]	Feed back to HMCTS on concerns reported about the judiciary objecting to duty solicitors wearing face coverings in court. <b>Post meeting note:</b> We have followed up on this query with colleagues in HM Courts and Tribunals Service. They have liaised with the Master of the Rolls' office, and have confirmed that the current position is as follows:  "Court and hearing rooms are not classified as public areas for the purposes of wearing face coverings. Decisions about what is to be worn in the court or hearing room will be made by the judges or magistrates hearing a case."	L Evans	Closed