

## Draft Annex 6 Complaints

### 1. Definitions

1.1 In this Annex the following expressions have the following meanings unless the context otherwise requires and any other terms defined in the Standard Terms, the Procedure Regulations and the Specification shall, if used in this Complaints Annex, have the meaning in the Standard Terms, the Procedure Regulations and the Specification (as applicable) applied to them:-

**Business Hours** means 9.00am to 8.00pm Monday to Friday and 9.00am to 12.30pm on Saturdays (in each case excluding any day which is a public or bank holiday in England and Wales);

Complaints received after 4pm on a Business Day or on a day other than a Business Day shall be deemed to have been received on the next Business Day;

**CLA Staff** means any individual involved in the management, operation or delivery of the CLA service working for CLA Providers, whether employed on permanent or temporary contracts, secondments or other flexible working arrangements or on an agency basis;

**CLA User** means any individual who requires or has received services from CLA;

**Complaint** means any Expression of Dissatisfaction with the level of service provided by either the Operator Service or you under the Contract and where a remedy in respect of some inconvenience, distress or loss is being sought or could be provided. This may include an apology or general service improvement;

**Complainant** means a CLA User or a Client who is making or has made a Complaint about the CLA service;

**Expression of Dissatisfaction** means any communication which expresses a negative comment, view or opinion about the CLA service;

**Operator Service** means any call centre operation appointed by the LAA or any online system developed by us, or on our behalf, to receive initial contact from a member of the public in respect of CLA to distribute to a CLA Provider;

Resolved	means all new aspects of a Complaint have been investigated in accordance with this policy, and where the Complaint is upheld, investigated by you to the satisfaction of the Complainant;
Review	means where a Complainant has requested that you review a Determination or withdrawal of a Determination (as described in the Procedure Regulations);
Supervisor	means the person responsible for the line-management or day-to-day supervision of a member of CLA Staff.

## 2. **Purpose and Aims**

2.1 The purpose of this Annex is to provide a clear framework for all CLA Providers so that:

- Complaints are handled fairly and consistently;
- there is a consistent approach to instances of unreasonable behaviour by Complainants in relation to complaints; and
- the roles and responsibilities of all CLA Staff are clear and with associated training and support, all CLA Staff will understand how to apply the requirements of this Annex.

2.2 It should be used in conjunction with the following:

- Annex 7 (Unacceptable Behaviour);
- CLA Privacy and Confidentiality Policy;
- CLA Providers' own complaints policies and guidance;
- CLA Providers' own Equality & Diversity policies;
- Our Complaints process; and
- Guidance from your own regulatory body where relevant.

2.3 Where there is any conflict between CLA Providers' own policies, procedures or guidance, this policy will always take precedence.

## 3. **Roles and Responsibilities**

3.1 The CLA Provider shall ensure that CLA Staff have responsibility for meeting the commitments contained in this Annex.

**All CLA Staff will:**

- Take responsibility for understanding the role they play in the application of this Annex; and
- Ensure they can explain the application of the requirements of this Annex where required or asked.

**CLA Providers will:**

- Develop specific guidance and procedures for their own organisation, which adhere to the requirements of this Annex;
- Ensure that relevant CLA Staff complete induction training in relation to the requirements of this Annex, their own internal complaints procedure and best practice in relation to complaints handling. CLA Staff should receive relevant refresher training to ensure that they can continue to fulfil their responsibilities under this Annex;
- Ensure that CLA Staff abide by the policy during the course of their employment within any function of the CLA service; and
- Ensure that any failure or breach of the requirements of this Annex is reported to the appropriate person within the CLA Providers own organisation and to us.

**We will:**

- Maintain and review the requirements of this Annex, at least annually;
- Take reasonable steps to ensure that any new CLA Providers have the capability to deliver the requirements of this Annex;
- Monitor the application of this Annex; and
- Take action where we consider that a CLA Provider is not abiding by the requirements of this Annex.

**4. Identification of Complaints**

4.1 It is important to spot signs that someone is confused or unhappy about the service being provided as early as possible and aim to reassure or manage expectations as a result. Where any Expression of Dissatisfaction is raised you should listen and wherever possible provide a response at the time. This should minimise escalation into a Complaint.

4.2 It is important to remember that some people may not use the term "complaint" as they may be intimidated or concerned that making a complaint could affect the

service we provide. You should still handle such situations as if a Complaint may have been raised.

4.3 Complaints can be made by phone, in person, in writing, by e-mail, letter or via another form of electronic communication.

4.4 Complaints can be brought by the person directly affected or by someone authorised by them to act directly on their behalf.

4.5 Examples of Complaints include, but are not limited to concerns raised about:

- rude or inappropriate behaviour or negative attitude towards the Complainant;
- failure to communicate in an agreed manner, for example, failure to contact the Complainant within an agreed timescale;
- failure to provide adequate progress updates or dissatisfaction with time taken to respond;
- failure to explain processes or advice properly;
- unnecessary delays or missing deadlines;
- provision of incorrect or negligent advice by CLA Providers;
- failure to follow any CLA policy or process including a data breach or incorrect application of the Privacy and Confidentiality policy or the Protection of Children, Young People and Adult at Risk of Abuse Policy;
- any allegation of discrimination, harassment or victimisation or failure to make reasonable adjustments for a disabled person, as defined under the Equality Act 2010; and
- a request for a Review of a Determination or withdrawal of a Determination as to whether a CLA User qualified for legal aid.

This list is not exhaustive and each Complaint must be judged on the available information and the circumstances giving rise to the problem.

## 5. **Complaints handling**

5.1 You must be committed to dealing with all Complaints fairly and impartially and to providing a high standard of service to those who make them. Your aim is to put things right where something has gone wrong as a result of your actions.

### **Making information about the complaints process available**

5.2 CLA Providers must include details of their complaints process within any initial written correspondence or communication with a Client.

5.3 All CLA Users must be able to access information about the complaints process. This must include details of how and to whom Complaints may be submitted.

- CLA Providers must include details of their complaints procedure within any initial written communication with their Client supplied at the outset of a case.

5.4 Where a CLA User asks to see the complaints policy and has not received it you should endeavour to share it with them.

### **Confirming the reasons for Complaint**

5.5 Where a Complaint is made you must find out:

- What the Complaint relates to. You must ask the Complainant to describe what has gone wrong, when it happened, details of any relevant dates and how they have been affected. You should also consider what the underlying reasons for a particular complaint might be;
- Whether the Complaint is new or relates to an existing Complaint. Where it relates to an existing Complaint and there is no new element you can treat it as part of the existing Complaint;
- Whether the Complaint relates to the service provided by you or another CLA Provider or us;
- What outcome the Complainant is seeking or what would help to resolve the issue(s) complained of. Where possible give options available. For example, if the Client is seeking to be transferred to another CLA Provider you should make it clear that this would only happen in exceptional circumstances (see the section on transfers below); and
- If the Complainant needs any assistance in making their Complaint including any reasonable adjustment. For example, if they have difficulty writing, do they need a

statement to be taken or would it be beneficial to send them a form to complete to help structure the Complaint.

## **Acknowledgement**

5.6 Whenever a Complaint is raised verbally you must acknowledge it and wherever possible seek to resolve it to the satisfaction of the Complainant at the time. Where this is not possible you must confirm acknowledgement of the Complaint in writing within one Business Day of receiving it.

5.7 When acknowledging a Complaint you must confirm:

- Details of next steps and estimated timescales;
- Contact details for the person dealing with the Complaint;
- Options available for handling the Complaint including both informal and formal routes for resolution. For example, if the Complaint relates to a lack of understanding you could offer to provide a more detailed explanation rather than completing an in-depth investigation. Whereas if the Complaint relates to whether or not you have followed Client instructions this more formal route is relevant and
- Any elements of the Complaint that you are not going to investigate further for example where they fall outside the remit of this Policy or your own internal Complaints procedure and what the Complainant can do next.

## **Complaints falling outside the remit of your procedure or this Policy**

5.8 Where a Complaint or part of a Complaint falls outside the scope or remit of your Complaints procedure then you must confirm this to the Client and provide advice in relation to what they can do next. The following guidance must be complied with:

The Complaint relates to another CLA Provider	If a Complaint made to you relates in whole or in part to another CLA Provider or the LAA you should take full details and then refer the Complaint as soon as practically possible to the organisation concerned but within a maximum of one Business Day.  Where a Complaint has been referred to another CLA Provider this must be explained to the Complainant and details of the other organisation provided.
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The Complaint has already been investigated and responded to and your internal escalation process has been exhausted	Unless there is fresh evidence which materially affects the original decision on the Complaint, you should acknowledge receipt and place the Complaint on file with no further action to be taken.
The Complaint relates to something that falls outside the remit of the CLA service e.g. regulations for qualification of legal aid	You should confirm that the CLA service is bound by legislation and has no discretion in how the rules are applied.

### **Investigation**

5.9 You should carefully consider what the Complainant is unhappy about and investigate by gathering and reviewing any data or information or talking to CLA Staff as appropriate.

5.10 The investigation of any Complaint must not obstruct or delay the progress of a Client's Case. Where a Client has an open Case with a CLA Provider the Complaint should where possible be handled separately to minimise any disruption of advice. But if there is likely to be any kind of an impact you must inform the Complainant of any such impact.

5.11 During the investigation the Complainant should be updated on any progress and must be informed if the timescale for response originally communicated changes.

### **Response and Resolution**

5.12 Once you have conducted a thorough investigation, and have established all the facts required to make a decision you must share the findings and your conclusion with the Complainant. Give as much detail as is necessary for them to understand how and why you reached a decision.

5.13 When responding make sure that you use clear, comprehensible language and neutral tone. Avoid jargon and emotive or provocative language.

5.14 If your investigation concludes that you did provide a poor service or made a mistake, acknowledge what went wrong, give a full explanation of what happened,

apologise and offer the customer a suitable remedy where appropriate that is proportionate to the level of poor service.

- 5.15 If you decide that you offered a reasonable service, provide a full and clear explanation about how you reached that decision and show evidence where possible.
- 5.16 All Complaints, or elements of a Complaint relating to your organisation, must be Resolved within 15 Business Days from receipt of the Complaint. But we would expect the vast majority of Complaints to be resolved within 10 Business Days. If this proves impossible a record of what action was taken and when and why the Complaint was not Resolved must be recorded.

## **6. Complaints Escalation**

- 6.1 Where you have responded to a Complaint or a Review in connection with the service provided by you, in accordance with your own Complaints Procedure and the Complainant is not satisfied with the outcome or the way in which the Complaint was handled you must have a process to escalate the Complaint.
- 6.2 You must inform your LAA Contract Manager about any Complaint you have escalated. If the Complaint remains unresolved, and the Complainant is unsatisfied, the Complaint can ultimately be escalated to the Legal Aid Agency's Customer Service Team.

## **Complaints Escalation to the Legal Services Ombudsman**

- 6.3 For CLA Providers that are regulated under the Legal Services Act 2007 and have been unable to resolve a Complaint about service issues, including in relation to the provision of legal advice, the Client should be referred to the Legal Services Ombudsman.

## **7. Your Internal Complaints Procedure**

- 7.1 This Annex is designed to provide a clear framework for all CLA Providers when handling Complaints about the CLA service but all CLA Providers are still expected to have their own internal Complaints handling procedure covering the detail of Complaints handling within your own organisation in accordance with the Quality Standard.
- 7.2 As a minimum your internal Complaints policy must include:



- a process for informing Complainants about how and to whom they can raise Complaints;
- how you will identify, understand and acknowledge Complaints, investigate and respond;
- who has responsibility for Complaints handling (generally and ultimately, including who is responsible for Complaints made about the person who would ordinarily have ultimate responsibility);
- how Complaints are recorded, in accordance with section on Complaints Recording and Monitoring below, including the outcome of the complaint;
- the process for reviewing Complaints (what is reviewed, when and by whom);
- the process for dealing with Complaints which relate to a Review; and
- how you will use learning to inform and prevent any future similar Complaints.

7.3 You must provide guidance and training to all CLA Staff on this policy, your own Complaints policy, your Complaints handling process and best practice in relation to Complaints handling.

## 8. **Unreasonably Persistent Complainants**

8.1 There is a small percentage of CLA Users or Clients who are unreasonably persistent Complainants, where the frequency and type of contact made to the CLA service in relation to their Complaint, can hinder the consideration of their Complaint and indeed the operation of the CLA service.

8.2 Examples of actions or behaviours by unreasonably persistent Complainants are set out below. It is by no means an exhaustive list and local factors will vary, but they are examples that have come to our attention.

- Persistently refusing to specify the precise grounds of a Complaint, despite offers of assistance
- Refusing to co-operate with the Complaints investigation process while still wishing for their Complaint to be Resolved – this includes cases where there is a 'scattergun' approach across different communication channels

- Refusing to accept that certain issues are not within the remit of the CLA Complaints procedure (e.g. challenging policy on legal aid which is outside the remit of the CLA service) despite the remit of our Complaints procedure having been clarified and confirmation of where such Complaints may be directed
- Insisting on the Complaint being dealt with in ways which are incompatible with the published Complaints procedure or with good practice
- Making groundless Complaints about the staff dealing with the Complaint
- Changing the basis of the Complaint as the investigation proceeds and/or denying statements made at an earlier stage
- Introducing trivial or irrelevant new information which the Complainant expects to be taken into account and commented on, or raising large numbers of detailed but unimportant questions and insisting they are all fully answered
- Making unnecessarily excessive demands on the time and resources of CLA Staff whilst a Complaint is being looked into, for example by excessive telephoning or sending emails to numerous staff, or writing lengthy complex letters every few days and expecting immediate responses
- Submitting repeat Complaints, after the investigation has been completed, essentially about the same issues but with additions/variations which the Complainant insists make them 'new' Complaints which should be put through the full Complaints procedure
- Refusing to accept the decision – repeatedly arguing the point and complaining about the decision
- Combinations of some or all of above

8.3 In all cases where it is considered that a Complainant's behaviour is unreasonably persistent, the CLA Provider dealing with the Complaint must explain to the Complainant why their behaviour is unacceptable and ask them to change their behaviour.

8.4 Where possible this information should be put in writing to the Complainant and a copy provided to your LAA Contract Manager, however, it is important to recognise that:

- Complainants who are acting unreasonably may nevertheless have justified Complaints which must still be investigated.

- Complainants may have a disability, including some mental health problems that can make it difficult for them to express themselves or communicate clearly and/or appropriately.
- 8.5 Wherever possible consideration will be given to the individual needs and circumstances of that Complainant and CLA Staff before deciding on how best to manage the situation.
- 8.6 If the behaviour continues after this initial warning a decision may be taken to restrict communications in relation to the Complaint or possibly both the Complaint and an open case in accordance with Annex 7 (Unacceptable Behaviour).
- 8.7 Before ceasing correspondence, you should be satisfied that the Complaint has been fully considered, a decision has been made, resolutions have been offered if appropriate and review options have been completed. Before taking this option, you should be willing to correspond with them about the outcome of your consideration.
- 8.8 If you decide to cease corresponding with a Client in relation to a Complaint you should write to them, including all of the following:
- A brief outline of their complaint;
  - The decision that has been made and how you reached it;
  - What remedies were offered, if any;
  - An explanation that in the absence of new evidence, you will not continue to correspond with them on the matter and that you regard the complaint as closed;
  - A statement saying that you will monitor any further correspondence for new evidence or areas of Complaint not previously considered, and make a note of your consideration; if further evidence or areas of Complaint are raised, you will assess this information and consider appropriate action;
- 8.9 Where you apply contact restrictions in accordance with Annex 7 (Unacceptable Behaviour) you must:
- Notify your LAA Contract Manager and
  - Add a note into the case notes for the record on the CLA Case Handling System.

## 9. **Referrals to another CLA Provider**

9.1 In the exceptional circumstances where a Client has an open case and the relationship between the Client and CLA Provider has broken down and the case has been closed a transfer to another CLA Provider may be considered where:

- The new CLA Provider has a Contract in the same Category of Law; and
- The Client has reasonable cause to be dissatisfied with the services provided by you.

Such cases must be discussed with your LAA Contract Manager before a referral is made.

9.2 In such circumstances the details of the cause for the relationship breakdown must be shared with the new CLA Provider.

## 10. **Complaints Records and Reporting**

10.1 A central record of every Complaint must be retained in accordance with this Contract and the Quality Standard. For each Complaint, you must record the details specified below and copies of any documentation (usually correspondence) showing how it was Resolved. This will form a "Complaints Log" which as a minimum must contain the following information:

- Complainant's name;
- Internal reference number;
- Name of the Complaint handler;
- Delivery type e.g. letter, e-mail etc.;
- Date Complaint received;
- Brief summary of the Complaint;
- Date Complaint was acknowledged;
- Date full response provided;
- Outcome of the Complaint investigation;
- Action taken;

- Category of Law;
- Complaint category e.g. incorrect or negligent advice, aAdviser manner, slow response time or delay, other access problems, or a Complaint related to a Review as well as multiple problem types;
- Record of any response to unacceptable Client behaviour including unreasonably persistent Complaints, action taken and who took the decision. This should include details of any decision to restrict communications with a Complainant, the result of any review of restriction on contact; and
- Date Complaint closed.

10.2 You should also have a process in place whereby you can review volumes and types of Complaint to ensure that you can eliminate any discrimination and promote diversity.

10.3 Documentation may either be held on the central record or the case file with a cross reference in the central record. We are entitled to access and take copies of this central record, or any/all documents relating to individual Complaints at any time.