

Draft Annex 7 – Unacceptable Behaviour

Definitions and Interpretations

1. The purpose of this Annex is to provide a clear framework for all CLA Providers so that:
 - Unacceptable behaviour is handled fairly, proportionately and consistently across the CLA service;
 - The roles and responsibilities of all CLA Staff are clear and, with associated training and support, all CLA Staff (as defined in Annex 6 (Complaints)) will be able to understand how to apply and comply with the requirements of this Annex.
2. It should be used in conjunction with the:
 - CLA Complaints Policy
 - CLA Providers' own complaints policies and guidance; and
 - CLA Providers' own Equality & Diversity policies.
3. Where there is any conflict between this Annex and CLA Providers' own policies, procedures or guidance, this Annex will always take precedence in relation to the delivery of the CLA services.

Equality and diversity considerations

4. There may be circumstances whereby the CLA User (as defined in Annex 6) or Client is a vulnerable person or has a disability that can make it difficult for them to express themselves or communicate clearly and/or appropriately.
5. Extra care should be taken to ensure that, where behaviour is considered to be unreasonable or unacceptable, CLA Staff should explore whether there may be any such underlying reasons and consider whether reasonable adjustments may be appropriate.
6. Wherever possible, consideration will be given to the individual needs and circumstances of the CLA User or Client and CLA Staff before deciding on how best to manage the situation.

ROLES AND RESPONSIBILITIES

7. All CLA Staff share the responsibility for meeting the commitments contained in this Annex.

CLA Staff

8. 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 as and when required.

CLA Providers

9. CLA Providers will:
 - Ensure that CLA Staff understand and apply the requirements of this Annex 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 Provider's own organisation and the LAA.

LAA

10. We will:
 - Maintain and review the requirements of this Annex, at least annually;
 - Ensure that any new CLA Providers are able to deliver this policy;
 - 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.

DEFINING UNACCEPTABLE BEHAVIOUR

11. When a Client first contacts the CLA, they will be advised, both by the Operator Service and by the CLA Provider, of what the service considers to be reasonable behaviour and what actions may be taken where that standard of behaviour is not met.

12. What is deemed to be unacceptable behaviour will often differ depending upon the individual(s) involved and their particular circumstances. Examples of unacceptable behaviour includes the following:

<p>Aggressive, abusive, discriminatory or offensive language or behaviour</p>	<ul style="list-style-type: none"> • Swearing; • Inappropriate comments about gender, sexuality, race, culture or religion or any other view that could be considered to be discriminatory; • Rudeness, including derogatory remarks; • Or other behaviour or language (written or spoken) that may cause staff to feel distressed, threatened or abused.
<p>Unreasonable demands that affect the level of service that is provided to them or to other CLA Users and Clients.</p> <p>The method or tone in which these communications are received may not in itself be unreasonable. It is the persistent behaviour in continuing to do so that is considered to be unacceptable.</p>	<ul style="list-style-type: none"> • Demanding responses within an unreasonable timescale; • Repeatedly contacting or insisting on speaking to a particular member of staff who is not directly dealing with the matter or not available; • Excessive telephone calls, emails or letters or documentation; • Sending duplicate correspondence requiring a response to more than one member of staff; • Persistent refusal to accept explanations; • Persistently disagreeing with the action or decision taken in relation to their case; • Continuing to make repeat contacts without presenting new and relevant information.
<p>Threatening behaviour or any behaviour that may endanger, or be seen to endanger, any CLA Staff.</p> <p>Danger to CLA Staff will include any actions that may put CLA Staff's physical, mental, psychological or emotional</p>	<ul style="list-style-type: none"> • Threats of physical violence; • Stalking and harassment, including via social media and other online methods of communication; • Comments of a personal nature directed at an individual member of CLA Staff.

health and wellbeing at risk.	
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13. Behaviour may be considered to be unacceptable due to:

- One or two significant incidents of unacceptable behaviour; or
- Unreasonably persistent behaviour which may be numerous incidents or an accumulation of incidents over a prolonged period of time that can be time consuming to manage and interferes with a full consideration of an underlying complaint.

Extreme Behaviour

14. Some behaviour may be so extreme that it threatens the immediate safety and welfare of the CLA Staff.
15. We take any threat to CLA Staff very seriously. In such circumstances, the matter must be immediately reported to a line manager or Supervisor, who will work with the CLA Staff member to ensure that all necessary steps are taken to maintain their wellbeing.
16. We may also consider other appropriate and proportionate options, for example reporting the matter to the police or taking legal action.

RESPONDING TO UNACCEPTABLE BEHAVIOUR

General Principles

17. Any action taken must be proportionate to the nature and frequency of the unacceptable behaviour, taking into account the personal circumstances of the CLA User or Client including the possibility that their behaviour may be linked to a disability.
18. Where the behaviour of a CLA User (as defined in Annex 6 (Complaints)) or Client is considered to be unacceptable they must be informed at the time or as soon as practicably possible. A clear explanation must be given of:

- Why the behaviour is considered to be unacceptable, giving clear examples; and
- How their behaviour needs to be adapted.

19. If the unacceptable behaviour continues, action may be taken to restrict contact.

Telephone calls

20. Where unacceptable behaviour occurs CLA Staff must calmly confirm this to the CLA User or Client and give them the opportunity to adapt their behaviour.
21. Where the behaviour continues and CLA Staff have issued a warning they may place the individual on hold or end the call.
22. Where a call is terminated by a member of CLA Staff, this decision must be recorded including reasons for why the decision was taken. The matter should also be reported to the CLA Staff member's immediate manager in order to ensure fairness and consistency of approach.
23. You should offer to communicate with the CLA User or Client at an alternative time or via another means of communication.

Emails and letters

24. Where unacceptable behaviour occurs via emails, letters or other forms of written communication, the CLA User or Client must be warned that the content of their communication is considered to be unacceptable, offensive or unreasonably persistent.
25. Where there is a legitimate request for information or advice contained within a communication containing unacceptable or unreasonable content, irrespective of the language used, the information should still be provided.
26. Where no legitimate information is being requested, CLA Staff do not have to respond in detail to an email or letter that is abusive or unreasonable.
27. It is appreciated that some staff may feel uncomfortable responding to abusive emails and letters. If this is the case, they should refer the matter to their Supervisor who may take matters forward on their behalf.

Follow up Communications once a case has been closed

28. Where any ongoing communication relates to a case that has been closed by a CLA Provider or a Complaint that has been Resolved or fully investigated you may decide to inform the CLA User or Client that future correspondence will be read and placed on the file but not acknowledged, unless it contains material new information.
29. A designated member of CLA Staff should be identified to manage any future correspondence.

RESTRICTING CONTACT

30. In the unusual situation where a CLA User or Client's behaviour continues to be considered to be unacceptable you may consider implementing one of the following options:
 - Offering a restricted time slot for necessary calls;
 - Refusing to register and process further contacts or complaints about the same matter;
 - Placing a limit on the number and duration of contacts with CLA Staff per week or month;
 - Limiting the CLA User or Client to one medium of contact (telephone, letter, email etc.); and;
 - Requiring the CLA User or Client to communicate only with one named member of staff.
31. When choosing how to respond to unacceptable behaviour you must have regard to the specific needs of the CLA User or Client.

Process for decision to apply restricted contact

32. You must have a clear process for applying restrictions to contact within your organisation. As a minimum this must include details of:
 - When and how you will apply restricted contact;

- Named individuals within your organisation who will be authorised to sign off such a decision. We would expect this to be a senior member of staff within your organisation and your LAA Contract Manager must be notified of this decision;
33. Where restricted access is being considered you must ensure that the CLA User or Client has previously been warned that their behaviour is unacceptable and that if the behaviour continues, contact restrictions may be applied;
34. The decision to apply any restriction on contact should be based on an assessment of the individual circumstances of the CLA User or Client, including any reasonable adjustments they require, and their case.
35. It should only be considered where CLA Staff are satisfied that there is no other reasonable recourse to address the unacceptable behaviour. Care must be taken to ensure that you continue to meet your equalities duties and the CLA User or Client can access the service in some way, e.g. giving the CLA User or Client a specific access number or contact name for a specific individual or restricting the times that the CLA User can make contact.
36. When a decision is taken to apply restricted contact, you must inform:
- All CLA Staff within your own organisation and/or the CLA Operator Service
 - Your LAA Contract Manager
 - The CLA User or Client in writing, explaining:
 - why the decision has been taken;
 - what it means for his or her contacts;
 - how long any restrictions will last; and
 - details of how the CLA User or Client can have the restrictions reviewed.
37. If the CLA User or Client does not comply with the restrictions that have been put in place, the member of CLA Staff should respond by confirming that the restricted contact is in place and remind the CLA User or Client of the ways in which they can access the service.
38. Further contact from the CLA User or Client must still be checked to pick up any significant new information.

REVIEWS

39. Where restricted contact has been applied the CLA User or Client must be able to request a review of that decision.
40. Where a review is requested, this should take place no later than **three months** from the point the review was requested or **six month** from the date when the restriction was originally applied.
41. When conducting a review factors that should be considered include:
 - the tone of any recent correspondence; and
 - whether the CLA User or Client has an open CLA case or Complaint
42. After conducting the review, restrictions should be lifted unless there are strong grounds to extend them.
43. The CLA User or Client should be informed of the outcome of the review. If restrictions are to continue, they should be told what the reasons are for this and given the date when the restrictions will next be reviewed.
44. A CLA User or Client may appeal a decision to restrict contact. Such an appeal should be raised in accordance with Annex 6 (Complaints) and, if exhausted, referred to the LAA Contract Manager in the first instance.

TERMINATING CASES AND REFERRALS TO OTHER CLA PROVIDERS

45. When transferring CLA Clients through to a CLA Provider from the Operator Service or when speaking to a Client for the first time, CLA Staff should take steps to make them aware that they will not usually be transferred through to a new provider except in exceptional circumstances.
42. In exceptional circumstances where a CLA Client has an open case and the unacceptable behaviour is extreme or does not improve following a clear warning, CLA Providers may be justified in withdrawing a determination and follow the process for terminating the case on the basis that the CLA Client will no longer meet the Merits Test, in particular regulation 11(6) of the Civil Legal Aid (Merits Criteria) regulations 2013, which states:

"(6) An individual or legal person may qualify for civil legal services only if the Director is satisfied that it would be reasonable to provide those services in the light of the conduct of that individual or legal person in connection with—

(a) any civil legal services made available under Part 1 of the Act;

(b) any application for civil legal services under Part 1 of the Act; or

(c) any civil proceedings for resolving disputes about legal rights or duties."

43. Cases will only be terminated where the CLA Provider and the LAA:

- Have followed this policy in handling the unacceptable behaviour and ensured the CLA Client has been treated in a way that is fair, just and proportionate
- Subject to and in line with Data Protection Legislation, have kept a record of the issues relevant to this decision, including examples of the behaviour and all correspondence
- Can demonstrate that all attempts to continue to ensure the CLA Client's access to services have been taken and that continuing to do so would place a disproportionate burden on the services.

44. Where a CLA Provider determines that a case should be terminated, they must discuss this decision, and any concerns they may have about it, with their LAA Contract Manager.

45. In such circumstances the case should not usually be transferred to another CLA Provider and a new case should not be started or the same case re-opened unless, it is a new legal problem which is separate or distinct.

46. There are, however, exceptions under which a CLA Provider may commence a case for the same legal problem. Paragraph 5.25 of the Contract Specification allows for such exceptions where:

- A period of at least 6 months has elapsed since the claim was submitted; **or**
- there has been a material development or change in the Client's instructions **and;**

save where the case was concluded under Paragraph 5.47(b), a period of at least 3 months has elapsed since the claim was submitted.

47. In addition, regulation 23 (4) of Civil Legal Aid (Procedure) Regulations 2012 sets out that a new case relating to the same matter may be opened where the CLA Client has reasonable cause to be dissatisfied with the services provided under the initial determination.
48. If those circumstances exist then the new CLA Provider is made aware that greater justification will be required and the obligation is on the new CLA Provider to:
- confirm the reasons for the termination of an existing retainer (the retainer being formed at the point instructions are received and accepted by the first CLA Provider);
 - obtain the relevant file and then (unless the case is urgent) assess whether the requirements of the Merits Regulations, Financial Regulations and the Procedure Regulations have been complied with in order to allow the new CLA Provider to continue to take the case forward
49. If a Client remains unhappy with the LAA's policy not to transfer in the absence of a breakdown in relations or dissatisfaction of service then they should be asked to refer their concerns by e-mail to cla.escalated.complaints@legalaid.gsi.gov.uk