

**Civil Contracts Consultative Group (CCCG)
Minutes**

14 July 2021

V2

Date:	Wednesday, 14 th July 2021, 3pm
Where	Video conference
Chair	Richard Miller – Head of Justice [The Law Society]
Minutes	Grazia Trivedi – Service Development [LAA]
Present	<p>Anastasia Kostaki – Bar Council Avrom Sherr – Peer Review Bob Baker – Association of Cost Lawyers Carol Storer – Access to Justice Committee [The Law Society] Chris Minnoch - LAPG Chris Walton – Shelter Deborah McLaughlin - Civil Operations [LAA] Eleanor Druker – Service Development [LAA] Ellie Cronin – The Law Society Fraser Clubbe - Performance/Planning and Risk [LAA] Helen Keith - Exceptional Complex Cases Team [LAA] James Wrigley - Civil and Family Legal Aid [MoJ] Jamie Niven-Phillips – Association of Lawyers for Children Jill Waring – National Contract Manager [LAA] Kate Pasfield – Legal Aid Practitioners Group Kate Tyrell – Mental Health Lawyers Association Laura Wensley -Service Development and Central Commissioning [LAA] Laura Fernley – Contract Manager [LAA] Louise Withington – Business Support [LAA] Lucy Swinnerton - Statistician [LAA] Nimrod Ben Cnaan - Law Centres Network Paul Tyrer – Civil Case Mgmt. [LAA] Samantha Milton - Exceptional and Complex Cases [LAA] Simon Cliff – The Law Society Tom Fitzgerald – Customer Service [LAA] Tim Collieu – Central Commissioning [LAA] Vicky Ling – Resolution Vicky Fewkes - Housing Law Practitioner Assoc.</p>
Apologies	<p>Kathy Hartup – Communications [LAA] Steve Starkey – Civil Operations [LAA]</p>

Chair welcomed everyone.

1. Minutes of the May meeting were approved and would be published.

Action 1 [Mar]. Modelling supporting the interim payments to housing providers. Finance colleagues did not have a robust analysis that could be shared. This action was therefore closed.

Action 2 [Mar] Information on inactive providers. The Contract Management and Assurance [CMA] would produce a report for the September meeting **Action 1 [Mar]**

2. **Commissioning Update**

Commissioning data. A report had been shared in advance. T Collieu proposed that from the September meeting the report would just show the position as at April of each year and then the individual months for the current year. This would allow for the current trends to still be identified along with the overall context. As the data in the spreadsheet was Management Information rather than official stats it could be subject to variants in time.

2018 Contract Schedules Upload of the schedule for the 4th year of the 2018 civil contract, to come into effect on 1st September, would commence shortly. Allocation of matter starts would be made on the same basis as previous years so providers would receive the minimum amount they bid for when they tendered for the contract in 2017 unless they had used their self-grant powers to increase the allocation by up to 50% thus they would receive the higher amount. An article on Gov.uk would announce completion of the upload and providers would be contacted individually when their new schedule was available to view. Providers would need to use their new schedule reference when reporting the first month of work under the new schedule. As this would not be until October, reminders would be issued nearer the time. Providers were to contact their contract manager in the first instance if they had any queries about the upload or the schedule. T Collieu confirmed that there were no constraints to stop a provider from increasing their allocation of matter starts by up to 50%; a process was available to request further increases via the contract manager.

Education face-to-face services. The tender for the face-to-face contract in Education closed on 20th May. Four contracts had been awarded through the recent procurement process and contracts began on 1 July. Two of those providers would take referrals from the CLA Operator service when advice wasn't provided by the current specialist telephone providers on Thursdays and Fridays.

Housing and Debt Digital Services. On 1 April 2021 twenty-two contracts commenced to deliver digital housing and debt services across twelve procurement areas in England and Wales (Calderdale, City of Kingston upon Hull, Cornwall, Doncaster, East Riding of Yorkshire, Hartlepool, Leicestershire & Rutland, North Hertfordshire, Sandwell, Somerset, Warrington and Halton, and Wirral).

Providers of these services had been contacted to provide some early feedback on how the services had been operating to date, what levels of interest had there been, what had worked well/not well in the first eight weeks of the services being in operation.

All organisations said the service was being delivered in line with the process set out in their delivery plan, with no adjustments being needed.

The level of interest in the services across the board, whilst relatively low, was generally in line with providers' expectations given the services were new to the areas and the impact Covid19 had had on housing work.

Comments on using technology to deliver the service were overwhelmingly positive, both in terms of clients being able to access it and providers being able to deliver an effective service via it.

The feedback was that clients had become more digitally enabled during the pandemic and used to accessing a range of services remotely, whilst providers had also become experienced at providing remote advice and had effective processes in place.

On the whole clients were using their own technology, without support, to access the service.

Organisations in the Procurement Areas with which providers had linked up with were playing an important role in the process; they were the most common means of clients finding out about the service and were frequently making appointments on behalf of clients.

R Miller agreed that in general people had become more digitally competent as a result of the impact of the pandemic, however concerns remained about individuals that still didn't have that capability. N Ben Cnaan pointed out that poverty had an impact on digital access. It was agreed that these issues would be discussed at a meeting with MoJ Legal Support Portfolio policy colleagues two days later.

Housing Possession Court Duty Scheme [HPCDS]. There was currently a gap in provision on the Stafford HPCDS as the provider had withdrawn at the end of June. Through discussions with HMCTS staff based at the court, it appeared cases were not being listed at Stafford due to an inability to observe social distancing and as a result the LAA had taken the decision not to go out to tender until further information on future listing information was known. However, an interim provider had been identified should that situation change; a tender for service would take place as soon as possible once listing recommenced.

HPCDS contracts would be extended to 30 September 2022. Providers were not required to take any action as this extension was within the provisions of the current contract, however the LAA were aware that given the ongoing impact on volumes of cases being listed and heard, some providers may choose to withdraw. Where this was the case the LAA would undertake any required procurement activity.

Specialist Quality Mark [SQM] The current contract to administer the LAA's SQM standard was going to end on 31st March 2022. A Prior Information Notice had been issued and the Gov.uk website updated to inform that tenders would shortly be invited for a contract to deliver these services from 1 April 2022. Market engagement was taking place ahead of the development of the tender.

R Miller said that rep bodies had for a long time been asking the LAA to engage with the market prior to developing a legal aid face-to-face contract that allowed practitioners to be involved. El Druker said that it was difficult to engage with such a large number of providers in any meaningful way therefore the consultative bodies approach was used.

3. LAA Civil Operations Update.

Civil Applications. D McLaughlin and T Fitzgerald went through the highlights of the Civil Applications Operational Performance Slides Pack. In answer to a question T Fitzgerald explained that proceedings under the Domestic Abuse matter type on CCMS were in the majority non-molestation or occupation orders plus, in smaller numbers, Female Genital Mutilation proceedings and Forced Marriage Protection Orders. He explained that when an application or amendment was refused the practitioner usually would submit a legal appeal request through CCMS which triggered

an internal review. If the appeal was successful at the internal review stage, the application would be granted. If it was refused and it could be referred to the Independent Financial Adjudicator, if the issue wasn't related to missing documentation/information, the practitioner would be asked whether he wanted to have the case referred. E Cronin expressed concern about the high number of Domestic Abuse cases that were granted in the internal review stage, thus showing that the initial refusal had been wrong; the nature of these cases was urgent and ought to be granted quickly. If the issue was mainly the lack of information/documentation, then rep bodies should know so that members could be made aware. D McLaughlin said that overall, 60% of applications were rejected because of insufficient information/documentation and the LAA planned to address this issue. Incorrect decisions at the initial stage would be flagged to the case worker's manager and decisions would be taken on how to address the problem. T Fitzgerald would find out the reasons for refusals in Domestic Abuse cases. **Action 2 [July] Closed**

Post meeting note: I have undertaken further analysis of appeals overturned on Internal Review in Domestic Abuse proceedings. These are proceedings which fall under the Domestic Abuse Matter Type within CCMS. The majority of these proceedings will relate to Non-Molestation and/or Occupation Orders, but they may also relate to Forced Marriage Protection Orders, Female Genital Mutilation Orders and Orders under the Protection from Harassment Act 1997. The Internal Review occurs upon receipt of an appeal against a decision to refuse/part-grant funding and will be determined by a caseworker who did not make the initial decision.

Incorrect caseworker decisions accounted for 19% of the appeals granted on Internal Review. Feedback has been provided to caseworkers and trend analysis completed to identify training needs. 81% of the decisions granted on Internal Review followed further information being provided. From September we'll be analysing our return rate data in more detail and working with stakeholders to improve getting it right first time.

Civil Billing P Tyrer talked about the data in the Civil Billing Operational Performance Slides Pack. He also said that there had been a big surge in escape cases applications prior to contingency ending on 21st June, which may cause a slight delay in payments.

He also flagged that in the coming weeks the LAA would contact providers that claimed 100% Payment on Account [POA] for CIS claims that had not yet submitted their final bill. The process and timeframes would be communicated with those firms affected in the weeks ahead.

P Tyrer agreed to find out whether it was possible to share the slides pack externally **Action 3 [July] closed**. Antony Evans [LAA Head of Civil Change] confirmed on the Microsoft Teams Chat function that the pack could be shared by the rep bodies with their members. The Hints and Tips would be published on the training website. Paul agreed to share the information on enhancements **Action 4 [July] Closed**

4. **Exceptional and Complex Cases Team [ECCT]**

H Keith introduced Samantha Milton, formerly Head of the Public Defender Service, who joined as Head of ECCT in April 2021.

Performance. H Keith talked about the ECCT data in the Operational Pack. Emphasis continued to be on the speed of the team's response and the end-to-end target for ECCT applications was showing a consistent pattern of being met. Exceptional Case Funding [ECF] applications, which

from April 2021 excluded urgent cases to enable the team to separately monitor them, showed a 1% increase each month since April 2021 and now stood at 86% against a target of 90%.

Performance on urgent applications remained unchanged. Volumes were low and the 90% target challenging when all three tests - ECF, Means, Merits had to be considered. The few cases that missed the 10 days target did so by 1-2 days. A review of the means process for ECF was planned for September which would help.

Performance on amendments remained below target because the current focus on reducing the oldest dates had an impact on performance stats. On a positive note however there had been a 4-working day improvement in the oldest dates. Looking at the ECCT work in progress, excluding ECF, around 40% was in-scope Immigration work and that was an area where overtime and training of additional resource were implemented.

ECF Family Reunion cases. N Ben Cnaan had sent an example of a case that had been delayed, which turned out to be an early case delayed whilst the team worked through the issues.

Since April 2021, 64 family reunion applications had been received of which 52 were completed and 12 were pending. Of the pending applications, the oldest had been received on 21 May 2021 and the team were waiting for merits information. 7 applications were received in June, and 4 in July.

All but one of the completed cases had been granted. 30 cases were legal help and the rest, which were First Tier Tribunal cases, were granted except one which was subject to a review. An ECF lawyer would be contacting the provider about it.

Draft Guidance had been circulated to the group that had met separately to discuss these cases and, subject to comments, there would be further communication of it. The document drew together the key elements from existing provisions and guidance, including the description of circumstances where difficulties may be experienced - e.g. in gaining signatures, providing evidence or an individual residing abroad who was unable to access digital technology. The intention was to update the Lord Chancellor's Guidance as well.

Court of Protection [CoP] case planning. A sub-group of the Performance Efficiency Team [PET] had identified issues with early handling, before cases reached high cost. As at the previous Friday, applications/amendments in this area stood at day 4, which was good.

The additional issue was on costs limits not just in CoP but other areas of law too. K Pasfield said that practitioners were reporting that costs limits were being refused on nearly every case without reason. H Keith said that guidance was being developed for both caseworkers and providers; the aim was to publish it in September, and it was agreed that a draft would be shared with K Pasfield and the PET working group before release. **Action 5 [July]**

5. Housing Possession Court Duty Scheme

E Druker said that the existing contract would be extended for a year and flagged that there was a risk that some practitioners may choose to give up their contract thus causing gaps in the service in some areas that the LAA would have to fill in the interim.

LAA and MoJ colleagues had been working with the Judicial working group to make changes to the specifications of the HPCDS scheme. The Master of the Rolls working group would be publishing their recommendation soon.

C Minnoch said that the service had already changed since it was first launched in 2010 and rep. bodies were concerned about fixed fees not being reviewed on account of those changes. He asked the LAA if they could help by identifying the differences between 2010 and now as they affected the viability of the contract; the fees structure ought to be reviewed automatically as a result of a change in the service. E Druker stressed that both LAA and MoJ were in agreement with rep bodies on this and were working hard to collate evidence from HPCDS providers to support a request for more money in the governments' spending review. J Wrigley said that although at times it seemed that little or no progress was being made, both Service Development and MoJ policy worked tirelessly to push through proposals to adapt the scheme so it worked better.

6. Covid19 Contingency Arrangements

F Clubbe said that the Covid19 guidance on Gov.UK had been set up at the start of the pandemic and had been gradually updated. The intention now was to reduce the current content down from six pages to one main landing page linking to the Schedule of Changes and three guidance pages. Simplifying the guidance ensured that only the live Covid19 specific measures were set out across these pages with clarity. F Clubbe would find out Management Information on usage of the pages

Action 6 [July] Closed

Post meeting note: Site traffic data confirms that the two pages planned for removal are the least frequently used in the last month with around 200 views each. Remaining content from these pages that remains relevant to COVID will be moved to the other pages and communicated as part of the wider refresh to GOV.UK scheduled for the next week. This will confirm the position for all measures in line with the latest guidance from the UK and Welsh Governments.

Any changes to the guidance would be flagged to providers three weeks before they were set to come into effect. E Cronin said that it was important for practitioners to be able to easily track all the information that had been on the page historically so that any disputes arising during an audit could be resolved. It was agreed that nothing would be lost, and that historic information would be archived. R Miller strongly advocated for the POA measures to be retained or providers would experience a sudden and debilitating cash flow reduction. He also said that once all restrictions were removed it would take time for supervisors to regain the experience required by the standard.

E Druker said that in relation to Inquests, interim billing would continue to be allowed till 31 March 2022 – this was a guidance change rather than contractual. The 80% POA would become permanent as would the 4 times a year payment; the contract would be amended accordingly following a consultation. The 100% POA had had a very low uptake and would be extended for 2 months before a review.

E Druker said that the new contract would need to be considered in the context of the current civil contract and other developments such as the Means Review Test, the Nationality Borders Bill, the recommendations for housing possession and also developments relating to the new Crime contract. The LAA had made a recommendation for the civil contracts to be extended by a further year to September 2023 and were awaiting confirmation.

As the LAA had set out previously, there was no intention of suddenly ending the Covid19 contingency measures such as those covering offices, supervision and remote working thus putting providers in a position of uncertainty. It had become clear that ways of working had changed and

some of those measures ought to be made permanent and included into the current contract where possible.

C Minnoch said that rep bodies appreciated the LAA's efforts to improve the system for providers and understood the reasons for seeking an extension of the contract to 2023, however this meant that new practitioners would not be able to enter the market for 5 years with the exception of Housing and digital delivery. Management Information showed a gradual reduction in capacity as a number of providers left legal aid practise, while demand remained the same, so two additional years without a new intake of service providers could have a serious impact. He wondered whether the LAA would consider targeted commissioning in areas where there were service gaps.

V Ling said that civil rep bodies ought to be kept informed about the discussions taking place on the development of the new crime contract because the Standard Contract ran across both civil and crime and outputs from crime discussions would have an impact on civil as well.

With regards to the temporary Covid19 arrangements and particularly around supervision, V Ling said that a number of Resolution members had been told by their contract manager that they were in breach of contract and would be allowed to continue to work only because of the temporary arrangements. Resolution did not believe that video supervision constituted a breach of contract as it was equivalent to face-to-face. V Ling asked when the temporary arrangements would be lifted and L Wensley said that it wasn't possible to give a specific date yet.

As for the crime discussions, L Wensley said that they were based on the comments/views already received about remote supervision and about finding a balance between what had become a new way of working versus any office presence that was required.

R Miller said that in the past decisions had been taken following discussions with either civil or crime representatives which led to the excluded party having to accept *de facto* decisions without being consulted. So, he felt it was essential that civil representatives be kept in the loop about what was going on in crime. E Druker felt that efforts had always been made to consult fully on contract changes and couldn't think of any example where something agreed in the crime contract had been put in the civil contract without consultation and invited R Miller to follow up with details on that if he wanted to.

E Druker said that the LAA were committed to be transparent, to keep rep bodies informed of their intentions and to give them the opportunity to express their opinions. K Pasfield said that she was the only civil rep at the Crime CCG and that the civil contract had been looked at during the last meeting to check for phraseology, so perhaps there should be a closer collaboration between the two groups. E Druker said that the crime contract was a new contract while the civil contract was an existing one so could only be amended where possible, however the 'direction of travel' was the same for both. K Pasfield felt that the Covid19 arrangements relating to working with clients should stay for the time being. E Druker was working on the digital signature temporary measure to determine whether it could be adopted permanently. The other arrangements in the guidance would be looked at in the same way and rep bodies would be consulted before any decision was taken.

Supervision. Contract Managers [CM] had contacted all providers and put in place an Office Standard Agreements in 95% of offices, covering 98% of supervisor categories across crime and civil. In civil specifically, CMs had recorded the data for each supervisor category per provider and

60% of providers were complying with the contract. 38% of providers were operating under the temporary standards because they were unable to fully comply with supervision requirements.

Offices. Across crime and civil 75% were fully compliant with the contract and so met all the requirements in terms of presence and access for clients.

CMs were still in the process of contacting Mediation providers.

J Waring said that the LAA were aware that practitioners wanted more certainty about what the position would be when the standard agreement was lifted and, crucially, when that was likely to happen. If a practitioner's circumstances had changed or were likely to change since the Standard Agreement, they ought to let their CM know.

V Ling felt that the LAA were taking a policy position that she would not agree with. For instance, Resolution did not agree that if a supervisor was not in the office the provider was in breach of contract as this was not a requirement in the contract itself. Before the pandemic supervisors were not required to be in the office all the time. CMs were currently allowing providers to use the temporary arrangements which allowed remote supervision but when the measures were lifted they would be put in a difficult position where, partly because of a change in working methods and partly because of Covid19, they would not be able to meet. Furthermore, the contract stated that non-compliance due to an epidemic did not constitute a breach of contract.

J Waring understood these concerns and said that the Standard Agreement had been put in place to reassure practitioners that if, for whatever reason, they were not able to fully comply with the Contract due to COVID-19, the LAA would not impose Sanctions under the terms of the contract, whatever the interpretation of its terms were.

E Cronin stressed the point about the discussions taking place on the new crime contract; she said that the outcome of those discussions would have an impact on the civil side in the long run. There would be an overlap between what civil and crime practitioners wanted just as there would be differences between the different categories in civil. There would however also be differences in what civil and crime practitioners wanted so it was crucial to have an input when there was a chance to reach a compromise rather than to be presented with a *fait accompli*.

L Wensley assured rep bodies that the LAA had listened to all the messages and would do their best to complete a very complex task of lining up changes to current and future contracts whilst taking those views into account; she agreed that good communication was key.

N Ben Cnaan suggested that a more centralised approach to communication might be better when the subject was of a sensitive nature, such as non-compliance; it could be difficult for practitioners to have such conversations with their CM, who was in effect their disciplinarian. J Waring understood that some practitioners may be reluctant to risk damaging their relationship with their CM if they were having problems complying with the contract, however it was important that they should be able to talk to someone about them so she suggested that any specific examples be referred to her so that she could address the situation and make improvements. She said that feedback from providers indicated that most of them appreciated the support given by the LAA during the pandemic; they welcomed their CM's calls to ask how they were coping during the

pandemic and to their offer to help to access contingency arrangements if that's what the provider needed.

K Pasfield proposed that the consultative bodies seek civil representatives' views during the forthcoming crime contract consultation.

7. Nationality and Borders Bill

J Wrigley said that the bill had been introduced the previous week and it included a number of measures relating to legal aid. One related to the advice on the National Referral Mechanism for people already in scope for legal aid, one for the non-means tested advice for those who received a priority removal notice; in October this was likely to be amended to also include a clause on legal aid for age assessment appeals. Second reading was going to be the following week and the main debate in Parliament would be in the Autumn. More worked had to be done on fees and how it was going to be implemented; opportunities would arise later on to feed into the process. He offered to take questions out of committee.

8. AOB

- K Pasfield asked for an update on the civil bills' consultation response. J Wrigley said that the response was being drafted and would eventually go to ministers. Once signed off, he would be happy to discuss it before its publication in September.
- R Miller informed the group that Carol Storer was stepping down as Chair of the Access to Justice committee and this meeting would probably be her last one with CCCG. He and everyone present wished to thank her for her substantial contribution over the years

Actions from this meeting			
AP1 [Mar]	Information on inactive providers.	P Enright	23 Aug
AP2 [Jul]	Find out the reasons why so many cases of Domestic Abuse applications were granted at the internal review stage	T Fitzgerald	Closed 21/07/21
AP3 [July]	Find out whether the slides pack could be shared externally	P Tyrer	Closed 21/7/21
AP4 [July]	Share the information on enhancements	P Tyrer	Closed 21/7/21
AP5 [July]	Share the draft guidance on Delegated Functions and Costs Limits with PET's working group <u>Post meeting note.</u> In line with proposed changes to emergency costs limitations the LAA are developing guidance for Providers on the use of delegated functions when applying for a non-standard costs limitation. We will share the draft guidance with PET members before this is shared more widely	H Keith	Closed

AP6 [July]	<p>Find out the MI on usage of Gov.Uk contingency measures pages</p> <p><u>Post meeting note</u>. Site traffic data confirms that the two pages planned for removal are the least frequently used in the last month with around 200 views each. Remaining content from these pages that remains relevant to COVID will be moved to the other pages and communicated as part of the wider refresh to GOV.UK scheduled for the next week. This will confirm the position for all measures in line with the latest guidance from the UK and Welsh Governments</p>	F Clubbe	<p>Closed 29/7/21</p>
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