

Civil Contracts Consultative Group (CCCG) Minutes

16 March 2022

V2

Date:	Wednesday, 16 March 2022, 3pm
Where	Microsoft Teams
Chair	Richard Miller – Head of Justice [The Law Society]
Minutes	Grazia Trivedi – Service Development [LAA]
Present	<p>Adrian Vincent – The Bar Council Anthony Evans - Civil billing [LAA] Avrom Sherr – Peer Review Carol Storer [LAPG] Charlotte Flanders – Association of Cost Lawyers [ACL] Chris Minnoch - Legal Aid Practitioners Group [LAPG] Chilli Reid – Advice UK David Phillips - Service Dev/ Commissioning [LAA] Deborah McLaughlin – Civil Applications and Estates [LAA] Eleanor Druker – Service Development [LAA] Ellie Cronin – The Law Society [TLS] Helen Keith – Exceptional Complex Cases [LAA] Ian Bickley – External Comms [LAA] Janet Land - Contract Mgmt./Assurance [LAA] Jenna Steens - Exceptional Complex Cases [LAA] Jill Waring – Contract Mgmt./Assurance [LAA] Karen Firth – Contract Mgmt./Assurance [LAA] Kathryn Grainger – Cust Serv/Case Mgmt. [LAA] Louise Cowell - High Cost Family Lead [LAA] Mark Bowden - Shelter Nimrod Ben-Cnaan Law Centres Network [LCN] Omiros Nicholas - Mental Health Lawyers Association [MHLA] Simon Cliff - The Law Society [TLS] Tim Collieu – Commissioning [LAA] Tom Fitzgerald – Business Improvement [LAA] Vicky Ling – Resolution Zoe Bantleman – Immigration Law Practitioner Association [ILPA]</p>
Apologies	Paul Tyrer – civil operations [LAA]

Chair welcomed everyone.

1. [Minutes](#) of the January meeting were approved and would be published. Only one action remained open and would be carried over to the next meeting: Action 6 - *Look for data on inactive/low-volume offices for the period prior to lockdown in March 2020 and compare it to now.* **Action 1 [Jan]**

2. LAA Operations update

T Fitzgerald, L Cowell and A Evans talked about the key points in the Case Management Operational Performance slides.

3. Applications Fixer

V Ling explained that Resolution was receiving feedback from members in relation to the applications fixer and when it should be used; they found it difficult to work out whether an application had been refused because of an error or because of a difference of option. She asked the LAA to provide examples of when the fixer should be used, particularly in relation to High Cost Cases [HCC] and historically incomplete HCCs. D McLaughlin agreed that sometimes it wasn't easy to know what option to pick as the LAA had a number of different contact channels – enquiries, fixer, appeals, complaints. Practitioners were advised to use the fixer if they thought the LAA had made an error however in the guidance the scope of the fixer service was outlined in more detail.

[Civil Fixer Guidance \(justice.gov.uk\)](https://www.justice.gov.uk/civil-fixer-guidance)

D McLaughlin agreed to provide some examples to help providers understand when to use it **Action 2 [Mar]**. she also asked the group for specific examples when a practitioner had been told that he should not have used the fixer for a particular query.

T Fitzgerald added that usually queries that came through to the fixer were only rejected when the appeal route was more appropriate, for instance when the practitioner was providing additional information. He said that the case worker should always explain why the fixer wasn't the correct route to be used and give advice on the correct route.

4. LAA Commissioning update.

T Collieu covered the main points in the commissioning report on civil providers and offices. There had been no sharp drops in numbers, just a steady reduction across the board. All Procurement Areas [PA] had services except in housing and debt, where 9 PAs had no provision and 3 HPCDS schemes. An Expression of Interest exercise had launched on 24 February 2022 to secure services in those areas and had closed on 14 March 2022. Responses were now being considered.

Since the last report in January there had been a decrease in the numbers of inactive Immigration offices with 9% of offices not having started work since April 2021. Historic data on the number of offices reporting low volume of work or no work at all would be provided at the May 2022 meeting.

N Ben Cnaan asked whether it was possible to guess the number of providers that would be lost to the service by the time the new civil contract was tendered in 2023. T Collieu said that the market was volatile; for instance provision in some areas of law had been stable over the past few months while in others had been erratic. It was not possible to predict when providers decided to retire or merge offices and such like. He confirmed that there would not be any interim tenders before the main civil contract tender in 2023 except to secure services in PAs where there was no coverage, such as housing.

The Standard Civil Contract had been extended to 30 September 2023 and new schedules would be published at the end of July 2022, circa 6 weeks before the new contract extension commenced.

5. LAA Exceptional and Complex Cases Team [ECCT]

H Keith gave an update on the Backdating Guidance which had been published on Gov.uk under the heading "Other Guidance" <https://www.gov.uk/guidance/funding-and-costs-assessment-for-civil-and-crime-matters#civil>.

A news story published on 24th February 2022 announced that applications for Exceptional Cases Funding [ECF] meant fee inquests could be made on CCMS. Paper applications would be accepted until 25 March 2022. Since 24th February 2022, 31 new applications had been received, 14 of which had been submitted on CCMS. The inquest legal help waver template would be updated, and the provider pack tweaked to explain.

Since the last CCCG the ECC team had been processing prior authority requests by availing themselves of the expertise of the Cardiff team. This pilot would be reviewed in April 2022 and representative bodies were asked to provide any feedback from providers that had made a request during this time.

H Keith then talked about the key points in the performance pack.

5.1. Parliamentary and Health Service Ombudsman [PHSO] recommendations

Work on the PHSO action plan had progressed. Screening for emergency applications and then internal reviews of emergency refusals was embedded. A deep dive on outliers had recommended that when the LAA administration screened for internal reviews, it automatically set up a document request (as there was no system one at present). Providers promptly supplied the information when requested so this should speed up the decision making by getting appeal information in and ready for when the case was allocated. The deep dive, on a relatively small sample, did not identify any trends concerning decision making or in missing information, so ECCT would look at either repeating a deep dive on a different or bigger sample or doing bespoke quality control.

A guide on how to change a substantive application to an emergency one was almost complete and would be circulated to CCCG for feedback shortly. The key area ECCT were working on at present was setting timeframes for emergency decisions and internal review decisions. The team would soon turn their attention to how they identified an onward substantive application that remained urgent, if the emergency remained refused and how to better handle linked cases.

Finally, ECF had begun work to review the Exceptional Case Funding guides on the Training Platform to make sure the current ones were up to date, to fill in any gaps and to devise a bespoke inquest application guide. Everyone was invited to put forward any suggestions about any areas where further guidance was needed.

Action 3 [Mar]

N Ben Cnaan asked for an update on the compensation that the PHSO had requested be paid to the Law Centre and reported that to date this has not been paid. H Keith said that this was a separate recommendation that was being dealt with by a different department at the LAA. H Keith agreed to find out what was happening and liaise with N Ben Cnaan out of committee.

6. Audit and assurance activities

R Miller said that practitioners feedback indicated that Contract Managers [CMs] approach to review meetings wasn't consistent; they varied from informal and relaxed to formal and stressful. E Cronin suggested that training for CMs and an online session for practitioners with a CM present would help to reach an agreed approach for all the different meetings. She also suggested that guidance similar to that used by CMs be made available to practitioners to explain what the objective of each review meeting was and how it was going to operate. K Firth said that the LAA strived to improve/maintain consistency; however there were variables that influenced the way meetings were conducted, for instance the number of categories of law the provider practised, how many offices they were working from, potential areas of risk highlighted by Management Information, issues with compliance that had come to light at previous meetings. A list of all the different assurance activities was published on [Gov.uk](https://www.gov.uk).

J Waring agreed that training would be a good way forward and would work with representative bodies to produce a useful programme. She also suggested that representative bodies meet with CMs to discuss their approach to reviews. Another helpful step would be for some anonymised examples of providers that had issues with a particular visit to be sent to the LAA. Practitioners were entitled to ask/challenge a CM about why a review was being conducted in a certain way or why they had been asked to produce certain documentation. Representative bodies said that:

- CMs wished to check different aspects within a category of law, they may ask to see a large number of files, causing providers concern and unpaid work.
- Some degree of proportionality had to be considered as to what was reasonable to ask for in the absence of any genuine, evidenced concern that something was wrong.
- CMs asked practitioners to self-review a number of files ahead of a visit so that they could review a sample of those during the visit. This put a lot of pressure on resources.
- Practitioners didn't voice their concerns to the CM because they felt that the request was non-negotiable. The LAA needed to make it clear that such requests were part of a discussion rather than an order.
- Were these requests proportionate to the level of assurance that was sought.
- A pro-forma emailed to the firm prior to the CM visit laying out the type of forthcoming review and its objectives would be helpful.
- Because in some cases communication with CMs was entirely conducted by email, it became difficult for the practitioner to work out when the process had started and when it would end, what stage of the process the practitioner was at, what actions they were asked to take.
- Systemisation of the process would help.
- A provider had received notice of a Peer Review to be carried out at the same time as the annual audit, which could be very problematic

J Waring explained that CMs did not check every part of the contract and guidance but did pick up on recurring errors that were flagged during core testing. Numerous errors were frequently made when billing hourly rates and CMs had to carry out a basic level of assurance by checking a larger number of files in some cases. Different firms had their own preference as to how the assurance process was conducted so it was important for CMs to have a conversation with providers about the most appropriate approach. Further steps had been taken to co-ordinate Peer review and Contract Management work, however at times it may not be possible to postpone a Peer review, for example if it was a second review following an initial rating of 4.

It was agreed that guidance/training would be helpful, with a message about the assurance process being a partnership between CM and practitioner and about having discussions with CMs if any part of the assurance process became an unreasonable burden.

J Waring would start work on the training module/guidance **Action 4 [March]**; representative bodies would send her feedback on specific issues arising from assurance and audit activities **Action 5 [Mar]**. A meeting would be set up with representative bodies to discuss the issue and providers feedback **Action 6 [Mar]**

A Sherr said that the new Peer Review Process document had been published in November 2021 and it included a link to the Quality Guides. He said that Peer Review should be referred to as Assurance rather than Audit. The LAA would correct the wording when a new edition was published.

7. Client and Cost Management System [CCMS]

J Lockett said that work was ongoing to modernise and support the stability of the system; extra resource was going to be recruited to test it, to plan for improvements and to help the system recover when it failed. Two major upgrades were being developed: a system Migration and the upcoming Means Test Review policy changes subject to the outcome of the current consultation. The Apply application was currently available for only a few matter types but work was ongoing to add more; the complexity of civil legal aid and efforts to make the process as simple and easy as possible affected speed of delivery.

Following the major upgrade in January to all billing functionality, users had incurred issues when trying to submit large bills line-by-line, slowness, work not saving, freezing screens. The digital team were working on a long-term solution to all these issues; for one ongoing issue the civil management team had introduced a temporary workaround. Most large firms used .xml bulk file upload to submit large bills, so a relatively small number of users were affected. Smaller issues were being resolved week by week and new ones were dealt

with in order of severity. A minor upgrade would be rolled out later in the year to the means and merits billing that would allow saving line-by-line billing.

C Flanders said that ACL members had been reporting issues with billing both in terms of bulk upload of .xml files and line-by-line entry direct onto CCMS. The upgrade had caused users to spend more time submitting bills either because whole chunks of work had been lost and had to be redone or because they had to keep saving the work. When a user wished to amend some of the work, it didn't come back in any discernible order, so it was difficult to find what they wanted. Also, .xml uploads were sometimes rejected even though costs had been approved previously. Summary-level claims from a single large provider had been continually rejected; they had over 30 higher value claims, that would have previously been court assessed, stuck in the system because they kept being rejected; providers were not getting paid within a reasonable time. The problem had been reported to the LAA, but no information or tangible response had been received; practitioners needed to know what was being done about the issues and what contingency arrangements were in place, for instance permission to submit a paper claim. A Evans agreed that it was unacceptable for bills to go unpaid for weeks and would contact C Flanders to arrange a meeting. **Action 7 [Mar]**

8. Strategic risks: discussion about areas such as assuring quality and market stability to explore potential mitigations from an operational (not policy) perspective.

D Phillips said that CCCG's agendas were about things that had happened or were happening and suggested that it might be helpful to try a more forward-looking approach. He gave some illustrative examples including a discussion about market stability, a joint campaign to attract people from different backgrounds to legal aid work and sharing intelligence about where best to focus quality assessment. He suggested this section on the agenda could be informal and non-attributable to encourage open dialogue if members felt that appropriate.

The following views were voiced:

- Pay wasn't good enough to attract people into legal aid and it was difficult to retain staff however, this was a reality outside the operational remit therefore the focus of discussions ought to be what could be done to alleviate costs to solicitors and what could be done to satisfy quality standards while keeping costs down.
- V Ling said that she had been working with a charity called Access Social Care on a report examining the pathway into Community Care [CC] law; they looked at ways in which the processes of legal aid could be improved, ways in which that work could be made more viable. Some of the principles found in this area of law might be applicable to others as well. It was agreed that the report would be of interest to CCCG and V Ling would share it with the group when available. **Action 8 [Mar]**
- There was a need to look at sustainability within the context of supervision requirements and supervisor standards and case mix requirements, which were very out of date. These practical adjustments would make it easier for providers to satisfy the contract requirements and they would not incur the cost of getting supervisors in.
- There was a need for greater tolerance towards providers trying to work out a way forward in a difficult environment, especially retaining and recruiting staff.
- A way to promote legal aid work would be to have a presence in universities and student law fairs to get young people interested.

D Phillips and R Miller agreed to discuss and agree format and themes and circulate proposals ahead of the next formal meeting.

9. AOB

- Covid19 Contingency measures. Resolution had responded to David Thomas' email summarising the current position; in particular members asked for clarification on legal aid forms. J Waring said that all the feedback would be considered and would be shared with CCCG; a response would be published as soon as possible. **Action 9 [Mar]** She asked representative bodies not to share the content of the email until the wording had been confirmed.
- Immigration contract There was no new information available at this stage on the extension of the Immigration contract or the MoJ consultation that was supposed to take place in the spring.

- HPCDS consultation no information was available on the outcome of that consultation or a date for the retender.

Actions from this meeting		Owner	Deadline
AP1[Jan]	Look for data on inactive/low-volume offices for the period prior to lockdown in March 2020 and compare it to now	T Collieu	Closed
AP2 [Mar]	Provide some samples of when the Application fixer should be used	D McLaughlin	Closed
AP 3 [Mar]	Forward views on areas that should be covered in the review of the Exceptional Case Funding guides	Representative Bodies	Closed
AP4 [Mar]	Prepare a training module on audit and assurance	J Waring	Closed
AP 5 [Mar]	Provide specific examples of issues arising from a CM review meeting	Representative bodies	Closed
AP 6 [Mar]	Set up a meeting with representative bodies to discuss the issues of audits and assurance	J Waring	Closed
AP 7 [Mar]	Contact C Flanders to arrange a meeting	A Evans	Closed
AP 8 [Mar]	Share the report from the Access Social Care charity with CCCG	V Ling	Closed
AP9 [Mar]	Share with CCCG the feedback received in response to D Thomas' email on Covid19 Contingency measures	D Thomas	Closed-28/03/22