

**Civil Contracts Consultative Group (CCCG) 6 December 2023
V2**

Date:	Wednesday, 13 March 2024, 3pm
Where	Hybrid
Chair	David Phillips – Service Development and Commissioning [LAA]
Minutes	Grazia Trivedi – Service Development and Commissioning [LAA]
Present	<p>Ann Henderson – Association of Cost Lawyers [ACL] Avrom Sherr – Peer Review Bernadette Cuddy – Commissioning [LAA] Chris Walton – Shelter Chris Minnoch – Legal Aid Practitioners Group [LAPG] Deborah McLaughlin – Civil Applications [LAA] Eleanor Druker – Service Development [LAA] Ellie Cronin – The Law Society [TLS] Eve McNally - Stakeholder engagement [LAA] Helen Keith – Exceptional and Complex Cases [LAA] Hilary Tabita – CEO office [LAA] Jill Waring – Contract Mgmt./Assurance [LAA] Karen Firth – Area Contract Manger [LAA] Karl Ford – Area Contract Manager [LAA] Kate Pasfield – Legal Aid Practitioners Group [LAPG] Kathryn Grainger – Process Efficiency Team [PET] Lauren Mallon – Commissioning [LAA] Llywelyn Charles – Service Development [LAA] Louise Cowell –High-Cost Family [LAA] Madeleine VanOss – Means Test Review [MoJ] Niamh Fagan – Immigration Law Practitioners Association [ILPA] Nilima Ali – Policy and Strategy [MoJ] Nicholas Omiros – Mental Health Lawyers Association [MHLA] Richard Miller – The Law Society [TLS] Robert Damiao – Civil Billing [LAA] Rowan O’Neil – Bar Council Simon Cliff – The Law Society [TLS] Tim Collieu – Commissioning [LAA] Tom Fitzgerald – Civil Applications [LAA] Vicky Fewkes – Housing Law Practitioners Association [HLPA] Vicky Ling – Resolution</p>
Apologies	<p>Nimrod Ben-Cnaan - Law Centres Network [LCN] Carol Storer – [Access to Justice] Chilli Reid – [Advice UK] Zoe Bentleman – [ILPA] Bob Baker – [ACL]</p>

D Phillips welcomed everyone.

1. [Minutes](#) of the December 2023 meeting were approved and would be published. All actions had been completed and closed except:

Actions 2 - Most common reasons for an application to be refused based on evidential requirements to be covered by T Fitzgerald under item 2.1.

Action 7 - Share an engagement plan on MTR with representative bodies to be covered by M VanOss under item 5.

Action 10 – Provide information in the Operational Pack on High Profile cases to be covered by H Keith under item 2.4.

2. LAA Civil Operations update

- 2.1 **Civil applications:** T Fitzgerald had included data on the most common reasons for an application to be refused on evidence on slide 18 of the Case Management Operational Performance Pack.

He agreed that the data provided didn't give an accurate indication of what the reasons were and agreed to provide a more detailed report going forward. **Action 1 [March]**

E Cronin explained that if a clear reason was given for a client's application being refused the quality of applications would improve and be less likely to be refused.

Representative bodies' members were reporting that more applications were being refused based on lack of evidence that met the regulatory requirements and were concerned that there may have been a change in approach by case workers when deciding whether or not the evidence met the correct threshold to show injury or harm consistent with domestic abuse. Was this because of the wording of the evidence in the application, or the way the guidance was written/interpreted based on the regulations or was it the regulations themselves? T Fitzgerald would check whether case workers had changed their approach and also check for consistency in approach to decision making. **Action 2 [Mar]**

E Druker had looked into this matter when it was raised at the Process Efficiency Team [PET] and had flagged it to policy colleagues in MoJ. She said that a more detailed analysis of the issues that caused difficulties would help to understand whether regulations needed to be amended. It was agreed that one of the main reasons an application was refused based on evidence was the letter supplied by support agencies such as GPs; they often discarded the template provided and wrote their own letter which failed to give the evidence as required by regulations.

V Ling said that victims of domestic abuse and their perpetrators were often patients of the same GP who thus felt that they had a conflict of interest; for this reason, they preferred to write their own letter and not the recommended template. E Druker explained that the matter had been raised with the British Medical Association in the past and the letter template amended; she would raise this again with policy colleagues **Action 3 [Mar]**

LAPG's members flagged that the Agency were perceived as not believing that a client was the victim of domestic abuse and were using that reason as a way to getting legal aid funding so it was important that case workers explain in detail why the application had been

refused based on the evidence. Consistency in the determination of an application was also questioned: for instance, two identical applications had been submitted but one was refused while the other was accepted.

K Pasfield offered to raise the matter with LAPG advisory committee members to find applications that had been accepted in the past and match them to similar cases that had been refused more recently and share with E Druker **Action 4 [Mar]** E Druker also offered to share some of examples of refusals showing the reasoning behind those decisions **Action 5 [Mar]**.

V Ling asked whether it could be explained to GPs that their letters would not be used in court as evidence against the perpetrator. In order to achieve a just outcome for the client, the LAA, practitioners and support agencies needed to do their best to minimise administrative barriers. Although the smallest proportion of clients may try to fabricate evidence of domestic abuse, the vast majority was vulnerable and desperately needed the help of legal aid. Regulations ought to be revisited to perhaps say: the client is 'likely to be' a victim of domestic abuse rather than 'is'.

It was agreed that once the evidence from the LAA Applications team [AP1 and AP2] LAPG [AP4] and the LAA Service Development team [AP5] was collated and reviewed, a proposal would be presented to policy colleagues to plan a way forward **AP6 [Mar]**

- 2.2 High-Cost Family.** L Cowell talked about the main points in the Case Management Operational Performance Pack and then announced that the Agency would be doing some tutorials for providers to walk them through how to submit the 'ideal' case plan to ensure a first-time agreement. G Trivedi would send out the links to these and other events for distribution to members [see below]. Representative bodies would share the links with their members. **AP7 [Mar]**

[#HelpUsSayYes Tutorial: Civil high cost family | Eventbrite](#)

[#HUSY clinic: High cost family: 24 April 2024 | Eventbrite](#)

[Civil high cost family: Care case fee scheme 2 May | Eventbrite](#)

- 2.2 Billing.** R Damiao talked about the main points in the Performance Pack which included a slide on the inactive cases review [slide 77].

There were approximately 4% of responses to the inactive cases exercise where providers informed LAA they would not be submitting a bill on the case in question. R Damiao said that even though the intention of the inactive cases exercise was not to make recoupments, it was important, as stewards of the public fund, that the LAA balanced each case and close it down where providers inform the agency that no bill would be forthcoming. The exercise may have prompted providers into taking billing action, which was a positive, so proper consideration would be given about cause and effect and how the agency managed/communicated the mechanism in the future. A deeper analysis of all the data and next steps would be looked at by PET once remaining responses from the exercise had been received. R Damiao would share the results of the final analysis at the next CCCG in June **AP8 [Mar]**

- 2.3 Exceptional Complex Cases Team [ECCT] update.** H Keith talked about the main points in the Case Management Operations Report and said that in future packs some narrative would be provided in relation to appeals and information about other management measures.

High Profile Cases. The Standard Operating Process [SOP] on high profile cases would be published on Gov.UK as soon as possible. Action 9 [Mar] closed.

Post meeting note:

The HP SOP is now on gov.uk

[High Profile cases - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

It has been located on this page, since it relates to all civil legal aid applications.

[Civil legal aid application forms - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

In relation to volumes there were 6 cases in December; 7 in January; 9 in February; 6 to date in March, mainly Claims Against Public Authorities and Public Law. Each case was assessed on its own merits in relation to the applicable funding criteria and, because of the low volume there were no identifiable trends emerging.

C Minnoch asked about the nature of external legal advice that was sought by the Agency on high profile cases and in what way it influenced the Agency's decision making. H Keith said that legal advice could be obtained from the Government Legal Department lawyers in any legal aid matter, whether high profile or not. Any information was ringfenced because of the confidentiality. The decision-making rested with the LAA caseworker. The high-profile nature of the case was not the reason for seeking external legal advice, it was to ensure consistency of application of the statutory framework and regulations e.g. with clarity of what was in scope or excluded from mainstream legal aid.

1. **LAA Commissioning update.**
- 3.1 **Civil tender.** L Mallon updated CCCG on the current Civil Contract Tender 2024. Representative bodies had flagged that new applicants were experiencing difficulties understanding the tender process, however the guidance provided contained all the information necessary to complete the tender. The verification process was ongoing and would continue until the end of August 2024 with contracts awarded from 1 September 2024. The second civil 24 tender would launch on 18 March 2024. L Mallon explained that the LAA had launched this additional tender to reduce barriers to entry (in line with commitments in the initial tender) to ensure that firms meeting the quality requirements were in place to offer legal aid funded services across all categories of law. For example, there had been anecdotal evidence that some firms had erroneously overlooked the need to bid so the new tender would allow that to be rectified. The agency planned to also award contracts for this second tender from 1 September 2024, but a specific date could not be confirmed due to the current unknown volume of applications and verification process.
- 3.2 **Crime tender.** The tender would launch in the latter part of 2024 and the Agency planned to complete verification by May/June 2025 to allow crime rotas to be prepared. In line with the recommendation in the Independent Review of Criminal Legal Aid [CLAIR] the Agency had reviewed the contract in terms of removing artificial barriers to entry, enabling more innovation, and reducing the costs of doing business with the Agency. Headline Intentions would be published in the next couple of months.

Any procurement activity started before the new Procurement Act came into force in October 2024 would be subject to the current process. The Agency expected to launch the crime contract before then. The operation of the Procurement Act included the creation by Cabinet Office of a central digital platform to store for basic information so that organisations would not have to repeat the process every time they bid for a government

contract. Cabinet Office intended that this information would be automatically shared with “eSenders” (Jaggaer/Bravo) which meant that firms would not have to enter the data twice.

- 3.3 Immigration and Asylum update.** E Druker had emailed CCCG prior to the meeting to answer queries concerning immigration. She suggested that if anyone wanted further information in relation to direct applicants and Exceptional Case Funding they should contact the immigration legal aid policy team: Fray-Mahony.Jobshare@justice.gov.uk and Alys.Cundy-Hengrung@justice.gov.uk

In response to a question D Phillips said that with respect to the Detained Duty Advice Service [DDAS] it was explicitly left to the professional judgment of providers as to whether face-to-face or remote provision was appropriate for a particular client. The LAA continued to feed operational intelligence to MoJ colleagues in order to help inform policy development.

- 3.4 Contract Management and Assurance Immigration** K Firth had emailed a written update before the meeting. She explained that the decision to conduct the annual file review for all immigration providers in the first 6 months of 24/25 didn't mean that an additional audit had been put in place but that the timetable had been adjusted and brought forward. These audits would focus in particular on risk management and errors on claims. The error rates in immigration were so high that it had not been feasible to adopt a more targeted approach; firms where errors were found would be subject to additional assurance activity. Everyone agreed that the system in immigration was very complex and led to a high volume of errors. V Fewkes said that her firm had passed an audit successfully in July 2023 but was now facing the prospect of another audit before the summer which would add additional pressure on already stretched staff. O Nicholas suggested that contract managers could review files remotely by being granted temporary access to the firm's management system, however this was not permitted by the LAA. D Phillips asked K Firth to revisit the LAA's assurance strategy in immigration and asylum to see if the impact on providers could be mitigated. Action 10 [Mar]

Post meeting note: the LAA Information Security team have confirmed that Contract Managers cannot access files on providers management systems but there are a number of secure file submission routes available to providers to make digital material available for audit.

2. Means Test Review [MTR] Update.

- 2.1 Engagement Plan.** M VanOss said that MoJ would continue to engage with representative bodies in the form of targeted engagement on specific matters from the people doing the work. For example around assessment of financial means for individuals who are self-employed and other areas where representative bodies have the expertise to offer advice and suggestions.
- 2.2 Timeframe for delivery.** M VanOss explained that due to the complexities of the project and wider government conflicting priorities, MTR would not be fully operational until 2026. MoJ planned to lay a tailored Statutory Instrument in the spring to deliver a number of specified measures focusing on payments which could be disregarded from the means assessment. A timetable with firm dates for each milestone would not be forthcoming soon mainly due to the uncertainty around the general election. CCCG members expressed disappointment at the delay.

In relation to thresholds of eligibility, a commitment could not be made at this time that they would be adjusted because the data underpinning these decisions wasn't available yet, but

they would be reconsidered in light of inflationary pressures since the consultation was published.

- 3. Deprivation of Liberty [DOL].** T Fitzgerald explained that where an application for a DOL order was to be heard within or alongside ongoing care proceedings, the existing non-means tested certificate could be amended. This would cover any hearings in relation to the DOL order up to the final hearing on the *section 31* care application. There was no need to request an amendment for each DOL application made within the proceedings, as one amendment would cover all applications and hearings. If the DOL applications were free standing or continued after the conclusion of care proceedings, a separate means and merits tested application for funding had to be submitted.

The Agency understood that there may be confusion with some DOL cases being determined by a single Court at the RCJ. Following the CCCG meeting on 13th March T Fitzgerald would approach MoJ policy colleagues for clarification that these cases met the definition of ‘related proceedings’ (*para 10.21* of the Lord Chancellor’s Guidance) and would update CCCG when a response was received. Action 11 [Mar]

4. AOB

- 6.1** V Ling had raised the concerns of Resolution members about the wording of the recently updated guidance on the assessment of correspondence on High-Cost Cases. L Cowell would look into these concerns Action 12 [Mar]
- 6.2** El Druker said the LAA had been doing a lot of work with MoJ on the imminent implementation of the Domestic Abuse Protection Orders and the Domestic Abuse Protection Notices and would welcome volunteers to meet with her and T Fitzgerald to discuss how these would operate as they cut across criminal and civil and family jurisdictions. Action 13 [Mar]
- 6.3** D Phillips agreed to provide an update on the recent problems with the Apply system. Action 15 [Mar]

	Actions from this meeting	Owner	Deadline
AP1 [Mar]	Provide a detailed report on the reasons for an application being refused based on evidence in the quarterly Case Management Operational Performance Pack.	T Fitzgerald	Closed On 12 June
AP2 [Mar]	Domestic violence applications:	T Fitzgerald	TBC
AP3 [Mar]	[AP2] Tom will check whether case workers have changed the way they interpret the guidance relating to applications and check for consistency in approach to decision making. [AP3] El Druker will raise the issue of the letter template used by support agencies as	E Druker	
AP4 [Mar]		K Pasfield	
AP5 [Mar]			
AP6 [Mar]			

	<p>evidence in applications for victims of domestic abuse, to be used more widely.</p> <p>[AP4] K Pasfield will discuss applications being refused based on evidence with LAPG advisory committee members and look for cases that had been accepted in the past and similar cases refused more recently.</p> <p>[AP5] El Druker will share a couple of examples of application refusals based on evidence showing the reasoning behind those decisions.</p> <p>[AP6] El Druker will plan a way forward with MoJ colleagues to deal with issues of applications refused based on evidence following the information gathered by LAA and LAPG.</p>		
AP7 [Mar]	Send out the links to high-cost Family cases tutorials for representative bodies to share with members	Representative Bodies	Closed
AP8 [Mar]	Share the results of the analysis of the inactive cases review	R Damiao	TBC
AP9 [Mar]	High-Cost Cases-SOP	H Keith	Closed
AP10 [Mar]	<p>Revisit the contract assurance strategy in immigration to see whether the impact of reviews on providers can be mitigated.</p> <p>Post meeting note: the LAA Information Security team confirmed that CM's can't access files on providers management systems but there are a number of secure file submission routes available to providers to make digital material available for audit'</p>	K Firth	Closed
AP11 [Mar]	Explain the correct procedure of how to apply for DOL cases	T Fitzgerald	TBC
AP12 [Mar]	Look into the concerns of Resolution members about the recently updated guidance on the assessment of correspondence on HCCs.	L Cowell	Closed 2 April
AP 13 [Mar]	Ask for volunteers to meet with El Druker and T Fitzgerald to discuss how the Domestic Abuse Protection Orders and the Domestic Abuse Protection Notices would operate	Representative bodies	Closed

AP14 [Mar]	provide an update on the recent problems you had with the APPLY system. Email sent from Communications Department [LAA]	D Phillips	Closed 19/04/24
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