



**Covid-19 issues and suggestions from LAPG members – for LAA consideration and implementation**

(Version 2 – 19.03.20)

**A. Civil legal aid**

1. **Managing staff**
2. **Interaction with clients**
3. **Cash flow**
4. **Miscellaneous**

Suggested measure	LAA response
<b>1. <u>Managing staff</u></b>	
<p><b>Supervisors/permanent presence</b></p> <ul style="list-style-type: none"> <li>• Relax the requirement for Supervisors to be available on site</li> <li>• Permanent and part time presence - completely lift the physically access requirement for a limited period so no obligation to be in the office as clients can contact via phone and email and they themselves will often not be travelling - I don't think relaxing hours is enough with things moving so fast and needing to put plans to protect people in place now</li> <li>• I hope the LAA wouldn't be too difficult on the supervisor standards. I think there is room for flexibility. As I say on courses, 'working from' is not the same as being there at all the time.....and surely they will accept that remote supervision is for the better performance of the role in the current situation? It would also be good if the LAA would be a bit flexible about deputy supervisors who don't meet all the requirements stepping in for maybe longer than the 6 weeks allowed for in the contract.</li> </ul> <p><b>Supervisor Standards</b></p> <p>2.10 In order to receive or maintain a Schedule Authorisation in any Category you must (unless Category Specific Rules specify otherwise):</p> <p>(a) have at least one full time (or full time equivalent) Supervisor working in that Category. For the purpose of this Paragraph 2.10 "full time equivalent" means the equivalent of one individual working 5 days a week and 7</p>	



<p>hours on each such day (excluding breaks); and (b) such person (or each such person) must be either a sole principal, one of your employees or a director of or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively) and must at all times during their working hours (except as required for the proper performance of their role attending court and/or Clients)) work from one of or any combination of your Offices.</p> <p>Subject to Paragraphs 2.24 to 2.25, if you cease to meet the requirements of this Paragraph 2.10 your right to undertake work in the relevant Category will cease. Any breach of this Paragraph 2.10 shall be a Fundamental Breach.</p>	
<p><b>Championing legal aid and liaison with other government departments</b></p> <p>Be our champion - ask other government departments like Ministry of Justice and Home Office to be flexible too and move to serving decisions (and preferably all communication) only electronically: As immigration practitioners some Home Office departments refuse to communicate by email already or share their emails. That is completely unsustainable - we need their email addresses and need them to agree they will email out decisions without us needing to prompt them. As it stands, particularly in London, some offices are very likely to close soon or people not want to risk public transport just to come in and check the post - it seems really disproportionate in these modern times when the Home Office has our email addresses on their online system to register representative details that they cannot wholesale send out decisions electronically to the registered email. The email addresses we use are considered secure enough by the Tribunal some of whom are now sending out electronic decisions anyway, so there is no justification for the Home Office not Suspend the permanent presence requirement for all offices</p>	
<p><b>Office opening hours/remote working</b></p> <ul style="list-style-type: none"><li>• Office opening hours to be relaxed (for example the minimum opening hours requirement) – encourage people to use skype and telephone to interact with their clients</li><li>• Removal of requirement for minimum opening hours and that offices be “open and accessible</li><li>• Recognition that staff (including supervisors) may have to work remotely for prolonged periods;</li></ul>	



<ul style="list-style-type: none"><li>• Practice wise planning is key but what do firms do if they don't have access to remote working (many legal aid firms)? It's interesting that there doesn't appear to be willingness by Government to grant fund IT advice and laptops etc.</li></ul>	
<b>2. Interaction with clients</b>	
<p><b>Flexibility on signing LAA forms and means evidence/submitting by email</b></p> <ul style="list-style-type: none"><li>• More on this point - could a photo of a signed and dated handwritten declaration agreeing to the contents of a form be sent by the client to go with a form completed with them on the phone? If clients and lawyers stop all have access to printers and being able to go to the post office or into the office to get post every day it will be hard also to get the signature page printed, sent out and returned. It is putting staff at risk to ask them to go into the office to get post every day, braving public transport, especially in a small team, and not appropriate for clients to have lawyer's home addresses to send back forms. Some clients may not have email addresses to send us things which is where solicitors signing forms becomes better.</li><li>• Increase the percentage of Legal Help forms that can be signed off-site</li><li>• Review the CCMS requirements for clients attending in person and signing declarations</li><li>• Relax the means evidence and allowing it to be photographed and emailed to the solicitor - or suspend the requirement for proof of means and replace it with some kind of 'reasonable belief they are eligible' test if client is unable to post/email proof of means</li><li>• Allow solicitors to sign the Legal Help form on behalf of the client if they are unable to see them in person</li><li>• If HMCTS moves to predominantly telephone hearings, what system can be put in place to have FAS forms signed? Can this be waved?</li><li>• Signing legal aid forms - the idea to get lawyers to sign them for a client is a good one. In addition : - Rather than just increasing the %age of forms accepted by post could the LAA provide the written authority under 3.17 that postal applications will be accepted without limit if a client is able to sign and</li></ul>	



post a form?

- Also lift the risk element for remote communication and getting forms signed after the event under 3.18-3.20 for a specified period? Or if that is too much - accept that the risk is removed if photos of a signature showing agreement to the controlled work form, any ID available and proof of means available are provided at point of instruction and that is enough? [or that the solicitor can sign the form instead]
- Not just review but agree that for certificated clients do not have to sign this in person in the circumstances at present and a declaration by the solicitor to their agreement to the contents is acceptable
- Deadlines for SUBMITTING bills for LOWER VOL work to be relaxed please
- Dispensation for wet signatures for legal aid forms where sol counter sig marks the grant of funding – eg CRM 3 Advocacy
- Proof of means - agree with relaxing requirement here as clients will struggle to get people to write letters of support to evidence third party support, get bank statements etc. and put themselves at risk by needing to go out and get documents
- Allow providers to complete legal aid applications over the phone and take applicant through CCMS remotely
- Make provision so that the appropriate declarations for full legal aid can be sent to client and signed /returned. I.e to allow signature other than on the day delegated functions is used.
- Make provisions to extend time for provision of evidence to support legal aid
- Make provision for legal aid applications to be completed in locations other than the registered offices.
- No limit at all on the number of postal applications that can be accepted for Legal Helps



<ul style="list-style-type: none"><li>• In place of postal applications, allowing the Legal Help to be scanned and emailed as an attachment (so, there would be no original signature)</li><li>• For CCMS/promissory declarations, also allowing it to be scanned and emailed as an attachment.</li><li>• Allowing more than 25% of NMS to be signed by post / remotely - indeed perhaps allow sols to sign on behalf of clients where the sols have clear instructions and copies of evidence of means (client could, for instance, photograph and bank statement on their phone and send to the solicitor);</li><li>• Not sure about CCMS - basically anything that allows sols to press submit without ever having been face to face with their clients.</li></ul>	
<p><b>Taking instructions and advising remotely/by video link/by email</b></p> <ul style="list-style-type: none"><li>• Consider practical arrangements for specific contract areas. For example prison lawyer members report that in many prisons legal representatives are not permitted to use video link facilities, which are reserved exclusively for other professionals such as probation officers or courts. This is impeding prisoners' access to justice and has caused additional practical concerns in the current circumstances. In relation to Mental Health clients who are detained in hospital, members have been notified by staff on the wards that they are considering not allowing them on to the wards to take clients instructions who are detained under the MHA. Will they be able to sign LA funding forms on behalf of the clients and advise them over the phone?</li><li>• Will the Ministry of Justice be flexible in the Tribunal and court system e.g. if the Home Office has been asked to communicate by email or fails to proactively do this and offices are closed so did not receive a signed for delivery decision and an appeal is out of time? Wholly undesirable to correct things in reverse but it would be good for the Legal Aid Agency to be reaching out and advocating for us for rapid change and direction to ensure our client group is protected.</li><li>• Issue guidance on what the contract allows in terms of remote service provision - and if they won't, we should;</li><li>• For prison lawyers who rely upon parole hearings taking place to be able to close files, there is a very real</li></ul>	



<p>risk that businesses will go under if – as seems inevitable – face-to-face hearings cannot take place for long periods because of the COVID restrictions. The Parole Board will not be able to conduct all its hearings remotely – they routinely direct that a significant proportion of hearings need to be face to face.</p> <p>To mitigate against this, the LAA should consider making temporary contract changes to permit files to be closed and billed if cases are deferred or adjourned for longer than three months or should make urgent arrangements for payments on account (of which there are none at all at present).</p>	
<p><b>Court hearings in person/vulnerable clients</b></p> <ul style="list-style-type: none"><li>• It's appalling that there is no comprehensive HMCTS plan for phone hearings. I would be advising all firms to identify cases which don't need to be progressed urgently in the next month or so and agree with the parties and seek approval from the court to stay them. And no visits to vulnerable clients unless absolutely necessary.....am sure we can pull together advice. The Law Society is being urged to give practical advice but hasn't yet.</li><li>• We have been told that due to local authorities being under pressure, and risk of infection, they will not be completing DoLs assessments. This means that many people will not have their deprivation of liberty authorised.</li></ul> <p>I have already spoken about the inconsistency and unfairness to clients in that one group who are detained are eligible for non means tested legal aid and others are eligible for means tested.</p> <p>If there is no standard authorisation under the DoLs scheme then legal aid is means tested. The absence of local authority assessments means that people will be left without representation because LA s are swamped and they will be ineligible.</p> <p>Can we ask that every client who has a deprivation of liberty case in the Court of Protection should be eligible for non means tested legal aid?</p>	
<b>3. Cash flow</b>	
<ul style="list-style-type: none"><li>• Re-instatement of SMPs giving cash flow security - these could be based on POAs claimed within the last</li></ul>	



12 months

- 100% POAs to be claimed at any point, or more frequently and without the current delays
- Allowing firms to include their enhancements as part of the POA process rather than having to wait until the case is being billed
- There are going to be problems with court-assessed claims if Judges are not doing their box work so quite a few cases might get stuck in the system – so can you allow POAs up to the full amount claimed (including enhancements) without Judicial assessment?
- Allow escape cases to be assessed on the claim form alone without having to see the files. Forms can be emailed but it is going to be difficult for firms who are still submitting paper files by DX to do that. And what is the plan for assessing paper files if Agency staff are not in the office and are all working remotely?
- Generally simplifying processes for claiming money in and in relation to final bills – dispensing with hard line requirements so claims can be paid, with evidence coming later (e.g. a 3 or 6 month evidence window). Obviously any overpayments need to be payable by practitioners but they need to start from a basis of trust unless there are already concerns about a particular firm
- Claims for FAS – to be submitted following hearings and to be paid in full – putting solicitors on the same footing as counsel
- Many years ago the Agency had a hardship fund that providers could apply to if in real difficulties – some providers may need to access to a hardship fund – to be able to have access to funds to keep them going.
- For HPCDS services, anticipating that there will be a decline in defendants attending court and therefore implementing the recommendation from the recent consultation to pay the attendance fee equivalent of 2 fixed fees instead of the nil session fee and introducing payments for reasonable travel costs
- LAA to agree to automatically pay all providers each month the average that they have paid per month over the last 12 months. This to be reconciled only once the crisis is over. Without this legal aid firms will



close. Our firm needs £X a month to pay salaries and expenses. If our billing team gets sick or fee earners can't get their files ready because they are sick then we will get in cash flow difficulties very quickly.

- For immigration cases - reinstate the old rule that allowed you to interim bill Legal Help after six months. Current rules don't allow it until you get a Home Office decision which can take years. And will no doubt be longer given current crisis.
- Make provision for POA to be requested monthly to ease cash flow problems caused by corona.
- Make provisions to speed up processing of escape fee Legal help cases to help cash flow.
- Allowing bills to be assessed as drawn, as there are bound to be backlogs at the courts, with pressures on the judiciary (I sit part-time and have had so many requests to cover hearings already). This would help enormously with cash flow. This may be one for both the LAA and HMCTS.
- In addition, another idea is relaxing current deadlines on responses to UPOA Statements to avoid recoupments on cases that providers are unlikely to have the staff to investigate and identify on increasing skeleton staff.
- Payment of FAS as interim bills (the facility is there as we request 100% payment on one aspect of a certificate concluding when a second is ongoing) – this would allow payment at 100% and be easily assessed remotely with very low risk
- Remove 3 month restriction for raising a profit cost poa on certificates
- Confirm providers can raise a poa for the relevant fixed fee (unless they pass the escape threshold)
- Put pressure on HMRC for a vat suspension – vat registered businesses with under 100 employees suspend vat payments backdated to the last VAT return (maximum 3 months) until further notice





- Upon request from a firm to reinstate Standard Monthly Payments - to help flatten out cash-flow issues... Maybe guarantee a monthly payment of at least 75% of the average monthly claim for the previous 12 months.
- I think that cash flow is the immediate concern but as time goes on and fewer fee earners can work there will be less WIP generated so this will have a knock effect later on.
- Allowing and processing 100% POAs would be best in civil. Ways of streamlining processes for payment, yes. The LAA is going to need to simplify the way we can claim money and this should also apply to final bills - they need to dispense with hard line requirements so claims can be paid, with evidence coming later (e.g. a 3 or 6 month evidence window). Obviously any overpayments need to be payable by practitioners but they need to start from a basis of trust unless there are already concerns about a particular firm.
- Payments on account to be paid in full – not just 75%
- Payments on account to be permitted more than twice per annum.
- Claims for FAS – to be submitted following hearings and to be paid in full – putting us on the same footing as counsel.

Feel free to circulate to whoever needs but there needs to be clarity on a FAS point

The 2 LAA guidance books say:

Electronic Handbook at para 6.5: “An advocates attendance form may not be available in hearings undertaken by video or telephone conference. In these cases notes of the hearing on the brief or an attendance note will suffice as evidence of the hearing.”

But costs assessment guidance at para 14.8 says “14.8 A hearing may take place by any method directed by the court e.g. by either video or telephone conference without attendance at court. If the court directs an alternative method of hearing then the advocate will receive the appropriate fee as if the hearing had taken



place at court. However, in these cases the hearing time will start from the time that the telephone call/video conference is first attempted rather than the time that the hearing was listed. Bolt-ons may be claimed for telephone/video hearings if appropriate although due to the nature of these hearings bolt-ons are less likely to be applicable. It is unlikely, for example, that the criteria for the expert bolt-on would be met. As there will be no Advocates Attendance Form, detailed notes of the hearing will need to be recorded and the claim justified on the CLAIM 1A or CLAIM 5A.”

Firstly which is it notes on brief or attendance note or detailed notes of the hearing?

Secondly Under FAS pre hearing discussions are included and the time runs from when advocates were to attend at court, however see costs assessment guidance “hearing time will start from the time the telephone call...rather than the time that the hearing was listed”

Does this mean that in these COVID-19 times if the advocates hold an advocates meeting prior to a telephone hearing it will be part of fixed fee or a separate advocates meeting fee or non recoverable?

Thirdly, will the costs of setting up a telephone hearing eg BT conferencing be a recoverable disbursement as my understanding currently they aren't...?

#### 4. Miscellaneous

##### **Auditing and flexibility on appeal deadlines etc.**

- Stop all audits and on-site visits until later in the new year (except where there are serious concerns or an official Investigation)
- Relax appeal deadlines as firms may have difficulty complying whilst staff are away from the office
- Non-means testing for emergency DV applications and any linked CA applications
- Allow all emergency private law applications to use Apply – if non-means tested all urgent work can filter through Apply
- Confirm audits are suspending until further notice - our time is better spent helping families whilst we are



<p>still able to work from the office rather than preparing for a contract visit</p> <ul style="list-style-type: none"> <li>• Stop all audits and on-site visits until later in the new year (except where there are serious concerns or an Official Investigation) - and tell providers so that they can focus on other stuff.</li> <li>• The issue I raised at CCCG was whether the LAA, in considering strategy etc. for Covid-19 crisis, are looking at flexibility on the deadlines the LAA sets for providers. The two examples I gave were:             <ol style="list-style-type: none"> <li>1. Providers/legally aided parties replying to requests for information before a certificate is suspended under show-cause</li> <li>2. The 28-day deadline to make an appeal on an assessment of claim for costs carried out by the LAA (e.g. para 6.72 of the Specification to the 2018 Standard Civil Contract – I did not actually quote this para in the meeting but it may be useful to include as a post meeting note)</li> </ol> </li> </ul>	
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**B. Criminal legal aid**

1. Managing staff
2. Interaction with clients
3. Cash flow
4. Miscellaneous

Suggested measure	LAA response
<p><b>1. Managing staff</b></p> <p>I anticipate it won't be long until court cases / non urgent police station interviews get adjourned + likelihood of staff falling ill/needing to self-isolate, so from a crime perspective, any suspension of the at times draconian duty solicitor requirements (14 contract hours a week / 36 attendances pa including quarterly requirements) and the 'in house' requirements (80% of police station attendances/50% of court attendances) would help alleviate some of the pressures.</p> <p>I would say a criminal solicitor maxes out their chances of getting the virus pretty much on a daily basis, attending courts, cells, prisons, and police stations. LAA obviously have limited role in most of those but can LAA ask the DSCC to specifically ask custody staff (at point of first contact on a police station case) whether</p>	



there are any corona virus related issues either at the custody suite or with the specific detainee? I have obligations to my staff I am unable to manage without information (for example reports of cases at 3 separate mags courts in London on Friday - how do I verify if correct / what done to deal?).

## 2. Interaction with clients

I may have missed it but is there any guidance to our clients anywhere who may have to pay legal aid contributions but are unable to do so due to loss of employment in current situation ?

I think this is on your list but we are in touch with companies who will offer video links to prisons for legal visits which can be done on fee earners computers at their homes. There is a charge of £40 per hour which in the circumstances is surely a disbursement that the LAA should cover as it helps keeps the CJS going, protects fee earners, prison staff, etc and will relieve pressure on prison staff.

I would be grateful for some guidance as to whether the costs of video conference facilities would be an allowable disbursement for MC and CC cases.

Given the present restrictions it can provide a useful mechanism for continuing to prepare cases with clients in custody. We have been advised of costings as follows:

*As discussed we have a secure software based video conferencing solution that will allow you to connect to prisons directly from a PC or Laptop.*

*For this solution to work you will need a PC/Laptop, a webcam, a microphone, a pair of headphones and an internet connection (preferably wired).*

*I would suggest we run a test call of the solution to make sure your equipment is compatible and the internet connection is strong enough to support a high quality video call.*

*I can confirm the cost of the video link service is £48 + VAT per hour.  
We will need full payment upfront before each link to be able to provide it.*



*For each new video link we will need the below information with **minimum 24 hours' notice**.*

*Prison connecting to :*

*Prison video link number ( 12 digit code starting 8875 ) :*

*Date of video link :*

*Start time :*

*Estimated duration :*

### **3. Cash flow**

We are raising concerns regarding how Covid-19 will affect Crown Court Billing.

To give a recent example, we had a drugs case due to conclude and be billed tomorrow but over the weekend the defendant told us he self isolating so the case is now being adjourned to May. This means our bill is delayed 2 months.

We suspect we are going to have quite a lot of similar instances going forward. This pandemic seems to gives defendants a temporary stay out of jail free card and the court cannot even them ask for medical evidence. We are concerned that some criminal clients may take advantage of this situation. At the moment this is a massive unknown.”

It's going to slow trials finishing and our biggest bills with the biggest impact will be delayed significantly if no alternative arrangements are made.

The ability to put in large bills for certain clients and be paid is vital, we would suggest in most cases the LGFS final fee is rarely affected by sentencing/trial outcome (unless extra evidence is served) can we propose that the LAA allow us to file our LF1 bill as soon as the case starts for all cases where the value of the claim will be £15k + at the end of the trial (assuming it runs) we could resubmit the final bill and be paid or repay any difference to what we have already received... or something along these lines.

For GP cases there is nothing in place currently for interim claiming and the same applies for advocate fees, which are currently based only on hearings attended. Maybe the LAA could also take the CPSs figures for electronic evidence, rather than sending in discs if staff here and at the LAA work from home and in



addition, we get paid for the listing date and then submit a final bill once all is concluded. E.g. it's listed for two weeks, we put a claim in for two weeks sitting on the first day of the listing and then if it runs for 3 weeks we put an additional claim in for the additional week or repay if it finishes sooner.

In addition to what has already been suggested, maybe the LAA could consider paying out wasted trial prep for counsel when cases are pulled from the list due to COVID-19. They currently allow wasted trial prep if counsel has to return a brief due to in unavoidable clash when it's re-listed. A relaxation of this would be welcomed in the current climate.

**4. Miscellaneous**