

COVID-19 LAA response

What is the issue	Proposed solution	What the government have done (guidance for legal aid providers.)
Contract requirements -		
How are the LAA going to maintain processing?		<p>Our contingency plans</p> <p>We have robust business continuity plans covering all aspects of our work, including client applications and claims for payment (including payments not made under contract, for example direct payments to advocates).</p> <p>These established plans will be put in place in the event our operations are affected by coronavirus (COVID-19), to enable continuity of operations.</p> <p>There is no current change to operating process, however we are identifying options to reduce administrative and audit burdens on providers and will communicate these through updates to this document.</p> <p>We will work closely with other parts of government connected to the provision of legal</p>

		<p>aid, including HM Courts & Tribunals Service (HMCTS), the police, prisons, and immigration removal centres, to ensure our contingency arrangements are aligned.</p> <ul style="list-style-type: none"> • HMCTS: coronavirus (COVID-19) planning and preparation • HMPPS: coronavirus (COVID-19) and prisons
<p>Presence requirements</p> <p>- the requirement to maintain a serviced office.</p>	<p>The requirement to maintain an office open to the public will be suspended</p>	<p>24.03.20 – new guidance</p> <p>Office and supervisory arrangements</p> <p>We understand the current context may mean you are unable to meet the office and supervisory requirements set out in your contract, and that reasonable actions will be needed to follow wider Government advice and to maintain the well being of your staff and clients. We will not take any action in this situation.</p> <p>Please consider and share with your contract manager your planned approach to:</p> <ul style="list-style-type: none"> • dealing with urgent matters • ensuring general supervision of work, including remote supervision <p>Please continue to document evidence on how supervision has been applied in line with</p>

		<p>accreditation and professional standards where applicable.</p> <p>This is a big improvement and addresses our concerns as far as we can see at this stage.</p>
<p>Supervisor requirements</p> <p>Remote supervision and the availability of a supervisor if they are ill</p>	<p>Remote supervision will be acceptable for the duration of the crisis.</p>	<p>See above</p> <p>As above concerns largely addressed by new guidance</p>
<p>Signing forms</p>	<p>The LAA will take urgent steps to enable legal aid to be granted without a wet signature.</p>	<p>Updated on 24.03.20.</p> <p>- new guidance improves the situation</p> <p>Using digital signatures</p> <p>Digital client signatures will be acceptable as an alternative to handwritten ('wet') signatures and will meet our contract requirements.</p> <p>The Law Society has guidance and practice notes in this area:</p> <ul style="list-style-type: none"> • Signing and exchanging documents • Execution of a document using an electronic signature

		<p>We will accept all digital methods which meet the requirements outlined as Simple Contracts in the Law Society practice note.</p> <p>Text messages are not considered an acceptable method of digital signature and are not covered by the Law Society.</p> <p>In situations where it is not possible to get a client signature, digitally or otherwise, please make a note on the file explaining why, countersigned by a supervisor, and also make a note on the application/form when submitted to avoid delays or issues with processing. Please seek a signature at the earliest possible opportunity.</p> <p>Is the supervisor signature allowed to be electronic?</p> <p>There is still the concern of supervisors and self-isolating, the practitioner should be able to sign the form without countersignature if the practitioner is a solicitor. If they are not a solicitor, then a countersignature should be required? What if the supervisor is ill? Also, LH and CLR forms are not technically submitted but remain on the file does it cover this situation we need clarity on this and confirmation that it applies to all legal aid applications</p> <p>It says -</p>
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<p>Requirements for a duty solicitor</p>	<p>While there is public health guidance in effect, the provisions requiring 14 hours of contract work and 36 attendances to qualify as a duty solicitor will be suspended. A mere “discretion” for contract managers to be lenient is not sufficient.</p> <p>If you or we are prevented from complying with this Contract: <i>30.6 Neither of the parties to this Contract is responsible to the other for any delay in performance, or for any non-performance, of its obligations and duties under this Contract due to any cause beyond its reasonable control. Causes beyond reasonable control are confined to:</i> <i>(c) epidemic”</i></p>	<p>Duty solicitor absence</p> <p>The LAA will be taking a proportionate approach to duty solicitor compliance in response to the coronavirus (COVID-19) outbreak. Where duty solicitors are unable to meet the requirements of the contract providers should document the reasons why and inform their contract manager. Contract managers will take into account the current context, including where it is clear a duty solicitor has not been able to meet the requirements due to the effects of the coronavirus (COVID-19) outbreak, and similarly any impact from reduced volumes of duty calls.</p> <p>The LAA will use existing duty solicitor arrangements which already operate 24 hours a day, 7 days per week. Under those arrangements, Providers are able to swap slots</p>

		<p>with other Providers on the scheme who are unaffected.</p> <p>In the event a Provider is unable to cover a slot or swap it, the Defence Solicitor Call Centre may:</p> <ul style="list-style-type: none"> • offer the slot to other members of the specific duty scheme • if the slot cannot be accommodated within the existing duty scheme, invite duty solicitors from neighbouring schemes to provide cover <p>Should the local police station be closed then detainees may be moved to another custody suite. In this scenario, the LAA will consider on a case by case basis whether it would be reasonable for the scheme members to “follow” the work to the new location. The LAA will consult on an urgent basis with affected duty scheme members.</p> <p>We continue to work closely with other criminal justice system agencies, including HMCTS, the police, and prisons, to ensure our contingency arrangements reflect theirs, particularly in relation to attendances in the police station and courts.</p>
	<p>if a firm fails to comply with its obligations as a duty solicitor for reasons related to coronavirus, either because of health concerns relating to the lawyer or client or because of a failure of the police or courts to provide reasonable health protection, this will not be regarded as a breach of contract</p>	<p>This has not been addressed by the guidance above and still continues to be a concern. The lawyer should be able to undertake a risk assessment and if they feel that they are putting their health at danger should not be expected to</p>

		attend. They should be able to claim an attendance fee for attendance by phone.
MH – accredited rep requirements	14 hour requirement	<p>Designated Accredited Representatives in Mental Health cases</p> <p>We understand the current situation may mean you are unable to meet the requirements of the contract regarding designated accreditation representatives, including where an individual is not able to meet the 14-hour requirement.</p> <p>Please document the reasons why, but we will not take any action in this situation.</p> <p>It will remain a requirement all advocates before the tribunal except self-employed counsel must be members of the Law Society’s Mental Health Accreditation Scheme.</p> <p>The guidance addressed the problem</p>
Reduced Bureaucracy	Stop audits	<p>25.03.20: improved guidance now includes audits</p> <p>Reducing administrative activity for providers</p> <p>Routine contract manager visits to provider offices will not take place at this time and we will</p>

		<p>not be undertaking new contract audit or peer review work unless exceptionally needed.</p> <p>We will keep this under review as advice changes. We have paused our routine reporting and recoupment activity on unrecouped payments on account and are only undertaking recoupment work needed to accurately pay final bills.</p>
<p>Payments - Processing</p>		
<p>How will the LAA maintain processing</p>	<p>Reduced bureaucracy</p>	<p>See above – contingency plans</p> <p>24/03/20 – new guidance</p> <p>We recognise the current situation will have cashflow implications for firms, and as a priority we are processing bills and other payments as rapidly as possible. We are working with Ministry of Justice (MoJ) and provider representative bodies to investigate what other immediate actions we can take to support firms. The Budget 2020 announced plans to provide support for public services, individuals and businesses affected by coronavirus (COVID-19). This includes Statutory Sick Pay funding, support on Business Rates, and guarantees to enable more lending via banks.</p> <p>Other schemes to support business are now available:</p> <ul style="list-style-type: none"> • Coronavirus Job Retention Scheme

		<ul style="list-style-type: none"> • VAT deferrals • HM Revenue & Custom's Time to Pay service
Submit forms etc electronically	Acceptance of electronic forms	<p>We are now accepting electronic forms in 3 areas of Civil Finance. Guidance for each can be found on our training website:</p> <ul style="list-style-type: none"> • Contingency measures for civil escape cases • Mandation of electronic civil billing appeals • Emergency payment process on non-CCMS cases • Contingency for paper claims • POA contingency form POAC1
Evidence for billing	Assessment of escape fee cases on the basis of scanned documents rather than demanding hard copies	<p>http://ccmstraining.justice.gov.uk/_data/assets/word_doc/0007/8188/Legal-help-Escape-Cases-Convid19-Contingency-Process.docx</p> <p>This resolves the issue allowing for electronic submission.</p>
Payments - Cashflow		
SMPs	<p>All standard or variable monthly payments will be retained at their current levels until the removal of public health restrictions.</p> <p>SMP payments should be based on the average of the previous 6 months prior to the start of the problem</p>	This has not been addressed yet

<p>Billing as work is done</p>	<p>The LAA to make arrangements for work to be billed as it is done, rather than only at the end of a case.</p> <p>Increased frequency for payments on account for profit costs and disbursements to be allowed.</p> <p>Asylum claims - Specifically, a 6 month stage claim for asylum cases as Home Office delays in processing claims are inevitable</p>	<p>This has not been addressed.</p> <p>There is some guidance on POA but this seems to allow for 100% payment at the end of the case rather than 75% payment? And remove the restriction of claiming 2 x within a 12 month period.</p> <p>It does not deal with billing for payments throughout the case.</p> <p>http://ccmstraining.justice.gov.uk/_data/assets/word_doc/0019/8191/Civil-Paper-Claims-Conv19-Contingency-process-guidance-and-FAQ.docx</p> <p>What is the new process?</p> <p>For any paper-based claims, we will pay a 100% Payments on Account (POAs) for profit costs at the conclusion of proceedings. These are special POAs that will not be subject to payment at 75%, nor restrictions on claiming 2 within a 12-month period. They will act as a temporary payment of the final claim, which will be replaced with a full assessment at a later date. We will treat any existing paper claims currently in our backlogs that you have submitted to us in the same way.</p>
<p>FAS hearings that are now virtual</p>	<p>Payment of 2 units on FAS for virtual hearings to reflect the work necessary immediately before and after the hearing.</p>	<p>New guidance has been published:</p>

		<p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875295/LAA-FAS-update-24March2020.pdf</p> <p>Continuing issues are:</p> <ul style="list-style-type: none"> • A one hour FAS fee for agreeing a consent order by exchange of emails, not limited to counsel only and not simply being absorbed into our fixed fee • A similar FAS fee if an employed solicitor is the advocate who gets a consent order agreed at an Advocates meeting at Para 15. It has always been the case that counsel can claim a one hour FAS for a vacated hearing but not solicitor and so is a carry over of that unfairness • Clarification of what practitioner do about lunch breaks if the hearing runs over the formal lunch period. • What they mean by the claim having to be “justified” at Para 19.
Remote police station work	While the public health guidance remains in effect, payments for police station attendances where the solicitor attends the interview remotely will be paid the full police station fee, and not merely the telephone attendance fee.	This has not been addressed
Bill disputes	Where a bill is submitted and there is a query or dispute about part of it, the undisputed part will be paid forthwith.	Rejecting bill payments

		<p>To maintain cash flow for civil and crime matters, we continue to only reject the parts of bills which are missing information fundamental to the assessment process. Other amounts submitted in the bill which we are able to agree will be paid promptly.</p> <p>This issue has now been resolved</p>
Recoupments	For the duration of this crisis, no recoupment of payments will be made in the absence of outright fraud.	<p>We will pause our routine reporting and recoupment activity on unrecouped payments on account with immediate effect. We are considering how else we can reduce the administrative activity for firms during this time and will communicate these with you through updates to this page.</p> <p>This issue has now been resolved</p>
Means testing		
Means testing	Collecting evidence of means	<p>Assessing financial eligibility where a client cannot attend</p> <p>The contract specification allows you in certain situations to assess means without</p>

		<p>accompanying evidence where it is not practicable to do so:</p> <ul style="list-style-type: none">• section 3.6 crime• section 3.24 civil <p>Where a client is staying at home, it may still be possible to collect evidence by email or post. Reasonable efforts to collect evidence should still be made and recorded.</p> <p>Relevant civil section is here:</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744438/HPCDS_Contract_-_2018_Standard_Civil_Contract_Specification_General_provisions_.pdf</p> <p>3.24 You may assess the prospective Client's means without the accompanying evidence where:-</p> <ul style="list-style-type: none">(a) it is not practicable to obtain it before commencing the Controlled Work;(b) pre signature telephone advice is given; or(c) exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the case. <p>3.25 Unless Paragraph 3.24(c) applies, you must require the Client to provide the evidence as soon as practicable. If satisfactory evidence of</p>
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<p>Deprivation of Liberty cases and the means test - Local authorities failing to authorise</p>	<p>Due to the COVID-19 emergency many Local Authorities are not carrying out updated Deprivation of Liberty assessments due to the reallocation of front line staff to other urgent work and/or due to the inability of staff to attend on clients due to Covid-19 restrictions on contact at care home and hospitals. This is causing two significant issues:</p> <ol style="list-style-type: none">1. Many incredibly vulnerable clients are left without the fundamental protections of the Deprivation of Liberty Safeguards (DOLS).2. For the clients who have already issued a challenge to the DOLS in the Court of Protection (COP) while a standard authorisation was in place, if the current DOLS has already been in place for one year (so that the COP cannot extend it further) non-means tested funding will end due to a lack of standard authorisation and this leads to an inability to progress the case on their behalf.	<p>We have approached the LAA on this but not yet had a response</p>

	<p>We suggest that, to resolve this situation, there are two options:</p> <ol style="list-style-type: none"> 1. if the new DOLS assessments cannot be undertaken due to the COVID - 19 crisis, the Legal Aid Agency should extend non-means tested funding to those cases where the COP authorises the deprivation of liberty, and includes a recital that it would, in any other circumstances, be authorised under a DOLS, or 2. the current Emergency COVID-19 Bill permits non means testing in all deprivation of liberty cases and/or the ability of the COP to extend DOLS before 1 year for a fixed period. 	
<h3>Closure of firms</h3>		
novation	<p>The LAA will enter into discussions with the profession about relaxing the novation requirements, so that when firms collapse, there is flexibility for other providers to help address the situation.</p>	
<h3>Remote Hearing</h3>		
FAS virtual hearing payments	<p>Payment of 2 units on FAS for virtual hearings to reflect the work necessary immediately before and after the hearing.</p>	<p>Additional guidance has been published regarding FAS cases.</p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875295/LAA-FAS-update-24March2020.pdf</p>

<p>work arounds for processes that currently require physical co-location, such as the signing of forms in the family advocacy scheme.</p>	<p>Attendance note as evidence of the hearing</p>	<p>Advocacy attendance forms in Family Cases Attendance notes already suffice as evidence where the hearing is held by video or telephone conference, as per 6.5 of the electronic handbook. The handbook states: An advocate's 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. If bolt-ons are included as part of the claim, you should include details in the attendance note.</p>
<p>Scope</p>		
<p>Legal aid for issues arising out of the coronavirus, eg if the Govt takes powers to order people to self-isolate. What contract will this come under? How will it be brought in scope? How will it be paid?</p>		
<p>Subject Specific</p>		

Domestic Abuse cases	<ul style="list-style-type: none">• How to help those trying to safeguard children where Local Authorities too stretched – consider temporary non means testing for private law proceedings for safeguarding vulnerable children• Relax/widen DA gateway and hard evidence -GPs are busy• Temporary 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	