



Legal Aid
Agency

Working with others to achieve excellence in the delivery of legal aid

Civil Case Management Teams - Help Us Say Yes Webinar - Your Questions

Managing Live Civil Cases

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Means

Q: When acting for a child, who turns 16, is it sufficient to simply reply ‘client still in full time education’?

A: No, as the child could continue in full time education but take on a part-time job or receive some other form of income. For client’s over 16 a full means re-assessment is required, as opposed to the simplified assessment for children under 16 who have no income / capital, so we need to know you have checked with the child / parents, that the child still has no income or capital.

Q: I am in the process of making an application for legal aid whereby my client does not qualify due to the matrimonial home. I however want to argue this is a trapped asset. What is the best way to go about this? Do we have to provide evidence the other side will not sell? Or can we just state it is unlikely and is the subject matter of the dispute?

A: The earlier you can upload your trapped capital representations, the better. You can include the details on the means report if there is room or upload the representations to the document request task.

When making trapped capital representations, please ensure you have considered the judgement in the case of GR v DLAC 2020 EWHC 3140 (admin) and make representations in line with this judgement. The representations should be 2-stranded, the first strand should set out how / why the client is unable to access or loan against the asset(s) whereas the 2nd strand should focus on the impact including the asset within the assessment will have on the client’s rights under the European Convention on Human Rights.

You will not have to provide evidence that the other side is unwilling to sell the property or allow the client to increase the mortgage on it, especially if they are opponents in the matter as we appreciate you may not be able to get hold of such evidence so you can say it is unlikely, due to the nature of the dispute that the other side will consent to sale.

If the asset is subject matter of dispute (SMOD), you would need to demonstrate this. The asset being classed as SMOD will always be considered ahead of it being treated as trapped.

Q: Where the client's universal credit award is nil due to deductions for take home pay but there is a housing costs element properly in payment to the landlord, is the client passported?

A: Yes, the client will still be treated as passported. However, when it comes to completing the assessment, we do check some element of Universal Credit (UC) is currently in payment, as well as checking the client has a live claim with the DWP. If the client is only in receipt of the housing element of UC and is paid directly to the landlord, it will not show on your client's bank statements. In these cases, we ask you to show the housing element is in payment. The best way to show this is a screen shot from your client's UC journal.

Merits

Q: When making an amendment, do we just add a new statement or replace the current statement?

A: When submitting the amendment, you can include details of why the amendment is required in the “Reasons for the Amendment for the Proceeding” section of the merits report. Alternatively, you can upload a separate statement or add to the existing statement at the bottom of the merits assessment

Q: What is the difference between enforcement proceedings and enforcement under Section 11J?

A: Enforcement under Section 11J specifically relates to enforcement of a CAO Contact order only. If a provider seeks to enforce an order under 11J you can apply for one of the following proceedings:

- CAO contact-Enforcement
- Enforcement order 11J-S8
- Enforcement order-Appeal-S8

If there has been a breach of an order, and you seek to make an application to enforce the order, you would apply for the relevant enforcement proceeding.

For example:

- If there was a breach of a Prohibited Steps Order you would select the proceeding ‘Prohibited Steps Order-Enforcement-S8’
- If there was a breach of a Specific Issue Order you would select ‘Specific Issue Order-Enforcement-S8’.

Q: In private law children cases for which Family Help Higher cover has been awarded i.e., Level 3 only, are Counsel’s fees for a final hearing still payable if the last hearing was not listed as a final hearing but was effective as one?

A: If the hearing was not listed as a final hearing, for example, a directions hearing but was effective as final hearing and a final order was made, Counsel will still be able to claim fees but only at Level 3. This is confirmed on page 15 of the Civil Legal Aid Finance Handbook.

Q: To what extent can the LAA disagree with Counsel's opinion on merits / prospects and therefore refuse an application for funding? And a linked question: to what extent are LAA caseworkers experienced in/specialised in specific areas of law to the case in question e.g., discrimination cases? And is it possible to request that a caseworker reviewing such a case is in fact experienced.

A: A determination to grant a substantive certificate or an amendment to a substantive certificate is for the Legal Aid Agency to make. Whilst we do consider counsel's opinion with any application/amendment there may be circumstances where we disagree with counsel and refuse an application/amendment. For example, an advice recommending a grant of funding is provided but insufficient information is included to satisfy the relevant funding criteria.

It is not a requirement for a caseworker to have a legal background, such as a law degree. The Civil Applications Team's merits caseworkers are split into two teams: family and non-family. Family caseworkers deal with applications such as private law children and finance proceedings as well as public law children and orders made to the high court such as child abduction and, inherent jurisdiction applications. The non-family caseworkers primarily deal with applications such as housing possession, unlawful eviction, disrepair, homelessness appeals and judicial reviews. All caseworkers are given comprehensive training on our regulations and criteria and how to apply those to an application/amendment. Caseworkers are regularly provided updated guidance and refresher training to keep them up to date with the regulations and merits criteria.

We have a Central Legal Team made up of legal professionals that we can refer to if we require advice on a particular issue.

We also have an Exceptional and Complex Case Team who deal with cases such as exceptional case funding applications, immigration and claims against public authorities. Several people on this team have a legal background.

Unfortunately, it is not possible to request that a specific caseworker reviews a case but if an application relates to discrimination, it will be processed by a caseworker in the Exceptional and Complex Case Team, many of whom, as mentioned above, do have a legal background.

Q: Sometimes urgent amendments need to be made, what is the best way of doing this because I do not think that delegated functions can be used.

So, by example there is a live certificate for the client and the other side makes an urgent application that isn't covered under the current scope, but a hearing has been listed within a few days.

A: If the matter is urgent then a provider can submit the amendment and contact our Customer Services Team on 0300 200 20 20. However, if the provider has to undertake urgent work such as attending a hearing before they have time to submit an amendment, they can still submit the amendment after the event and ask us to exercise discretion and backdate the amendment to a specific date to cover the work carried out.

Q: What regulation applies to the backdating provisions?

A: The backdating provisions are contained within Procedure Regulation 35 and are as follows:

(3) If the requirements in paragraph (4) are met, the Director may specify that a determination has effect from a date earlier than the date of the determination.

(4) The requirements are that:

(a) the application for the services was made as soon as reasonably practicable;

(b) the Director is satisfied that:

(i) it was in the interests of justice for the services to be carried out prior to the date of the determination; and

(ii) the services could not have been carried out as Controlled Work; and

(c) in the case of reconsidering a determination on review or following an appeal, having regard to all the circumstances, including the information that was available to the provider when the application for the services or the application for the review was made, the Director is satisfied that it is appropriate for the determination to have effect from the earlier date.

(5) In paragraphs (3) and (4), “determination” includes a limitation or condition.]

Q: With counterclaims, if the counterclaim is initially in scope as a defence to a possession claim (e.g. deposit protection defence to a s21 claim), if say the possession claim is withdrawn or dismissed at the early stages, can the counterclaim still be pursued or does funding automatically stop?

A: Please note where a claim for possession has been issued through the accelerated procedure following the service of a s21 notice, a counterclaim in relation to the failure to protect the deposit would be out of scope for legal aid as any damages recovered would not assist with the defence. However, if it was an arrears claim for possession then a counterclaim for the failure to protect the deposit would be in scope as any damages recovered would be used to offset the arrears. In that instance, if the possession claim is withdrawn or dismissed then the counterclaim would fall out of scope for legal aid. The counterclaim is only in scope by virtue of the possession claim so once the possession proceedings are withdrawn or dismissed the counterclaim then falls out of scope.

Similarly, if the counterclaim related to disrepair and the proceedings were withdrawn or dismissed then any claim for damages arising from the disrepair would also fall out of scope.

However, if the disrepair posed a serious risk of harm to the health or safety of the individual or a relevant member of the individual's family then the counterclaim can continue as that would be in scope in its own right under Paragraph 35 LASPO, but only to remove the serious risk of harm.

Equally, if the counterclaim related to a breach of the Equality Act, then as those proceedings are in scope under paragraph 43 LASPO the counterclaim could still continue.

Q: If you are applying to extend the certificate to cover a contested final hearing in a children case, a statement of case is provided but a request is being made for the statements of the parties to be provided (which has been directed by the court in advance of the final hearing) but clearly this piece of work is not covered under the scope. How do you resolve this issue?

A: We do require an indication of the parties' positions to enable us to determine the amendment and whether the reasonable private paying individual and prospects of success tests are met. We would accept a court order that specifically set out each party's position.

It is expected the client's position is known and what issues are still in dispute and not capable of settlement so a statement setting out these issues could be submitted. Once the provider has a copy of the statements and the positions differ then these should be brought to the attention of the LAA as soon as possible.

Q: In Secure Accommodation Proceedings, where this is extended by the Judge during the same proceedings and under the same case number, are we required to apply for a fresh certificate each and every single time the Court has sanctioned an extension to the Secure Accommodation Order? E.g., a lot of the time, the Court will only grant the Order for short periods of time (such as 2 weeks) and then will bring the matter back to the Court after those 2 weeks and will consider any further extension at that stage. There was one case where we were involved in whereby the Judge was reviewing the extension every 2 weeks for a period of approximately 2 months. On that basis, would we have to apply for a fresh certificate every 2 weeks when the Judge granted an extension, even though it is under the same proceedings and under the same case number?

A: If the court is extending the order of its own motion, then no amendment would be required, and the initial application would cover that work. However, if the Local Authority (LA) were making applications to extend the order, then a fresh application is required for each time the LA make the application to extend.

Prior Authority

Q: Do you need a prior authority for translation of documents?

A: Only if the translation rate is in excess of £100 per 1,000 words or 10p per word.



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