



Legal Aid
Agency

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

Civil Family - Help Us Say Yes Webinar – Your Questions

Initial Applications: Merits assessments

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Evidential requirements

Q: GPs are frequently offering telephone appointments unless clinical need. How can this meet evidential criteria?

A: Unfortunately, under the Regulations as they currently stand, telephone attendances are not acceptable. Adjustments were made to the evidential requirements at the start of the pandemic, allowing video consultations, to satisfy the “face to face” element of the examination.

However, as part of the ongoing review of the evidential requirements, a proposal has been put forward that the Regulations are amended to allow for telephone consultations. However, there is no date for that amendment to take place.

Q: With regards to gateway evidence and delegated functions, if the evidence is undated would it be sufficient to show the date via an attendance note or email to show the date it was received?

A: An e-mail from the organisation providing the evidence, showing the date it was supplied would be acceptable. An attendance note would not.

Q: The evidential requirements do not stipulate that letters from Health Professionals need to name the perpetrator of domestic abuse. However, we are hearing instances where the LAA are asking for the evidence to name the perpetrator. Can you shed any light on why this is happening?

A: This should not be happening. Caseworkers should be aware that the perpetrator is not required to be named in Health Professional letters. However, Paragraph 12 of Schedule 1, Part 1 LASPO does require that the perpetrator is a party to the proceedings, and we may need to establish that, if the contents of the letter, or the legal aid application, raise a question mark as to the identity of the perpetrator. Solicitors should not be requesting that health professional adds the perpetrator name.

Q: Does evidence of domestic abuse, such as a letter from a Domestic Violence Support Service, become invalid if a finding of fact hearing judgement subsequently finds there was no domestic abuse?

A: No. The subsequent court finding would not invalidate the DVSS letter. However, there **are** certain items of evidence which can be invalidated by a change in circumstances. These are set out in Regulation 42(1)(k) of the Civil Legal Aid (Procedure) Regulations: <https://www.legislation.gov.uk/uksi/2012/3098/regulation/42>

Q: I had a case where I had evidence from Social Services of child abuse and applied for legal aid to cover CAO – Contact, parental responsibility and declaration of parentage. However, the application was refused on the basis the evidence didn't bring the proceedings into scope.

A: Child Protection evidence can only be used to bring into scope those specific proceedings listed in Paragraph 13 of Schedule 1, Part 1 LASPO. As applications for Parental Responsibility and Declaration of Parentage are not listed in Paragraph 13, those proceedings can only be brought into scope by Domestic Abuse evidence.

In relation to the Contact application, Paragraph 13 and Regulation 34 of the procedure Regulations require that 'the order being sought must be intended to protect the child from the risk identified': It is not considered an order for contact would protect the child from any risk posed by the custodial parent, as they would still be living with that parent.

Q: We encounter difficulties when the Local Authority does not put labels on the evidence, such as 'Child Protection' plan. Are there any plans to change the requirements?

A: It is not essential for the evidence to be specifically labelled. Please ensure it contains an assessment that the child has been, or is at risk of being, a victim of abuse by someone other than the client, and the order being sought will protect the child from that risk.

Some of these reports can be very detailed. It is helpful if you can identify which part of the report you are relying on to bring the proceedings into scope.

Public Law Children matters

Q: In Public Law Children matters, if the grandparent has been made party to care proceedings and is being considered as a possible carer for the child, but does not have parental responsibility, are they able to apply for legal aid? Or, are they only able to get legal aid if they have parental responsibility?

A: Yes, grandparents can apply for legal aid. This would be on a means and merits tested basis, as a Joined Party, with the application submitted under the Public Law – Family Matter Type in CCMS.

If, as part of the proceedings, an interim Child Arrangements Order is made, granting the client Parental Responsibility, they would then qualify for non-means tested legal aid and could re-apply under the special children act (SCA) Matter Type

Q: I have an application for a Deprivation of Liberty Order alongside existing care proceedings. Is this under the Inherent Jurisdiction of the High Court and is a copy of the care plan sufficient evidence of the child protection requirement?

A: Yes, a Deprivation of Liberty order would be made under the Inherent Jurisdiction of the High Court. If the application is being “heard together” with the existing care proceedings, it will fall within the definition of “related proceedings”. It can be added to the care certificate by way of a scope limitation amendment, using a non-standard wording: For example: “Hearing, on a date to be fixed, in relation to an application for a Deprivation of Liberty Order”

If the matters are to be timetabled separately, a separate certificate should be applied for under the High Court Matter Type.

As the case is Public Law, no child protection evidence is required

System issues

Q: Is there a problem with the Online Portal receiving electronic documents? There have been many occasions when I cannot submit documents electronically at the time of 'submitting an application'. Instead, I must wait for the LAA to generate a request to provide the documents, which causes extra delay and work.

A: We have not been made aware of any issues with the portal preventing the submission of documents at the time of 'submitting an application'. If you are encountering any difficulties, please contact our Online Support Team: Tel: 0300 200 2020 or by e-mail: Online-Support@Justice.gov.uk

Q: Is there a CCMS wording for injunctions under the Human Rights Act to present removal, or does that need to be added as a scope limitation on Discharge of a Care Order? If there is no wording, will one be added?

A: No. However, we are in the process of making changes to the wordings and limitations available in CCMS. This is on the list of changes to be made.

Q: Regarding certificates with multiple proceedings, why do costs have to be split across the elements when generally they take place at the same time?

A: Costs across different aspects of a case, Finance, Children, Domestic Abuse, should be recorded separately for the purposes of the Fixed Fee PFLRS scheme. This enables us to monitor whether any aspect escapes the Fixed Fee Threshold. However, when submitting a costs amendment in CCMS, global figures can be used, even though the merits report asks for the costs for each aspect.

Decision making

Q: My client's legal aid application for CAO contact was refused as she had commenced the proceedings wanting to resolve father's contact. Had she been the respondent in the proceedings legal aid would have been granted. Why is there a difference?

A: Without knowing the circumstances of the case, it is difficult to be specific, but it is likely due to either: We didn't consider Regulation 36 Merits Criteria Regulations was satisfied, in that there were alternative remedies available, such as negotiation or mediation; Or: The Reasonable Private Paying Individual Test, in Regulation 7 was not satisfied.

Q: Emergency application submitted without use of delegated functions, as the client is self-employed and did not wish to take the risk. Rejection response was only complex if financial circumstances difficult to assess such as a company director.

A: This should not have happened. A caseworker on the Means Assessment Team should have been contacted to look at the information provided. They would then have given a preliminary view as to whether the client would be likely to be eligible

Other

Q: Are there plans to re-establish the civil eligibility calculator?

A: The eligibility tool and platform are both currently in the Alpha testing stage.

The aim is to have:

- A tool built for the end of this year
- The platform in time for Means Test Review changes

Q: Do you know if there will be any upcoming webinars around billing/statutory charge?

A: We are continuing to develop our Webinar content over the next 12 months. We plan to run further Civil Billing sessions in the future. Please check the LAA Bulletin.



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