



08/06/23

LAPG Member Update

Issue 14 of 2023

Current Consultations

- Family Mediation
- Moving from SMPs (Standard Monthly Payments) to VMPs (Variable Monthly Payments)
- 2024 Standard Civil Contract and 2022 Standard Crime Contract
- Open Justice - Call for Evidence

Consultation Response

- Means Test Review

Current Consultations

Family Mediation – deadline 15 June

The Ministry of Justice is consulting on 'Supporting earlier resolution of private family law arrangements – a consultation on resolving private family disputes earlier through family mediation'.

We are asking our members for comments on [LAPG's draft response here](#) before 13 June as the response has to be in on 15 June.

You will be aware that we have flagged this up in three of our updates. If you are submitting a



response in your practice's name we would be very interested in seeing your response. If you would like to input into ours please do email policy@lapg.co.uk with your comments.

We have put a summary for members at the start of the document but it might be helpful if we set it out here as well:

The consultation is here:

https://consult.justice.gov.uk/digital-communications/private-family-law-consultation/supporting_documents/supporting_earlier_resolution_of_private_family_law_arrangements_consultation_web.pdf

The foreword by the previous Lord Chancellor states that the consultation's aim is to tackle the backlog in the courts, take cases out of the courtroom where possible 'sparing families from the unnecessary stress and children from avoidable anxiety' except the cases involving domestic abuse and child protection concerns. The government wants to provide families with an affordable, appropriate and effective alternative to court. They see mediation as playing a role and refer to the success of the Government's Mediation Voucher Scheme. So they are determined to (in appropriate cases) 'make sure that parties in private family law disputes make reasonable attempts to mediate and reach solutions before applying to courts as a last resort'. They also want judges to hold accountable 'those who do not engage seriously with mediation and who draw proceedings out unnecessarily by refusing to reach reasonable settlements'.

There is a summary in the introduction pages 5-9. There are 19 questions. The consultation is essentially pages 5-39. The proposals break down into four areas.

Chapter 1 - How the Family Courts are Used

Chapter 2 - Supporting Families to Resolve Issues Earlier

Chapter 3 - Agreeing Private Family Law Disputes through Mediation

Chapter 4 - Accountability, Enforcement and Fees

The family law specialists on our Advisory Committee will be looking at this in more detail and there will be a further revision. We hope to hear from LAPG members with their views and have highlighted those areas where we feel we particularly need to add in more information.

Moving from SMPs (Standard Monthly Payments) to VMPs (Variable Monthly Payments)

As noted in previous updates, we believe this process is of the upmost importance to a large number of legal aid providers.

The deadline for responding is 30 June 2023. [The LAA news story on this is here.](#)

Approximately 390 organisations receive SMPs for civil and/or criminal work and the LAA want to convert these to VMPs. That could cause serious financial difficulty for some practices. So if you receive SMPs then you need to consider the implications for your practice. We are told by the LAA that they have tried to negotiate higher repayment where a provider seems to be receiving a lot more than they are claiming, but it appears that there was no contractual term that enabled this to happen if the provider said no.

This was what the LAA appeared to be saying so we looked into the contract provisions. We are very grateful to Matt Howgate for his assistance with this.

Clause 14.14 of the Contract Standard Terms says:
“We have the right to set-off against any amount payable by us to you under this Contract or otherwise, any amount payable by you to us, under this Contract (including under the Specification) or otherwise. For the avoidance of doubt, when this Contract ends, any obligation to make payment is subject to this right of set-off.”

Clause 14.17 says that where there has been a LAA notice that there has been an overpayment (or mis-payment) firms should notify the LAA within seven days of becoming so aware to enable them to adjust the provider’s account (or to require repayment). It also requires providers to “promptly make any repayment requested” by the LAA.

Clause 14.20 does allow for repayment of sums over £5,000 in instalments but makes clear that it must be “over the shortest reasonable period and must usually be completed within 12 months.”

Please do get in touch with us if this affects your organisation. It would be helpful to us to hear from members to see what effect it might have. Please



Legal Aid
Agency

2024 Standard Civil Contract and 2022 Standard Crime Contract

As members will be aware, the 2018 Standard Civil Contract has been extended to 31 August 2024. Why? This will enable the findings of the Review of Civil Legal Aid to be considered and introduced by the LAA. The LAA will be issuing supporting contract schedules to cover 1 September 2023 to 31 August 2024.

Compare the 2017 Crime Contract - a 2022 Crime Contract was brought in to run for one year from 1 October 2022 and has now been extended by two years to 30 September 2025. The 2022 contract will run to a point at which a subsequent Contract based on the governments' substantive response to CLAIR has been developed and can be implemented.

The LAA is negotiating with the statutory consultation bodies – LAPG, The Law Society, ASA and The Bar Council – about the detail of both contracts. We are not allowed to share the proposed changes or the detail of the discussions but:

- Where possible all relevant representative bodies (beyond the consultee bodies listed above) are being asked for their views
- We would very much like members to feed back to us about what changes they want to see in the next contracts. Clearly, increased fees are the priority, but please take that as a given that we are pressing for these at every possible forum we attend. Increasing the fees does not come within this contract engagement process as it is a matter of government policy, not LAA administration. The contract feedback that we would like from you is about any improvements in the contract that would make it easier/less bureaucratic for you and for clients.

Please email policy@lapg.co.uk with your suggestions. This piece of work will be ongoing for some time but it would be helpful to have your thoughts.

Please send us your thoughts on the **Standard**



Legal Aid
Agency

Civil Contract by 12 June as we need to submit our response to the LAA by 23 June.

Please send us your thoughts on the **Standard Crime Contract** by 21 June as we need to submit our response to the LAA by 4 July.

A note on the timeline for the 2024 Standard Civil Contract: The LAA has advised us that it intends to run the tender process for 2024 Standard Civil Contracts from autumn 2023. It has also indicated that it intends to initially contract for one year, but include a term in the contract enabling a number of 12-month extensions. Presumably this is because there is a great deal of uncertainty over when any potential changes might arise from the Review of Civil Legal Aid.

Open Justice Consultation – Call for Evidence – Closing Date 11.59pm 7 September 2023

[The consultation on open justice is here.](#)

The Government states:

“We want to hear from all interested parties, including the judiciary, legal professionals, the media, businesses, academics, law and technology experts and our court and tribunal users on how you think the government can uphold and strengthen open justice in the modern age.”

The topics on which evidence is invited include: open justice, listings, accessing courts and tribunals, remote observation and live-streaming, broadcasting, single justice procedure, publication of judgments and sentencing remarks, access to court documents and information, data access and reuse, and public legal education.

We’d love to hear Members’ views on any of these topics, and in particular on those that relate to our key concerns of client access to the justice system and the future delivery of justice services. Please feed any thoughts into policy@lapg.co.uk.



Consultation Response

The Means Test Review

On 25 May 2023 the government published its long-awaited response to the consultation on proposed changes to the Legal Aid Means Test. The response and accompanying documents can be downloaded here:

<https://www.gov.uk/government/consultations/legal-aid-means-test-review>

Uncertainty remains over exactly how the proposals will be implemented, and how long that process will take in reality, but the response contains some positive steps forward. However we and others have voiced concerns about whether the proposals will actually enable more clients to access legal aid given the diminishing number of providers. There are also concerns about the lack of a mechanism for reviewing thresholds and eligibility levels (they may be reconsidered in 3-5-7 years as part of a 'post-implementation review'), and about the government's approach to passporting, particularly in relation to Universal Credit.

[We issued a press release](#) outlining some of our concerns on 26 May 2023.

We are currently digesting the detail of the proposals and will be meeting with the LAA and MOJ to discuss our concerns and the implementation process.

If you have any issues about the Means Test proposals that you want to discuss with us, or want us to raise on your behalf, please email us: policy@lapg.co.uk



Please do contact us if you would like to feed into any of these crucial consultation processes. We really do value your input as front-line practitioners.

Look out also for the National Audit Office's consultation on '[Value for money from legal aid](#)'. This should be published in the coming weeks, and is timed perfectly to provide additional oversight and scrutiny of the MOJ's Review of Civil Legal Aid.

Take care one and all,

Chris Minnoch, CEO [@ChrisLAPG](#)

Follow LAPG on Twitter @WeAreLAPG

#WeAreLegalAid

08/06/23



Subscribe to our courses

Would you like to contribute to our Member Updates and share news and information with other members? If so, just email us and we can discuss how you can best contribute.

Thank you for being brave enough to be part of the LAPG community!

LEGAL AID LAWYER OF THE YEAR AWARDS



Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).