



## **Response of Legal Aid Practitioners Group to:**

### **Proposed amendments to the 2018 Standard Civil Contract General Specification in respect of Payments on Account**

#### **1. About us**

1.1 Legal Aid Practitioners Group (LAPG) is a membership body for firms and organisations with a contract to carry out legal aid work in England and Wales. Our members are private practice firms, not for profit organisations, barristers and costs lawyers. Our members carry out civil and criminal work and cover the whole range of business models from smaller, niche and/or sole principal firms to many of the largest providers of legal aid services.

1.2 In preparing this response, we have consulted with LAPG members and the LAPG Advisory Committee which is made up of legal aid practitioners, costs drafts people and practice managers. We have incorporated all views expressed, as far as has been possible.

#### **2. Framework of the consultation**

2.1 The LAA is consulting on a change to the 2018 Standard Civil Contract General Specification ('the Contract') on whether to increase the number of claims for Payment on Account that can be made in a 12 month period. The proposal is to amend paragraph 6.21 by changing the maximum number of claims from two to four per year. While this is a relatively small change it is an important step in the right direction towards a more sensible remuneration mechanism that reflects the reality of legal aid practice.

#### **3. Frequency, timing and percentage of POA claims**

3.1 We are broadly supportive of the proposed amendment to the contract to allow providers to claim up to four times per year rather than two.

3.2 However, we do not feel that the proposal goes far enough in addressing cash flow issues and starting to resolve financial instability and would suggest the following additions to the proposal:

a) A further amendment to the Contract at paragraph 6.21 (a) allowing an application for a first POA to be made no earlier than one month as opposed to three as currently. A significant amount of work can be undertaken during the first month after a case is opened and a substantive certificate granted. The three month provision is unnecessary, does not serve any purpose and an amendment to the current provision would give practitioners the flexibility to decide when is best to submit a claim. This flexibility would assist providers to remain financially sustainable and is even more important now given the impact of the COVID-19 crisis and the need to ensure providers can recover from the financial fall-out of the crisis, retain staff, and ensure they will be able to respond to emerging legal need.

b) A further amendment to the Contract at paragraph 6.21(c) to provide that cumulative Payments on Account for profit costs under a Certificate must not



exceed 100% of the amount of incurred profit costs rather than the current 75%. Again, this flexibility would ease cash flow concerns for some providers and help to stabilise the provider base.

- c) Remove the cap on the frequency of POA claims by the complete removal of paragraph 2.1(b). This would give providers the flexibility they need to make claims as often as they wish to. Some of our members have indicated that four times per year is not frequent enough and the cap is not required. As an alternative to this, if the Agency wishes to impose some sort of limit on claims, we would suggest monthly claims rather than four claims per year.

Given the reconciliation and recoupment mechanisms available to the LAA, we do not believe that these proposals present any additional risk to the legal aid fund.

#### **4. Additional amendments requested by providers**

- 4.1 Family providers should be able to claim for FAS hearings after each hearing, at 100% of their costs. This would put solicitors on a par with counsel. The detail is set out below:

Paras 7.25-7.29 of the Family Specification covers POAs for standard fees.

Para 7.25(c) would need to be amended to add a similar provision that exists for counsel under Para 7.28 which allows counsel to claim payment for FAS once the work is concluded.

As there is no “escape” mechanism for payments under the Family Advocacy Scheme any Payment on Account for work within that Scheme may not exceed 75% of the relevant Standard Fees and Bolt-on Fees due – see Para 7.28 for the position of Counsel:

7.28 No Payment on Account may be claimed in relation to services provided by Counsel (as defined at Paragraph 7.119) under the Family Advocacy Scheme (“FAS”) as set out in Part D of this section 7. Instead Counsel may apply, on an approved form, for payment under the FAS as soon as the relevant hearing or other item of work is concluded. When requested by Counsel you must, within 7 days of receipt of the request, provide Counsel with such information as may reasonably be required for the purposes of making a claim under the FAS (or challenging any reduction in fees payable under the FAS).

- 4.3 In addition to POAs in certificated cases we also believe there is an urgent and pressing need for interim payments to be made available across all areas of controlled work for disbursements and profit costs. For example mental health cases require Level 1, 2 and 3 to be submitted together when the practitioner reasonably expects there is no more work on the case. This is problematic because hearings are presently being delayed which means the Level 3 work cannot be completed and results in cash flow issues as practitioners cannot submit a claim. There needs to be greater flexibility, allowing for submissions to be made for level 1 and 2 payments and then a later submission for Level 3.

The issue will be the same for other areas of controlled work such as inquest cases given that all inquests have been cancelled until the end of 2020. Providers have incurred significant costs in some of these cases and are currently unable to submit claims.



This also applies to education cases which can be lengthy and incur high value disbursements.

We urge the LAA to look at all areas of controlled work which carry high value work in progress and disbursements, or where there has been disruption to external processes that trigger the ability to submit claims, and make provision for interim payments at such a point as the providers running the case deem it necessary.

**LAPG – 18 June 2020**