

2024 Standard Civil Contract

Resolution's response to the Legal Aid Agency (LAA)

Resolution's 6,500 members are family lawyers, mediators, collaborative practitioners, arbitrators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes. Resolution members abide by a Code of Practice which emphasises a constructive and collaborative approach to family problems and encourages solutions that take into account the needs of the whole family and the best interests of any children in particular.

Resolution is committed to developing and promoting best standards in the practice of family law amongst both its members and amongst family lawyers in general.

We also campaign for better laws and better support for families and children undergoing family change.

This response has been prepared by Resolution's Legal Aid Committee. We comment on some of the proposed changes and make some additional requests on behalf of our members.

The Standard Terms

Clause 9.6 (Co-operation...)

The words highlighted seem to have crept into clause 9.6 from the footer at the bottom of the page and ought to be removed:

*You must co-operate with us, our employees, agents or any statutory or regulatory body during any Audit (including when you are subject to an Official Investigation) carried out by us. You must provide all such explanations and answer truthfully, fully and promptly all questions which are put to you by any **January 2021** person carrying out the Audit and which relate to this Contract.*

Clause 19 (Indemnities)

It would be helpful and timely for the LAA to revisit its processes and requirements for signatures.

We ask the LAA to accept e-signatures on indemnities that directors of law firms have to sign. Obtaining significant numbers of signatures from directors who do no legal aid is an onerous task (one member mentioned their firm has over 60 directors).

Each indemnity binds the partner to any future contract in any event so we do not believe there is a need for all directors to provide a wet signature each time there is a new contract.

Contract management at the LAA may not be aware that Contract Managers do not routinely send copies of the deeds counter-signed by the LAA and so they may not be valid as not correctly executed.

The General Specification - sections 1-6

1.21 (Supplementary Matter Starts)

We welcome the amendment which clarifies that a provider may self-grant matter starts up to 50% of its original allocation '*on any number of occasions*'.

We understand this to mean, e.g., that a provider could increase matter starts from say 50 to 75 in June and then from 75 to 112 in November. If the LAA is concerned that firms cannot grant higher numbers of matter starts that would put them into a different lot without contract managers needing to check that they meet the requirements for a higher lot, then this should be spelt out.

2.10 (Supervisor Standards)

We welcome the amendment which removes the words '*working in that category*', which the LAA confirms will allow an individual who is working full time to supervise more than one category of law (subject to them meeting the relevant supervisor requirements).

We should be grateful if it could be clarified that an individual working full-time and meeting both sets of requirements could supervise both family and crime.

2.19 (Supervision Standards)

We welcome the amendment which removes the requirement to provide an example of a case involving human rights as not relevant to all categories of law.

We also welcome the proposal to remove the option of having completed an NVQ as acceptable evidence of experience/knowledge of supervision.

We request an amendment to clause 2.19b) which requires a supervisor to complete training covering key supervisory skills if they have not supervised one FTE caseworker for the equivalent of 12 months in the preceding 5 years.

We understand that the intention behind this was probably to ensure that people new to supervision were trained to do it, which we support. However, the problem with the clause is that if someone is self-supervising and does not ever supervise anyone else, they have to do a supervision course every year. We consider it to be good practice for a self-supervisor to do a supervision course but every year seems very onerous. We suggest self-supervisors should only need to do a supervision course once during the typical life of a contract.

We suggest the following amendment:

(b) completed training covering key supervisory skills in the previous 5-year period;

2.21 and 2.23 (Supervision Standards)

The LAA is proposing to amend the clause to give providers more discretion in how to deliver supervision. This is welcome in principle as feedback has been received that it causes practical difficulties due to, e.g., court commitments, and is particularly difficult during holiday periods.

We would support the amended wording on the basis that ‘*where you determine that this is required*’ applies to both the frequency and the location. If it does not, it negates the flexibility provided at 2.21c) which allows supervision to be tailored to the skills, knowledge and experience of the individual.

Practitioners practising public law family tend to be very experienced with many years PQE. It is not appropriate that they should all have to be subject to monthly supervisions whether in person or otherwise.

2.26 (Minimum Supervisor Ratios)

We welcome the proposal to remove any restriction on the number of offices that an Individual Supervisor can supervise across under the 2024 Standard Civil Contract.

However, we request clarification that this means a full-time equivalent (FTE) supervisor must not supervise more than four full-time equivalent (FTE) caseworkers. We suggest the amendment should be:

An FTE Supervisor must not supervise more than four FTE Caseworkers across a maximum of two Providers.

In relation to **supervisor forms**, we ask that the LAA’s guidance should clarify that in box 4, rows b)-e) are not compulsory and only need to be completed if the supervisor cannot show 1050 hours or more personal casework across row a). Also that the hours can be satisfied from ai) alone so a) ii) is only needed if the individual cannot show 1050 hours on a) i).

2.33 (Offices)

The LAA is proposing an amendment which would explicitly exclude residential premises from being acceptable schedule offices.

We are aware of a small number of family practitioners who practise from, e.g., an extension to their home or home office building. Implementing this change would increase their office costs and could lead to them withdrawing from contracts. We do not support this change. We note that this proposed wording to prohibit the use of residential premises is not replicated in the Family Mediation specification.

Generally, we strongly recommend that there is a need for the LAA to look ahead and move quickly to recognise and work with developing modern ways of working in time for 2025 and beyond.

2.33A (Serviced Premises)

We welcome the provision expressly to allow a serviced office.

2.33B (Serviced Premises)

We should be grateful for clarification that where a serviced office employs a receptionist, that satisfies requirement 9(c) of the new provision, as long as they are able to provide a telephone number/email address for the provider’s office to arrange an appointment/emergency advice.

Section 3 Signing forms

As stated earlier, it would be helpful and timely for the LAA to revisit its processes and requirements for signatures.

3.19 Post Covid, we are aware that fewer clients are attending providers' offices in person to sign forms. In addition, PLO meetings are generally remote and so there is no longer an opportunity to obtain a wet signature before the meeting.

We request that any limit is removed on the number/percentage of forms where forms are signed remotely (which may include where there is no wet or digital signature and contract).

If there is an issue for the LAA if the proportion is above 50%, exceptions should be made, e.g. for vulnerable clients and/or for the public children category.

3.20 We request clarification to the wording so that a signature can be wet, digital or by alternative means as per the Law Society guidance.

The Family Specification – section 7

We request the following changes:

- 7.43 et seq. On transfer of provider the LAA should assess a claim from provider one as a final claim at the time the certificate is transferred.
- Criteria for Family Help (Lower) Request to amend the evidence requirement for Level 2 fees as follows as an objective measure could make life easier for practitioners and contract Managers alike:

7.58 You may only make a determination that a Client qualifies for Family Help (Lower) where all relevant criteria in the Merits Regulations, Financial Regulations and Procedure Regulations are satisfied including the criteria in Paragraph 35 of the Merits Regulations. In addition, the fee for Family Help (Lower) may only be claimed for those Family Disputes:

- a) *which involve more than simply taking instructions from and advising the Client, and providing any follow up written or telephone advice; and*
 - b) *where there are at a minimum two meetings with the client (which may be in person, by video or telephone) each at least 24 minutes or more in duration; and*
 - c) *where the dispute, if unresolved, would be likely to lead to family proceedings; and*
 - d) *which do not primarily concern processing a divorce, nullity, judicial separation or dissolution of a civil partnership; and*
 - e) *which do not primarily concern advice relating to child support.*
- 7.100 et seq. Solicitors should be allowed to claim FAS fees after each hearing/be paid 100% of FAS fees during the case, as Counsel can.
 - FAS fees should be claimable where a hearing is vacated/cancelled, as counsel can do, if a hearing is settled by consent order or vacated, following an AVM.
 - 7.141 provides that no more than two Conference Fees may be claimed per case. As for opinions, in Private Law proceedings the Children and Finance Aspects of a case will be considered separately. However, no Conference Fee may be claimed under the FAS in Domestic Abuse Proceedings.

- The number of conference fees allowed needs to be increased to accommodate the reality of how children cases now run.

The Family Mediation Specification – section 18

We support the content of the Family Mediation Council’s paper to the LAA on Family Mediation and New Legal Aid Contracts of November 2021 attached.

We ask that a separate fee element is introduced to reflect the additional sessions required for child inclusive mediation (typically adding 3 additional sessions) and for which mediators are required to have undertaken additional training.

Other issues which it would be helpful for the LAA to consider are:

- That the KPI for conversion rates (40%) in mediation is not something mediators are in control of, e.g., safety issues come out on assessment.
- Whether thought needs to be given to the future approach to assessing substantive disputes and outcomes, particularly from the perspective of early resolution and the wider policy direction of travel.

Members also report there is a need improve Contract Manager understanding of mediation contracts.

18.18B (Schedules)

As in relation to the General Specification, we should be grateful for clarification that where the serviced office employs a receptionist, as long as they are able to provide a telephone number/email address for the provider’s office to arrange an appointment/emergency advice, that satisfies new requirement c).

18.18C (Schedules)

We understand that a number of mediation organisations have contracts with serviced offices which enable them to book a suitable confidential room for mediation as required. We request clarification that this would comply with the new requirement to have ‘*exclusive use of a designated space*’ as per new requirement b).

It is worth noting that a permanently designated space is not needed to store documents as usually documents are now stored digitally in the cloud/firm’s server.

Generally, we strongly recommend that there is a need for the LAA to look ahead and move quickly to recognise and work with developing modern ways of working in time for 2025 and beyond.

18.42 (Supervision)

We support the proposed change on the basis that ‘*where you determine that this is required*’ applies to both the frequency and the location. Please see our comments on 2.21 and 2.23 of the General Specification.

**Resolution
June 2023**