The Law Society

legal services COMMISSION

CCA Review

Joint Stakeholder Working Groups

National Audit Office

advice services alliance

October 2008

Contract Compliance Working Group Report

1. Introduction

The purpose of the Contract Compliance Working Group was to fulfil the requirements of Appendix 5 of the Deed of Settlement "A Commitment to joint working and objectives", i.e.

To review the current approach with a view to identifying whether it is possible to improve the current process or to identify alternative approaches that:

- Provide LSC with the assurances it requires that devolved decision-making is being exercised by legal aid providers in accordance with regulations and contract requirements and that there is propriety of expenditure;

- Provide effective feedback to legal aid providers to help them ensure that they are making decisions in accordance with regulations and contract requirements;

- Support the further devolution of primary decision-making from LSC to legal aid providers;

- Are effectively linked to other management information on individual legal aid providers available to LSC;

- Are consistent with other objectives, as light a touch for legal aid providers as possible;

- Are simple and clear; and

- Provide for proportionate and justifiable responses on the part of the LSC to the issues identified.

The Group was made up of representatives from The Legal Services Commission (LSC), The Law Society (TLS), the Advice Services Alliance (ASA) and the National Audit Office (NAO). There was also a sub group made of members of the profession that contributed to the work of the main group. Although not everyone could attend the meetings, all materials were circulated for comment. For membership/contributors see *Appendix A.*

2. Initial Exploratory Work

The Group initially reviewed existing processes and available Guidance documents. Alongside this there were extensive discussions about current issues from a Provider perspective and regulatory and contract requirements from an LSC perspective.

The key areas covered were:

a) File Audits: Cost Compliance Audits, Contract Compliance Audits, Exceptional Cases, Transaction Criteria Audits, File Review
b) Communications
c) Provider Selection

d) File Selection
e) Standard Letters
f) Timescales
g) Appeals Process
h) Categorisation and potential financial sanctions following Contract Compliance Audit (CCA)
i) Internal and external guidance
j) Self regulation and reporting

Each of these discrete areas was looked at individually and as part of the whole. The Group was committed to producing solutions that made sense in their own right and as part of a cohesive whole.

3. File Audits

As a starting point we reviewed those file audits that were, or were thought to be, in use; identified any issues and agreed solutions.

i. **Cost Compliance Audits**: these had been a contentious area as the profession felt that they tended to be subjective in terms of being very reliant on individual auditor's opinions; e.g. they include judgements about the amount of time claimed for attendances. In 2007/08 they were only employed in auditing Immigration, Mental Health and Crime. From 2008/09 they will only be used for Mental Health and in 'closing out' any issues remaining from the previous year. From 2009/10 it is anticipated that they will be phased out altogether.

Agreed:

a) No action required.

ii. **Contract Compliance Audits**: the group reviewed the questions being used for Civil auditing under this regime *Appendix B*, all of which relate to contract requirements. The main concern was the fact that very few people were aware of this change in file auditing. This links through to the communication issues. The results from 2007/08 were shared and this gave the group even greater confidence in the new style of auditing. The Crime file audit tool could not be shared as it was still being prepared.

Agreed:

a) The Civil Audit tool, including any guidance, should be posted on the web so that providers could see what they were being audited against.
b) It was recommended that they use this to assist in self-monitoring.
c) The Crime Audit tool should be posted on the web as soon as it is available in November 2008.
d) Results should be published on a quarterly or half-yearly basis (depending on their availability) and include an analysis of key issues

iii. **Exceptional Cases**: it was agreed there was no requirement to undertake any work in this area other than to ensure that the decision-making against exceptional cases was consistent with decision-making in other areas.

Agreed:

a) Contract Compliance Guidance should be applicable to audit of Exceptional Cases

iv. **Transaction Criteria Audits**: the issue with these was that the profession was aware that they appeared no longer to be in use but that they had never been officially withdrawn. A definitive statement was required.

Agreed:

a) It was confirmed that these are no longer in use.
b) Although the booklets could be made available for providers who wanted to use them as a training tool it should be noted that they have not been updated and, depending on category of law for which it was being used, could be misleading. It was therefore agreed not to issue them.
c) It has been agreed with the Quality Working Group that the updated version of the Specialist Quality Mark (to be issued in 2009) will exclude any reference to these.

v. **File Review:** This is not a Contract Management tool but an exercise carried out by the LSC to demonstrate to its Accounting Officer and the NAO that Legal Aid expenditure is in accordance with Parliament's intentions. No sanctions are attached to the outcome of this (although standard contract rules apply to the provision of files). The files for review will be randomly selected across all transactions billed within a 12-month period, not on a Provider basis. The review will cover the same questions as the CCA. The difference is that where necessary, further investigation will be undertaken in order to try to obtain assurance that the Client was eligible for Legal Aid.

4. Communications

The group considered communications as a whole and as a part of each of the other areas for consideration. The issues that were raised were:

- Concern about the poor level of communication generally. Specific examples cited were: a new CCA process had been introduced and very few people were made aware of it; Transaction Criteria Audits had been withdrawn, but no one told.
- The LSC website is not user friendly or intuitive. It is difficult to find what you are looking for and there is no guarantee that it will be current when you think you have found it.
- 'One size' does not fit all when it comes to communications. Some Providers do not read Focus, others do not routinely cascade e-mails. Whilst some of the responsibility rests with the Provider, the LSC needs to ensure that relevant and important information is made available using a selection of the available media.

Agreed:

a) Communication to be a lot more open and transparent. First step towards this to be the publishing of minutes from the Group's meetings on the LSC website. Additionally, any changes that affect the providers to be communicated as soon as possible.
b) A File Auditing section should be developed on the LSC website where Providers can access information on all audits undertaken by the LSC. It should include an archive section for tools/processes that are superseded. This will feed into the review of the website being undertaken by LSC Communications.
c) Significant information will be disseminated by at least two routes.

5. Provider Selection

There were concerns that it appeared that some Providers were selected for audit far more frequently than others. The 2007/08 selection was based on fund spend, i.e. for both Crime and Civil the LSC audited the top 20% of fund spend. The Law Society expressed a strong view that those Providers performing well at File Audit should receive some immunity from immediate reselection. The LSC expressed an equally strong view that poor performance should be subject to reaudit within a tight timeframe to ensure that improvements had been made. Alongside these views was the NAO requirement for random selection of Providers. The discussions were lengthy and constructive, reaching agreement that met all parties' objectives.

Agreed:

a) Those Providers who achieve an A1 or B1 rating for their first audit will be exempt from random selection for the next year. *(See Para.10 for rating definitions)*
b) Those Providers who achieve an A1 or B1 rating for their 2nd consecutive audit will be exempt from random selection for the following 2 years.
c) Those Providers who achieve an A1 or B1 rating for their 3rd consecutive audit will be exempt from random selection for the following 3 years.
d) Providers receiving an A2/B2 or B3 rating will automatically be reaudited within 6-9 months.
e) Regional Offices may identify Providers for audit and will make it clear the basis for their selection, e.g. an unusual reporting profile.
f) The balance of the audit programme will be made up of Providers selected on a totally random basis (excluding a-e above)

6. File Selection

The group felt that there was lack of clarity regarding file selection and there were concerns about representativeness. In order to clarify the process a paper was presented *Appendix C.* The file selection is stratified by category of law and type of work, not by fee earner or office. It was noted that the Civil file selection would include Immigration and that Immigration would not be audited separately. This change was welcomed. Concerns regarding representativeness of the sample were assuaged by the fact the extrapolation would only be applied following an extended audit where the number of files would be much greater than for the initial audit.

Agreed:

a) There was a great deal of discussion around the methodology but the outcome was that no change to the current methodology was recommended.
b) For the extended sample there would be (as has always been the case) the opportunity to Appeal on the grounds of representativeness.

7. Standard Letters

All standard letters used in the Contract Compliance Audit process were reviewed. The general consensus was that they could be reworded to be personalised, more inclusive and customer friendly. The group had found the paper File Selection *(Appendix C)* extremely informative and discussed the benefits of sending it with the File Request letter. It was also suggested that the Process Paper *(Appendix D)* should accompany the File Request letter.

Agreed:

a) Reworked letters to be available by November 2008.
b) File Request letters sent in November 2008 and onwards to include accompanying documents

8. Timescales

Timescales for provision of files, making Representations and lodging an Appeal were all reviewed. The group did not have any problems with these timescales (providing reasonable requests for extensions could be agreed when necessary). The concern was that the requirement to meet timescales was one-sided, with no commitment from the LSC to complete audits within an agreed timeframe.

Agreed:

a) Initial audit to be completed, report issued and files returned with 28 working days of receipt of the complete file sample.
b) For the extended audit no timeframe could be provided, as the time taken would depend on the number of files to be audited. However, the report to be issued and the files returned within 1 week of completion of the extended audit.

9. Appeals Process

TLS raised questions about the Appeals process as some of their members had expressed concerns about it. The process as set out in the Contract was reviewed. *Appendix E.*

Agreed:

a) No change is required.

10. Categorisation and potential financial sanctions following CCA

Under the previous Cost Compliance Audit regime, where a category 1 rating was achieved (0-10% reduction) no financial recoupment was made. Under the Contract Compliance Audit regime, where a category A1 rating was achieved (0-3 files nil assessed) financial recoupment was made. TLS expressed a very strong view that this change in approach was unjust. After considerable discussion it was decided that the A1ratings for the new process should be brought in line with the previous Cost Compliance Audits. *Appendix D.* A rating commencing with 'A' signifies that it is the outcome of an initial file sample; a rating commencing with 'B' signifies that it is the outcome of an extended file sample.

There was some discussion about extrapolation and how it was calculated. An explanatory paper was presented *(Appendix F)* and no further action was required.

Agreed:

a) Category A1 = 0-2 files nil assessed, no recoupment
b) Category A2 = 3-6 files nil assessed, recoup
c) Category A3 = 7+ files nil assessed, further files required for extended audit
d) Category B1 = 0-10% nil assessed, no recoupment
e) Category B2 = 10+%-20% nil assessed, extrapolation
f) Category B3 = 20+% nil assessed, extrapolation

11. Internal and External Guidance

This was a subject that caused a considerable amount of debate. A major issue was the fact that it appeared that previously contradictory guidance had been provided and that the profession and LSC staff had been provided with differing guidance. This had resulted in confusion and contention.

The group worked together, aided by the LSC contract lawyer's expertise, in order to produce comprehensive Civil Guidance. *Appendix G.* There were several iterations before it could be agreed but the exercise provided an opportunity for everyone to gain an insight into each other's perspective. Work is underway to produce a similar document for Crime and it will be circulated to ensure that the resulting guidance meets everyone's needs.

The guidance issued to LSC auditors alongside the audit tool was shared with the group. This is currently being updated for both Civil and Crime.

Agreed:

a) The same guidance will be provided to the Providers as to LSC staff
b) The Civil Guidance will be published on the website by the end of October
c) The Crime Guidance will be published on the website on completion (November)
d) If/when any guidance changes the profession must be alerted to the fact and the previous guidance archived.
e) The updated audit tools and accompanying audit guidance will be made available to Providers via the LSC website

12. Self Regulation and Reporting

Initially there was some enthusiasm for this, but on further consideration it was felt that the application was limited to file management and file preparation for audit. File preparation for audit was considered in some detail and a paper outlining what was appropriate was agreed. *Appendix H.* There is a necessity for the LSC to audit to ensure proper use of Public Funds and self-regulation cannot be used to replace this. However, improvements in self-monitoring should result in improved audit results.

Agreed:

a) Self-regulation was to be encouraged
b) Providing audit materials and guidance would facilitate this

SUMMARY

The group has worked together effectively with a sense of common purpose. It has been able to achieve a satisfactory resolution to any issues that were identified under the terms of reference. As a result of working together a greater understanding and respect of everyone's perspective and point of view has been developed.

Having experienced and demonstrated the benefits of joint working the group has decided that it would be shortsighted to totally disband and that there would be value in continuing to meet 2-3 times per year in order to:

- Ensure that the expected benefits of this work have been realised
- Work together to resolve any emerging issues
- Maintain and strengthen relationships and lines of communication
- Share and publicise best practice

APPENDIX A

Contract Compliance Working Group Members/Contributors

Legal Services Commission

Geoff Mountjoy
Pamela Phillips
Natalie Pedley
Matthew Howgate
Gary Winter

The Law Society

Sajid Sheikh
Joy Merriam
Jenny Beck
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Lucy Scott-Moncrieff
Joe Mensah-Dankwah
Stephen Hewitt
Carol Storer
Andrew Caplen

ASA

Ann Lewis
Gayle Collier (Shelter)
Clare Shirtcliff (Citizens Advice)
Noeleen Adams (Law Centres Federation)
Beverley O'Sullivan (Advice UK)

National Audit Office

Paul Keane
Tim Valentine
Ella Firman

	Questions	Answer	Reasons for No	General Comments
1	**Has the advisor correctly assessed the client's eligibility?**			
2	**Is there evidence of financial eligibility (income and capital) on file or has the supplier recorded acceptable justification for not retaining this on file?**			
3	**Were any disbursements incurred allowable and reasonable?**			
4	**Is the eligibility section completed in full?**			
5	**Is the certification signed and dated by the client?**			
6	**Does the matter type code on the CMRF correctly identify the subject matter of the case? If not then show the correct matter type.**			
7	**Is the end point correct on the CMRF? If not then show the correct end point.**			
8	**Is the work within scope of CLS funding having regard to the Access to Justice Act 1999 and any relevant direction of the Lord Chancellor?**			

APPENDIX B

	Questions	Answer	Reasons for No	General Comments
9	**Does the case fulfil the sufficient benefit test at the outset of the case and is a Legal Help matter start warranted in the circumstances?**			
10	**Was the matter reported within 3 months of the end of the matter under the Contract?**			
11	**Where a postal application is accepted by the advisor, is this justified on the file?**			
12	**Where the advisor has accepted an application from a child or on behalf of a patient or child is this justified on the file?**			
13	**Where the client has received previous Legal Help on the same matter is this justified on the file?**			
14	**Where the statutory charge applies, has the supplier 'applied the charge by ensuring that all money the client received was paid to the advisor so that they retained the appropriate amount to satisfy the charge'?**			

APPENDIX C

Contract Compliance Audits
File Selection - Summary

When undertaking a CCA, files are selected from the claims made in the preceding year or in the months between this file selection and the previous CCA, whichever is the shortest period.

Files are selected using a computer programme that:

- Selects on a provider (not office) basis
- Randomly selects on a stratified basis across the reported work, by category and type
- Does not select according to file value
- Does not select according to location
- Does not select according to fee-earner

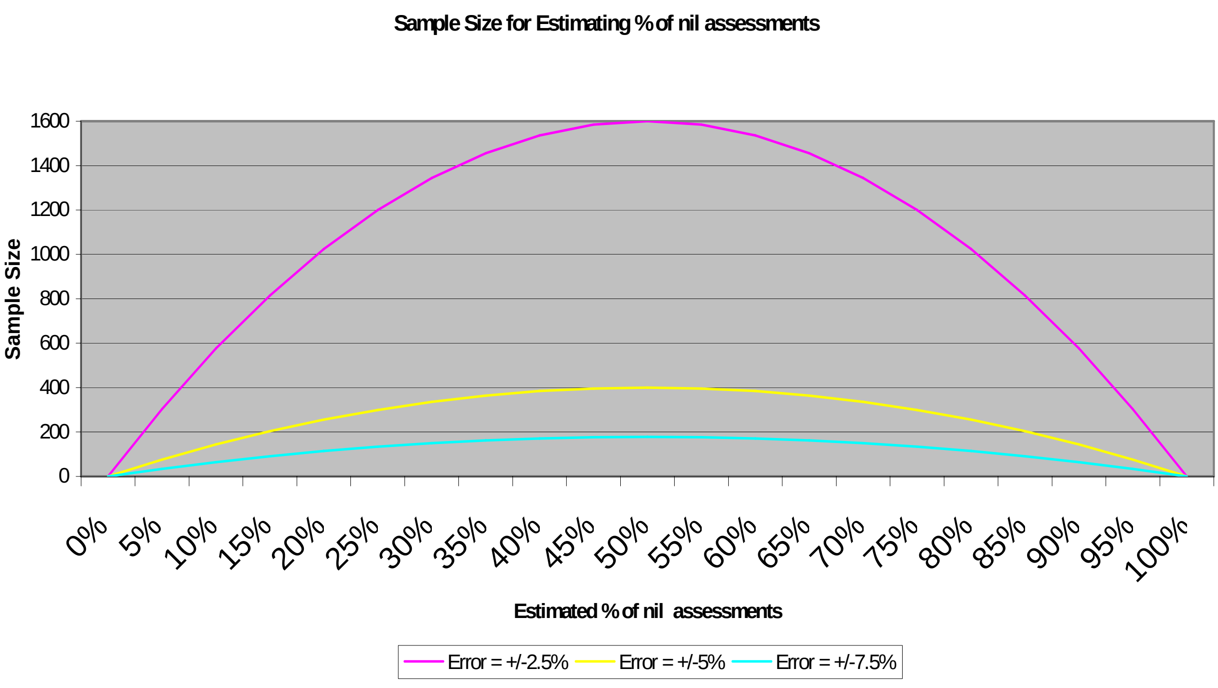
The initial file sample is usually 20. Any variance to this number is in order to achieve a stratified sample across the categories and types of work undertaken.

An extended file sample will vary in size, dependant on the number of files required to produce a representative sample. The method of selection is exactly the same. The date of the file selection used (for the purpose of identifying the claim period covered) is that of the initial sample.

An externally validated statistical tool determines representativeness of the sample. The following is a summary of the paper of the sample size required to achieve a representative sample:

As a result of introducing fixed fees, we will need to increase the sample size above the 20 files we have historically audited for CCA.

The graph below plots the required sample size based upon varying factors. The



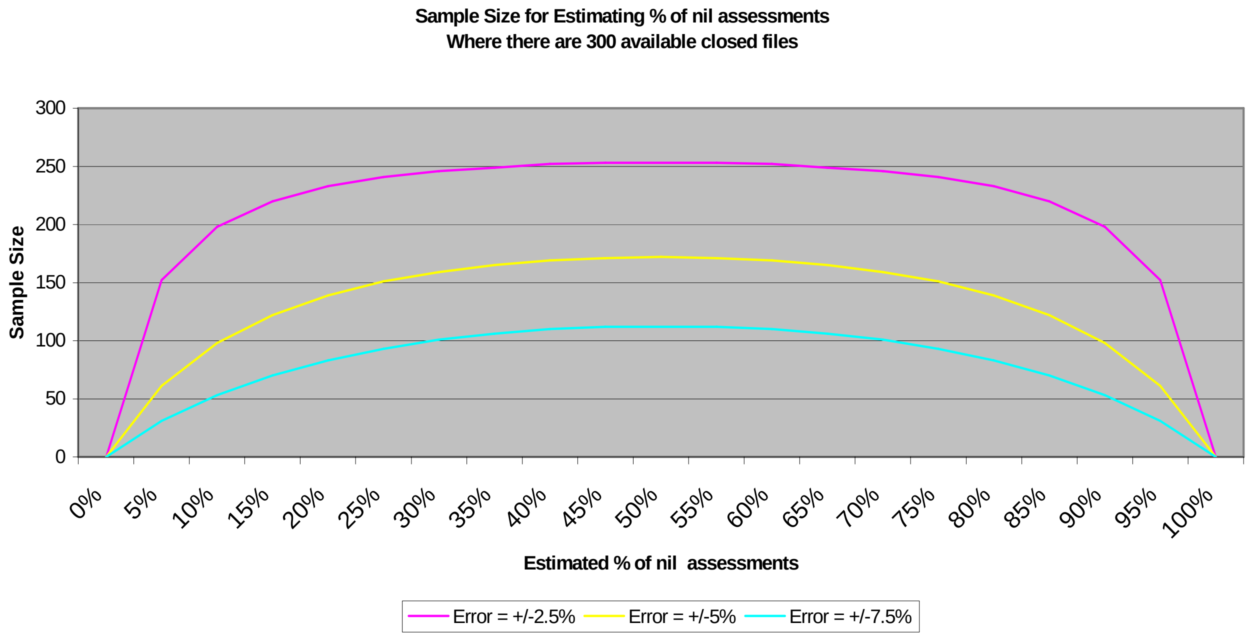
error rate (the different coloured lines) is the range in percentage points within which the true value of the population is estimated to be.

EXAMPLE
We assume that 5% of files are nil assessed overall.
We will accept an error of +/- 7.5%
The sample size is 34. We can work this out from the graph and accompanying statistical tool.
If it turns out that 5 of those files would be nil assessed, then with the sample size we have taken, the margin of error is +/- 12%. (Calculated with statistical formulae).
This means we are 95% confident[1] that if we were to review ALL files, the proportion nil assessed would be 15% (5 out of 34) +/- 12%, so anywhere up to 27% of files.
But we've said we want +/- 7.5%, not +/- 12%, and so to bring the margin of error back to +/- 7.5% we would need to review a further 56 files (90 files in total).
If it turns out that only 1 of those files would be nil assessed, then with the sample size we have taken, the margin of error is 5.8% and we can be 95% confident that the true proportion of nil assessments would be 3% +/- 5.8%, so anywhere up to 8.8%.
Here the level of precision (or sampling error) is within the 7.5% we require (at +/- 5.8%) and so we do not need to audit any additional files.

Adjusted sample size dependent on supplier size

This all assumes providers have a high number of files from which we could sample, and in practice that is often not the case. Of course, we can only sample up to the number of files closed out by the firm. These figures would therefore require an adjustment where the sample size was close to the total number of files available for audit.

The example below shows the same chart as above but for a supplier that has closed out 300 cases over the sampling period.



[1] All analysis is based on 95% confidence. This means that there is a 5% chance of an invalid sample. ThIs is standard statistical practice and is the level adopted previously by the LSC.

In effect, where a provider does less work, we need to audit fewer files for that sample to be representative[2].

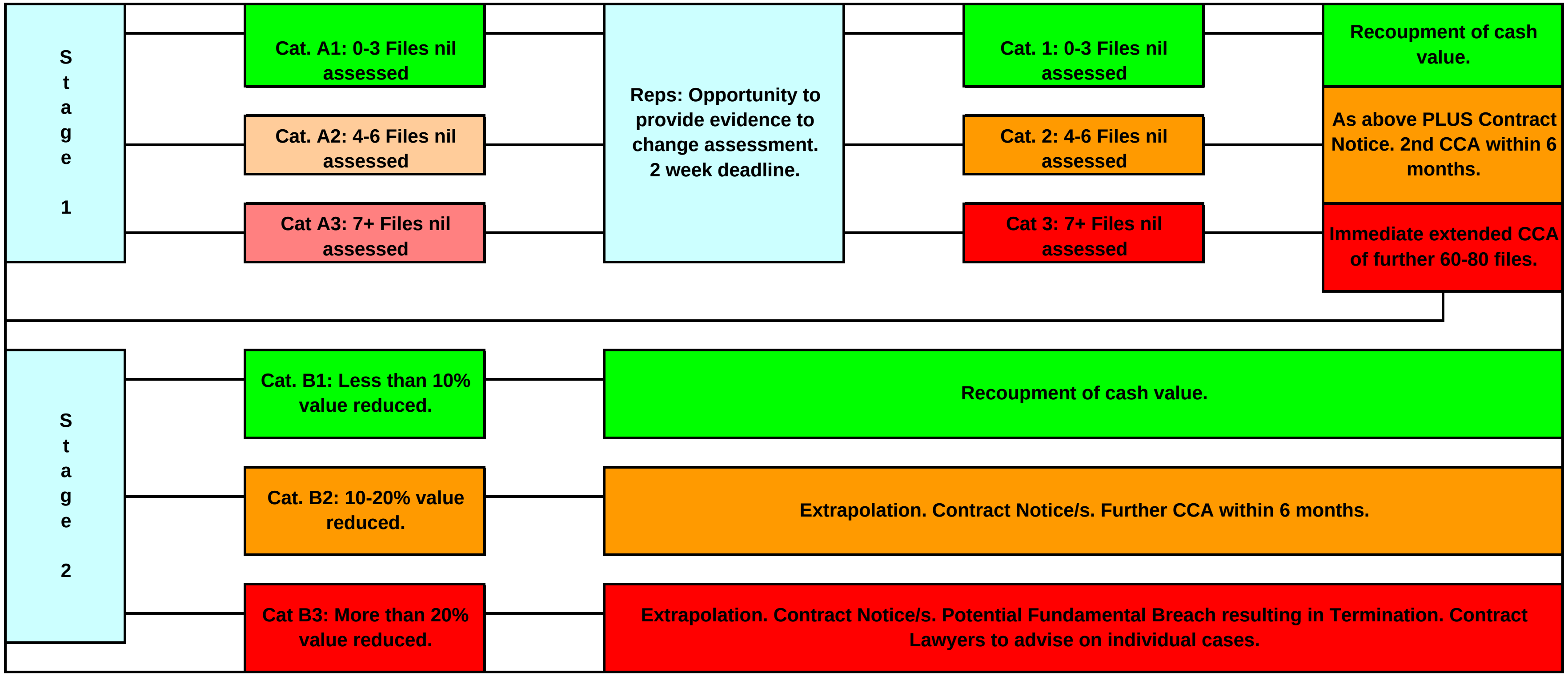
Pamela Phillips

July 2008

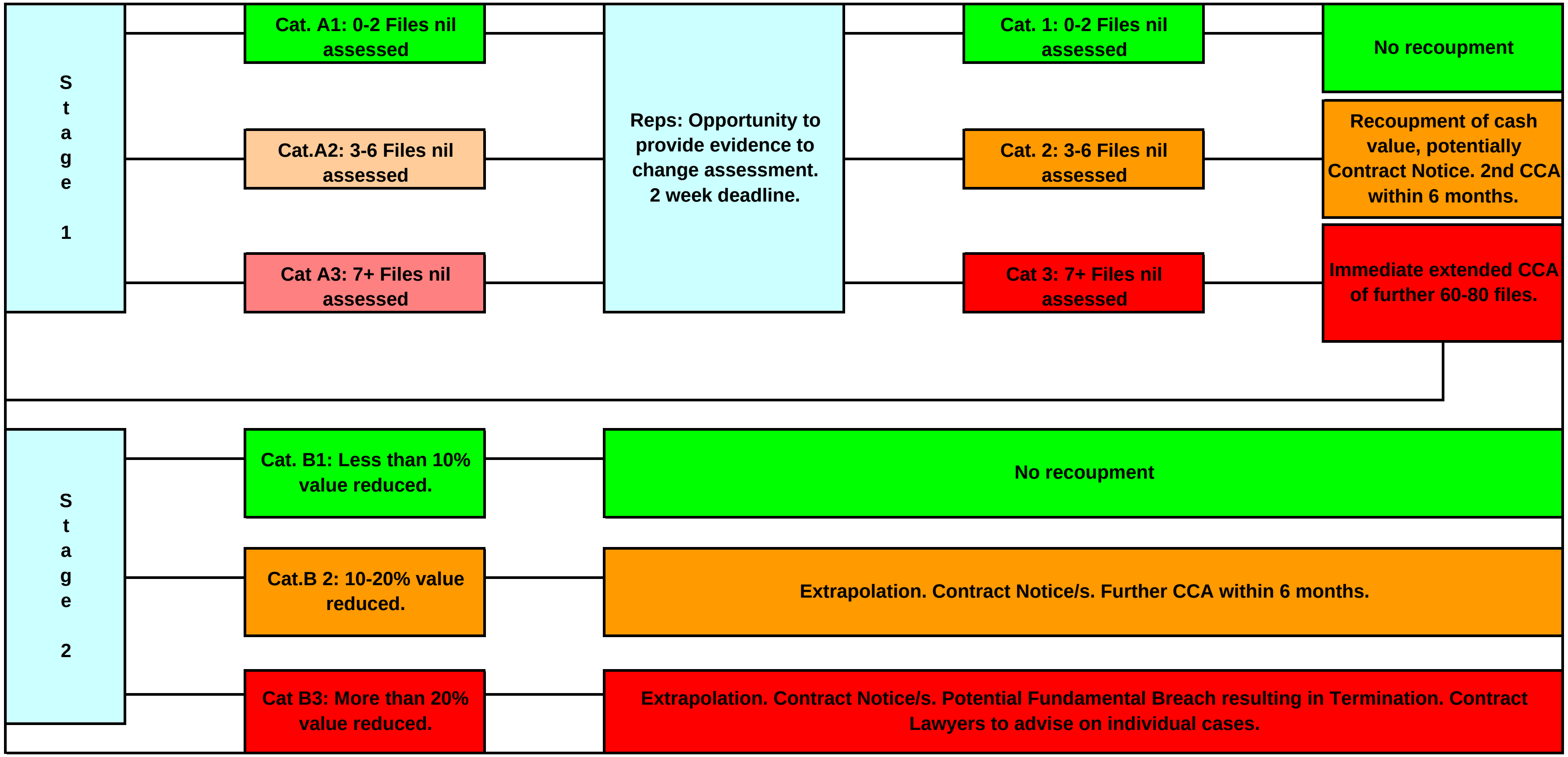
[2] Paper by Rebecca Bennett

APPENDIX D

CIVIL C.C.A. PROCESS MAP - 2007/08



CIVIL C.C.A. PROCESS MAP - 2008/09 Amended by the Contract Compliance Working Group



APPENDIX E

Provisions on appealing our Assessment decisions – Controlled and Licensed Work (*Copied from the Unified Contract)*

8.48 If you or counsel are dissatisfied with any decision of the Director as to the Assessment of the costs of Contract Work, you may appeal to an Independent Costs Assessor ("the Assessor"). For the avoidance of doubt, subsequent references in this rule and its related Guidance shall include "Assessors" in cases where an appeal is dealt with by a panel of three Assessors rather than a single Assessor alone.

8.49 The appeal must be made in writing (setting out full reasons) within 28 days of notification of the Assessment decision, and must be accompanied by the file. The Director will only extend the 28-day time limit where you have requested an extension for good reason within 21 days. Any extension of the time limit will be for a maximum of a further 14 days.

8.50 Failure to comply with any of the requirements set out in Paragraph [1]8.50 above means that you accept the decision of the Director and lose your right to dispute it.

8.51 Where an appeal is to proceed the Director also has the right to make written representations (in addition to those contained in the original assessment) to the Assessor. If the Director does so, these will be sent to you not less than 21 days before the appeal papers are sent to the Assessor. If you receive such further representations from the Director then you have the right, within 14 days, to provide a written response to them.

8.52 The appeal shall be dealt with by the Assessor on the papers only. There is no general right for either party to attend or to be represented on the appeal. However, if either party considers that there are exceptional circumstances which mean that concerns or issues cannot be addressed in writing, they may make a written request (setting out full reasons) for an oral hearing, to the Assessor. Such an application must be made at the same time as:

(a) in your case, you submit your written appeal; and

(b) in the case of the Director, at the same time as he or she makes any written reply (or, where no written reply is made, during the period allowed for making such reply) .

8.53 The Assessor will consider the request and notify both parties of his or her decision.

8.54 If:

(a) neither party has made a request for an oral hearing but the Assessor believes that his or her review of some or all of the issues under the appeal cannot be concluded properly without hearing oral submissions; or

(b) having considered a party's request for an oral hearing, s/he is of the opinion that the request should be granted

he or she will notify the parties of this. If either party chooses to attend at an oral hearing, having been given permission from the Assessor, the other party will

[1] This is copied from The Unified Contract. It should read "…set out in Paragraph 8.49 above"

also have a right of attendance and representation at the appeal and shall confirm whether or not they intend to exercise that right.

8.55 In any case, whether or not a party has made a request for an oral hearing, if the Assessor is of the opinion that an appeal is of such complexity and / or value that it should not be considered by a single Assessor alone s/he may, in his or her sole discretion, refer the appeal to a panel of three Assessors either to deal with on the papers only or by way of an oral hearing. If the Assessor is of the opinion that the appeal should be dealt with by way of an oral hearing, the provisions set out in the preceding Paragraph apply save that a panel of three Assessors shall deal with the appeal rather than a single Assessor alone.

8.56 For the avoidance of doubt, the Assessor may give procedural directions as to the determination of the appeal whether the appeal is to be dealt with on the papers only or an oral hearing basis.

8.57 On appeal, the Assessor shall review the Assessment whether by confirming, increasing or decreasing the amount assessed. The Assessor may apply his or her findings generally across files outside the sample before him or her under the terms of Paragraph 8.43. However, no such decision shall apply to any completed Assessments that you have not appealed within the time limit.

8.58 Where in dealing with an appeal on the papers only the Assessor identifies new issues (i.e. issues which have not been raised by either party under the appeal) the Assessor will, as s/he considers appropriate in the circumstances, either:

(a) adjourn the appeal and seek representations from the parties before making his or her final decision; or

(b) refer the matter back to the Director for a new decision.

Points of Principle of General Importance

8.59 At any point after the submission of an appeal to the Assessor, but no later than 21 days after receipt of the Assessor's final decision, either you, the Director or the Assessor may seek certification of a Point of Principle of General Importance.

8.60 An application for certification of a Point (or Points) of Principle of General Importance must be made as follows:

(a) in your case, by sending your application to the Director and, if one has already been appointed and their identity notified to you, to the Assessor. The Director will, within seven days of receipt of your application, forward that application to our Legal Director and, if an Assessor has been appointed but their identity not notified to you, to the Assessor also; and

(b) in the case of the Director, by sending an application directly to our Legal Director and copying that application to you and to the Assessor (if appointed);

(c) in the case of the Assessor, by sending the application to the Director. The Director will, within seven days of receipt, send the application to our Legal Director and notify you that the Assessor is seeking certification of a Point of Principle of General Importance.

8.61 All applications for certification of Points of Principle of General Importance, whether made by you, the Director or the Assessor, must set out the exact wording of the Point of Principle of General Importance being sought and explain, in detail, the basis of the application.

8.62 Upon receipt of an application for certification of a Point of Principle of General Importance our Legal Director will decide whether the matter should progress to the Costs Appeals Committee. If our Legal Director decides that the matter should not progress to the Costs Appeals Committee for certification then the

Legal Director will send the reasons for refusal to the Chair of the Costs Appeals Committee for approval and, if approved, to you, the Director and, where appropriate, the Assessor.

8.63 If our Legal Director or the Chair of the Costs Appeals Committee consider that the matter should proceed for certification to the Costs Appeals Committee then the matter will be listed for consideration by that Committee.

8.64 Applications for certification of Points of Principle of General Importance are, unless permission to attend is granted by the Chair of the Costs Appeals Committee, considered by that Committee on the papers only.

8.65 On considering an application under this rule, the Costs Appeals Committee will either:

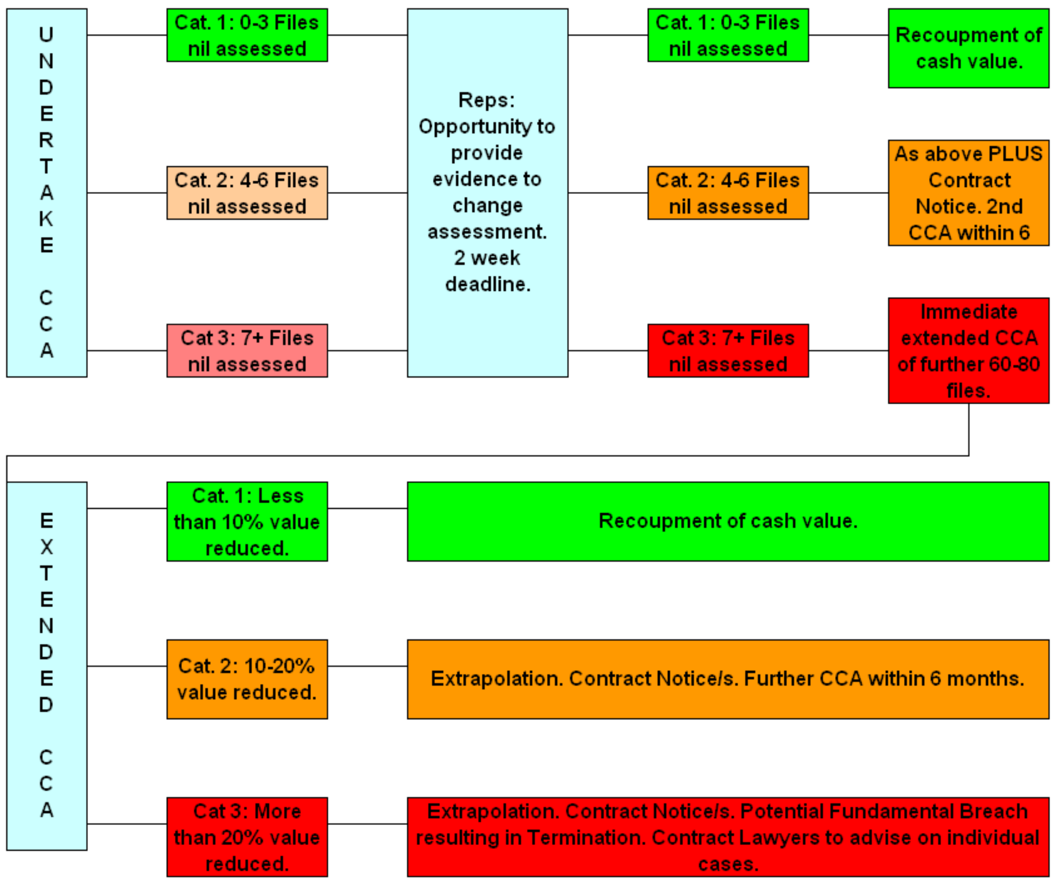
(a) decide whether to certify the Point of Principle of General Importance sought and/or, where appropriate, amend any of the Assessments of the Assessor to give effect to this determination, or refer the matter back to the Assessor for him to do so; or

(b) determine that there is no Point of Principle of General Importance raised by the application before it and refuse the application accordingly.

APPENDIX F

Contract Compliance Audit

CIVIL C.C.A. PROCESS MAP



Extrapolation – Brief Summary

Extrapolation only takes place when:

- The audit is Category B2 or B3
- The audit has taken place over a statistically representative sample of files.

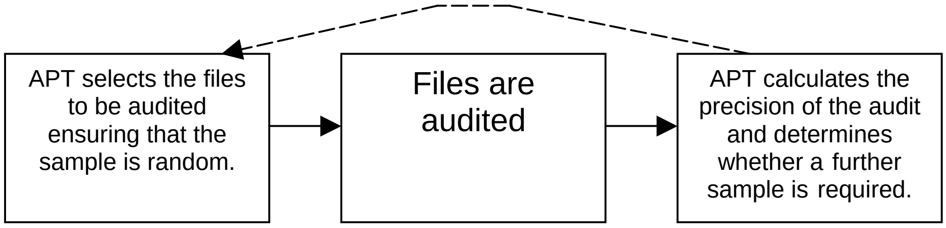
APT

The Audit Precision Tool (APT) performs two roles in the Contract Compliance Audit Process; the selection of files for audit and the calculation of the statistical precision of the audit result. APT works alongside the Audit Performance System (APS).

File Selection – APT randomly selects the file sample ensuring that it reflects the work done by the supplier in the period being audited.

Precision – This is a statistical measure of our confidence in the result of the file-audit and how representative it is of all the supplier's work. It informs our decision on whether we can use the results (for categorisation and extrapolation) or whether we need to audit more files to improve our levels of confidence in the audit results.

The flow diagram below shows the process:



The period over which extrapolation is calculated corresponds with the period over which the files sample was taken.

Example:

1. **Initial sample of 20 files called from period July 2007 – to May 2008.**
2. **All files audited - 9 Files nil assessed.**
3. **Representations received. As a result 7 files nil assessed.**
4. **Audit proceeds to extended file sample. A total of 15 files nil assessed of 60 audited, i.e. 25% reduction.**
5. **Value of claims July 2007 – May 2008 = £146,000.**
6. **Recoupment = 25% of £146,000, i.e. £36,500**

Pamela Phillips
July 2008

The Legal Services Commission Contract Compliance Audit

A Guide to LSC Staff and Practitioners

Issued by the Legal Services Commission as an outcome of the Contract Compliance Working Group: made up of the LSC, Law Society and Advice Services Alliance.

CCA Keycard

What is checked?	Why is it checked?	What are the potential outcomes?
	File opening stage	
1. Scope		
Was the case / matter within the scope of the legal aid scheme?	Should the case have been funded? The Access to Justice Act makes it clear that a number of cases are outside the scope of the legal aid scheme.	File paid in full. File nil assessed.
2. Financial eligibility / means test		
Was the client financially eligible to receive legal aid?	Should the case have been funded? Legal aid, as a matter of law, is only available to individuals who are financially eligible.	File paid in full. File nil assessed.
3. Evidence of means		
Is there evidence of financial eligibility on file?	Should the case have been funded? Legal aid, as a matter of law, is only available to individuals who are financially eligible.	File paid in full. File nil assessed.
	Throughout the case	
4. Disbursements		
Was it reasonable to incur any disbursement and is the amount claimed reasonable?	Disbursements may only be incurred where it is reasonable and it is in the best interests of the client. The amount claimed must not be unreasonable.	All disbursements allowed in full. Particular disbursements disallowed or partly disallowed.
5. Sufficient benefits / merits test		
Did the case have 'sufficient benefit' and meet the merits test to receive public funding under the terms of the contract / Funding Code?	Should the case have been funded? The Access to Justice Act makes clear that the Commission shall create the Funding Code setting out the basic criteria for the award of legal aid. At Controlled Work level this criterion is that the case had sufficient benefit to be funded. This effectively replaced the old "private client" test.	File paid in full. Discussions with firm over contract compliance issues. Files nil assessed if an issue on 10% or more of the initial file sample.
	At the end of the case	
6. Reporting		
Has the case been reported correctly?	Accuracy of reporting is checked partly because it is a contract requirement, but also because it impacts on the information that we use to manage you and the legal aid fund. It is in everyone's best interests to ensure that the data we are using to make judgements about your performance is accurate.	Case reported correctly - no issues raised. Case reported incorrectly with no financial implications. Issued raised with firm. For example, incorrect outcome code used. Case reported incorrectly with financial implications. Claim adjusted to correct level.

Introduction

1. The LSC is required to spend public funds appropriately and therefore must have processes in place to ensure that legal aid is only made available where appropriate. Where the decisions in respect of granting legal aid are devolved to its providers, then those decisions must be open to scrutiny and checked, such that the LSC can assure that National Audit Office (NAO) that the legal aid fund is being properly used.

2. The Contract Compliance Audit (CCA) process is a mechanism by which the LSC ensures that:
   - its providers have complied with the terms of the Unified Contract, particularly in respect of claiming costs in Controlled Work; and
   - it has not paid costs where it has no authority (statutory or otherwise) to do so.

3. The attached key-card sets out the issues that the LSC looks for when doing a CCA. Providers should ensure that they refer to the key-card when carrying out file reviews and before claiming any Controlled Work costs from the Commission. If a they discover that, for instance, evidence of means is missing, then they should try to obtain that evidence before submitting the claim, making clear on the file that it was obtained after the event. The key CCA issues are:

   Is the Client entitled to receive legal aid?
   - Was the case within scope of the legal aid scheme?
   - Was the client financially eligible?
   - Is there evidence of the client's financial eligibility on the file?
   - Did the case have sufficient benefit?

   Were the Disbursements claimed proper disbursements payable under the terms of the Unified Contract?

   Was the case reported correctly?
   - Was it reported in the right category of law?

- Was the correct outcome code used?

Is the Client entitled to receive legal aid?

4. The criteria for entitlement to legal aid are set out in the Funding Code which is a form of delegated legislation. It, along with the Unified Contract, sets down the conditions that must be satisfied before a client can be treated as eligible for legal aid and as and when further work is provided throughout the matter.

5. The key criteria considered in the CCA process are:
   - Was the case a matter of English Law?
   - Did the case relate to a service excluded from legal aid by Schedule 2 of the Access to Justice Act, namely: personal injury (other than clinical negligence and claims to the Criminal Injuries Compensation Authority); negligently caused damage to property; conveyancing (subject to exceptions); boundary disputes; making of wills (subject to exceptions); matters of trust law; defamation or malicious falsehood; matters of company or partnership law; other matters arising out of the carrying on of a business.
   - Was the case within the terms of the provider's contract (i.e. did the provider have a contract in that category of law or was it allowable under tolerance)?
   - Was the Sufficient Benefit Test satisfied, namely was there sufficient benefit to the client, having regard to the circumstances of the matter, including the personal circumstances of the client, to justify work or further work being carried out?
   - Was Controlled Work the appropriate level of LSC funding?

Was the Client Financially Eligible?

6. The Funding Code and Unified Contract make clear that Controlled Work shall only be carried out on behalf of a client who has been assessed as financially eligible in accordance with regulations and guidance.

7. It also says that, subject to guidance, satisfactory evidence in support of the client's information as to their means must be provided to the supplier before financial eligibility is assessed and a copy must be kept on the file.

8. It provides that a provider may assess the prospective Client's means without the accompanying evidence where:-
   - it is not practicable to obtain it before commencing the Controlled Work; or
   - pre signature telephone advice is given; or
   - exceptionally, the personal circumstances of the Client (such as the Client's age, mental disability or homelessness) make it impracticable for the evidence to be supplied at any point in the case.

9. The questions that an auditor should ask and the likely results are:

   - Does the means information on the Controlled Work form indicate that the client is eligible - if no, nil assess; if yes, consider the following:
   - Is there is evidence of means - if yes, and the client is eligible, allow the claim; if not, consider:
   - Is there no evidence of means or if the client is not eligible based on the evidence:
     - o if there is no evidence of means but it was reasonable to carry out work without evidence of means at any time then pay in full;
     - o if it was reasonable to carry out initial work before the evidence was provided then pay the fixed fee in full but limit disbursements to the period where it was reasonable to carry out work without evidence;
     - o otherwise nil assess;

10. If it is clear to the auditor that the Funding Code Criteria are not met or that a provider has failed to assess means or, in circumstances where none of the exceptions apply, has failed to see and / or keep the evidence of means then the provider may have acted in breach of contract and the LSC will not be able to satisfy the NAO that the client was eligible for legal aid and therefore that the LSC had the right to pay for that case.

11. Typically the LSC will seek to reclaim the payments made in such cases. However, if there are just one or two breaches or, for instance in the case of sufficient benefit, there is room for debate, rather that reclaim payment the LSC will highlight the errors and re-schedule a future audit to see that the same errors are not still being made. In serious cases the Commission may also consider the application of a contract sanction. In either case the Provider will be given the opportunity to make representations and, where appropriate, to provide missing documentation and evidence.

12. Previously, in cases where there was no means evidence on the file, the LSC allowed for the first 2 hours of such a claim to be paid, unless there was clear failure to obtain evidence of means across a significant proportion of the sample of files audited. This approach is however inconsistent with the concept of fixed fees and is not allowed under the Unified Contract or any associated guidance.

Were the Disbursements claimed proper disbursements payable under the terms of the Unified Contract?

13. The Unified Contract makes clear a provider may only incur disbursements where it is in the best interests of the Client and reasonable to do so. It also requires that the amount of the disbursement is reasonable and that incurring it is not otherwise prohibited by the contract.

14. In particular it makes clear that the following disbursements are not payable in the provision of Controlled Work:

Costs of (or expenses relating to) the residential assessment of a child or treatment, therapy, training or other interventions of an educative or rehabilitative nature unless authorised by the Lord Chancellor.
Ad Valorem stamp duties.
Capital duty.
Client's travelling and accommodation expenses save in the circumstances prescribed in the Costs Assessment Guidance and unless they relate to treatment,

therapy, training or other interventions of an educative or rehabilitative nature or to the residential assessment of a child.
Contact centre fees.
Court fees unless for a search/photocopies/bailiff service or as part of Controlled Legal Representation or otherwise permitted by Category Specific rules
Discharge of debts owed by the Client, for example, rent or mortgage arrears.
Fee payable on voluntary petitions in bankruptcy.
Immigration application fees
Mortgagees' or lessors' legal costs and disbursements.
Passport fees.
Probate fees.
In the Family Category of Law only, costs of or expenses in relation to the provision of Family Mediation, conciliation or any other dispute resolution including Family Group conferences.

15. If the wrong type of disbursement is claimed or if the amount claimed is wholly unreasonable then, again, the LSC has no obligation to pay those disbursements and the provider no right to claim them.

16. In addition there have been examples of providers seeking to claim as disbursements items or work that should have been part of their profit costs and therefore covered by the relevant fixed fee. This method of claiming costs over and above the fixed fee is a breach of contract and no such claims will be allowed.

Sufficient Benefit

17. The current Funding Code guidance makes clear that the focus of the Sufficient Benefit test is on whether to continue work, rather than making an assessment at the start of the case. In particular, the test recognises that, at the Controlled Work level of service, even in a matter with poor prospects of success, it will usually be considered worthwhile for a client to pay for initial advice, including advice about whether or not the case is worth pursuing further. This means that it is unlikely to have much relevance in a fixed fee

regime unless the case is inappropriately continued and becomes and exceptional case.

18. We would not expect to see many, if any, cases where there is not sufficient benefit at the outset but if an LSC auditor does come across such a case then he or she must seek guidance from the LSC's Corporate Legal Team before making an audit decision. It is therefore essential that providers make detailed file notes of why work was undertaken in cases where there is arguable sufficient benefit.

Accurate Reporting

19. It is essential that claims are reported accurately, not just to ensure that the correct payments are made on that particular claim, but also to ensure that relevant information about, for instance, success rates, is recorded – particularly where that information impacts on contractual key performance indicators.

20. In addition, much of the data recorded from claims is also made available for research on the effectiveness of the legal aid scheme – research which could directly impact upon future funding levels.

21. For this reason auditors are asked to consider whether the case has been reported accurately. If it has been inaccurately reported then this would normally be raised with the provider with no particular cost consequences. If however the inaccurate reporting has led, for instance, to the wrong fixed fee being paid then any over / under payment can be adjusted.

The Auditor's Approach

22. It is not for the auditor to second-guess the provider but to decide whether the decision, say as to incurring a disbursement, was one properly open to a reasonable decision maker at the relevant time, even if not the decision that the auditor would have taken. In this regard the function is very much a review function.

23. However if the auditor comes across a claim which is clearly out of scope or relates to a financially ineligible client, then they must disallow costs on that claim as to allow the claim to be paid would potentially be ultra vires the LSC's powers.

File Reviews

24. We suggest that providers incorporate in to their file assessment procedures for checking that the relevant means assessments were undertaken; that evidence of means is on the file and that the sufficient benefit test has been appropriately considered.

Contract Compliance Audits and Providers Reviewing Files Prior to Assessment and Adding Retrospective Information.

The CCA working group have asked to what extent is it appropriate and acceptable to review a file that has been selected for CCA prior to sending it to the LSC, and whether and when is it appropriate to amend or provide additional information?

In short, the LSC has no difficulty in providers reviewing their files beforehand, and in providing additional information. The LSC is keen for providers to adopt their own assurance mechanisms (e.g. file review and other supervisory activities). These may take place on a random basis, or prior to files being reviewed under CCA.

However, it is not acceptable to remove or amend any documentation. It is only acceptable to add further information. Where that takes place, it must be clear what has been added and when. There must be no confusing such additions for contemporaneous notes.

The intention here is minimise the number and scale of issues identified as part of the CCA process, where a straightforward explanation is easily available. Rather than prohibit any such amendment, it is sensible that a firm be given the opportunity to send additional information as an addendum rather than for the LSC to identify and raise these issues, and for the provider to then go to the trouble and expense of providing reps.

In addition to being identified prior to CC, issues may be identified as part of the SQM file review approach. A provider may identify an omission, for example, evidence of means has not been retained. Here we would encourage the provider to take action to correct the position. This will emphasise the educational aspects of the process.

Of course, some providers may finds this additional review burdensome and are free not to adopt this approach.

This approach does not apply to Peer Review. That process is independent and not owned and nor defined by the Commission.

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