



Alison Pickup
Public Law Project
The Design Works,
93-99 Goswell Road
London
EC1V 7EY

MP ref: AP
MoJ ref: ADR77580

10 May 2020

Dear Alison,

EXCEPTIONAL CASE FUNDING AND THE COVID-19 PANDEMIC

Thank you for your letter of 9 April 2020 to the Lord Chancellor raising your concerns on the impact of the COVID-19 pandemic on the Exceptional Case Funding (ECF) scheme. I am responding as the Minister responsible for legal aid.

The COVID-19 pandemic is the largest peacetime challenge faced by the United Kingdom. The Ministry of Justice has taken unprecedented and wide-ranging measures to tackle the issues caused for both providers and individuals in need of legal advice.

These measures include:

- Regular meetings with key stakeholders, including legal aid practitioners and representative bodies, to assist in the rapid identification and resolution of issues.
- Protecting legal aid practitioners and the public by transitioning to remote audio and video hearings wherever possible, and working with HMCTS to ensure that vulnerable individuals are not disadvantaged by this change.
- Ensuring that providers can claim the same amount of money for online hearings as they can for face-to-face hearings.
- Relaxing evidence requirements, including evidence of means, the use of electronic signatures and submission of evidence by email.
- Halting the pursuit of outstanding debts owed to the Legal Aid Agency.
- Suspending sanctions in relation to missed deadlines for delegated function applications, substantive amendments and appeals against LAA decisions.
- Issuing updated Exceptional Case Funding guidance and forms for challenges to restrictions under the Coronavirus Act

Many of these steps directly address the issues that you raise in relation to both the ECF scheme and the wider difficulties experienced by legal aid practitioners and the public. These are kept under constant review and further measures can and will be taken as needed.

In terms of the specific issues you raise, as detailed above, the Legal Aid Agency (LAA) has already published guidance on evidence requirements and procedural matters. This guidance applies equally to ECF applications and should mitigate the issues you raise in relation to the evidence requirements.

Successful direct ECF applicants do not require a further ECF application to be made on their behalf by a provider – the applicant has a determination that they are eligible for legal aid subject to finding a provider and so there is no need for such an application to be submitted when a provider is found. The LAA has recently amended its provider pack to make this explicitly clear.

In addition, individuals experiencing difficulties with the ECF application process can contact the LAA's Customer Service Team. This continues to operate remotely and can discuss arrangements with individuals. This includes the provision of reasonable adjustments, which can provide for a third party to assist with ECF applications where required.

The LAA has significant digital remote working facilities in place and, to date, the pandemic has had limited impact on workforce capacity. The LAA will continue to monitor this; however, there are no indications that the change to remote working is impacting on ECF application processing times.

It is correct to recognise that ECF applications can, on occasion, take longer to process than the target timeframe. However, the reasons for these delays are broader than processing issues on the part of the LAA or as a result of overly burdensome evidence requirements. For example, applications that experience delays are often the result of the circumstances of the application; for example, cases involving direct applicants with complex civil claims or applicants being given additional time to provide information. Allowing this flexibility for additional time to supply information necessarily means that some applications will take longer to conclude.

In terms of the Lord Chancellor's guidance for ECF applications, it is not clear that the existing guidance inadequately addresses the impact of the expansion of remote hearings on vulnerable individuals. An individual's ability to participate in hearings, which would include their ability to access remote hearings, is a factor relevant to the overarching test, which is clearly set out. The guidance makes clear that it covers some of the factors and caseworkers must approach each case based on its own facts and information

I recognise that you raise important issues about the operation of the ECF scheme. However, it's not apparent that these issues are specifically due to COVID-19 or that the pandemic is creating new and specific challenges for the ECF application process. The general issues you raise in your correspondence were recognised by the Ministry of Justice as part of the Post-Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Legal Support Action Plan. The ECF application process review currently being carried out will consider measures to address these.

In order to consider making immediate changes to the ECF application process, we would need clear and specific evidence that the process has been adversely affected by COVID-19, that existing measures have not mitigated this and that immediate steps are required to address this. I fully recognise the importance of this issue to both providers and the wider public and I would welcome any evidence that you have to show that there are indeed specific problems that are not being addressed by the steps already taken. Ministry of Justice officials are happy to continue engage with you on this important issue.

Thank you again for getting in touch.

Yours sincerely,



ALEX CHALK MP