



Crime Contracts Consultative Group (CCCG) Minutes

1 November 2011

When:	Tuesday, 1 November 2011, 14:00 – 16:00		
Where:	The Law Society, 113 Chancery Lane, London WC2A 1PL Teleconference - James MacMillan – MoJ; Bridgette Humby-Jones – LSC		
Chair	Rodney Warren – TLS		
Present	Alice Mutasa – TLS Elaine Annable – LSC Greg Powell – LCCSA Jacqui Hislop – LSC	Marie Bray – Bar Council Matt Shelley – LSC Neil Lewis – LSC Nick Poulter – LSC	Raj Chada - SAHCA Ruth Wayte – LSC Steve O’Connor – LSC
Minutes	Grazia Trivedi - LSC		
Apologies	Avrom Sherr – IALS Carol Storer - LAPG David Keegan-LSC John Sirodcar - LSC	Elizabeth Gibby - MoJ Jim Meyer – LCCSA Mike Jones – CLSA	Paul Keleher QC Gus Ghataura – ILEX Mark Lucraft QC

Actions from the previous meeting		By Whom	By When
AP1	Forward views to GT on the Volume & Value figures report	Rep bodies	Carried forward to the next meeting
AP2	Remind rep bodies of deadline for AP1	GT	Closed
AP3	Circulate the up to date <i>Investigations claims by scheme</i> figures	SO’Connor	Closed - Included in the Volume and Value figures report
AP4	Find out when the LAC1 e-form would become available	NLewis	Carried forward to the next meeting
AP5	Find out whether CDS Direct could notify solicitors of a court hearing by fax	JSirodcar	Taken forward to the next meeting
AP6	Obtain an updated ‘Unrepresented Clients’ reports with revised <i>unrepresented clients</i> data	MShelley	Taken forward
AP7	Look into the issue of the bulk load spreadsheet raised by MJones	SO’Connor	Closed
AP8	Find out why the new CDS forms would be introduced in February instead of April	NLewis	Closed
AP9	Consider RWarren’s query about excluding specified criminal files from peer review and contract compliance audits	MShelley	1 Nov

RWarren welcomed all present.

1. Minutes and actions from the previous meeting.

Minutes of October’s meeting were approved and would be published on the LSC website - *lsc>Criminal Defence Service>Crime contract>Criminal Contract Consultative Group.*

AP1. Representative bodies reiterated that the Volume and Value figures report was useful to the profession and should continue to be produced every other month for crime lower and quarterly for crime higher.

Rep bodies agreed with the LSC, who produced the report, that it could be streamlined and reduced from the current 24 pages. SO'Connor said that some of the data, such as that relating to proceedings claims by month, showed such small variance that it did not justify the use of resource needed to produce it.

It was agreed that representative bodies needed more time to examine the report before being able to form an opinion on how it could be improved; therefore this action was taken forward to the next meeting. **AP1**-Rep bodies

AP4. M Shelley would soon know when the LAC1 e-form would be available and he would inform the CCCG as soon as possible. **AP2**-MShelley

AP5. EAnnable would take this action forward to the next meeting **AP3**-EAnnable

AP6. HMCTS and MoJ had agreed to produce a quarterly report on *unrepresented clients*, which would be incorporated in the crime higher Volume and Value figures report.

AP7. The LSC's Claims Adjustment team had been made aware of providers' concerns regarding the new billing process and revised bulk load spreadsheet, which became operational in October.

A mechanism could not be put in place to disregard October's submissions but, if any SMPs had to be adjusted as a result of the October's submissions, providers' could make representations regarding the effects of the new requirements and these would be considered by the reconciliations team.

AP9. If a provider had a representation order and advice was given or a decision was taken not to offer advice, then that advice/or decision would be included as part of a Peer Review assessment.

MShelley would find out whether such work would be considered when conducting a contract compliance audit even though no cost had been incurred by the LSC. **AP4**-MShelley

2-3 Electronic Evidence and T3 Programme

AMutasa said that the amendment to the CDS (Funding) Order in 2007 did not go far enough. The Law Society claimed that the use of electronic evidence was increasing and would continue to do so as the T3 programme¹ developed.

The main concern was that evidence which had never existed in paper form, such as CCTV footage, emails, audio evidence, the contents of a computer's hard drive, etc, did not count as Pages of Prosecution Evidence (PPE) when The Law Society felt they should.

In TLS' view, the inclusion of 40-60 days cases, which used to be paid under the VHCC scheme within the graduated fees scheme, meant that it could no longer be said that all electronic evidence was fairly reflected within the base fee.

AMutasa argued that it was not acceptable for providers to claim for electronic evidence separately as Special Preparation (SP), because payment of work submitted as SP depended on the assessor's discretion and was sometimes declined.

¹ Information on the T3 Programme can be found in the [CCCG Minutes April 2011](#), pg 4, published on [Isc > Criminal Defence Service > Crime contract > Criminal Contract Consultative Group](#).

AMutasa said that at a meeting with Dr E. Gibby on 31 August she indicated that, following further discussion between representative bodies, MoJ, CPS and LSC, the Funding Order was likely to be amended again before the T3 programme was implemented in April 2012.

JHislop said that at a meeting between the LSC and representative bodies in March, there had been agreement that it was not possible to implement a 'blanket' acceptance of all electronic evidence.

JHislop explained that the issue of Pages of Prosecution Evidence (PPE) would be addressed in 2 stages. In Stage 1, PPE would include pages that existed in paper format and had been converted into electronic format and served by the prosecution.

In Stage 2, the MoJ, LSC and representative bodies would review PPE as the T3 programme evolved, and the CPS *bundling tool* demonstration would be integral into this review. The demonstration was expected to take place on 14 November. Following the demonstration, another meeting would be set up with the T3 Practitioners Group at which the definition of PPE would be discussed.

JMacMillan confirmed that the 2 stages had been agreed as the way forward. If, in the short term, prosecution papers were being digitised to aid easy storage and transmission, then the current definition was fit for purpose. However, if the CPS went further than that, the definition would have to be amended.

JHislop circulated a paper listing the three different types of electronic evidence and how providers should claim for them. The group agreed that it would be helpful to include this guidance in the next LSC Update.

RWarren had been made aware of a Serious Fraud Office (SFO) case in which all the interview transcripts had been recorded electronically and would only ever be available on a disk. He pointed out that this type of evidence was not covered by the PPE definition. JMacMillan said that the SFO had historically done things differently to the CPS.

JHislop said that it was this type of examples which would help inform Stage 2.

EAnnable added that transcription of recorded statements at police stations was becoming obsolete.

RChada said that a lot of the work undertaken by providers, for which they were not always paid, turned out to be unnecessary and gave the example of a case based on 10,000 PPE, that had been determined by 1 ½ minutes of CCCT footage. He argued that a review would be beneficial.

In response to a question about whether there had been an assessment of PPE, JMacMillan said that, as we lived in a society that increasingly relied on digital technology, it was deemed that a move to paperless working practices was the right way forward.

After further discussion, it was agreed that JHislop would set up a CCCG working group that would meet to discuss all the issues raised by practitioners. **AP5**-JHislop

Transfer costs. RWarren said that his firm, which was taking part in the T3 programme pilot had, together with the CPS, compared the cost of storing all its paper files with the cost of saving the files electronically, and found that there was no difference. This put a negative perspective on the decision to move to electronic working.

Access to electronic evidence in court. The point was raised about practitioners' need to be provided with laptops in order to access PPE in court.

It was agreed that all of the above concerns would be addressed by the T3 Practitioner Group, which included representation from HMCTS, the Prison Service and the Police.

4. Police Stations

Volume and Value figures report² There was discussion about the data in the report. SO'Connor said that in the 2009-2010 financial year 740k Police Station matter starts and 530k Magistrate Courts matter starts had been dealt with. Data for the current year indicated that volumes remained broadly in line with those of the previous one. SO'Connor asked representative bodies to meet with him outside the meeting to discuss the format of the Volume and Value report, which now stretched to 24 pages.

5. Means Testing

CDS Forms. New forms (Version 9) would come into use in February 2012 and RWarren asked whether providers would be allowed a grace period in which they could use the old forms. BHumby-Jones said that this decision had not yet been made, but understood that the profession would need to know in good time. It was important to note that new and old versions could not be mixed. **AP6-BH-J**

Feedback received by the LSC indicated that those who had already seen the revised forms had not fully understood the rationale behind the changes to CDS forms and there was confusion around the CDS15 form not being needed in every case. The LSC would make every effort to ensure that practitioners understood what the forthcoming change of forms aimed to achieve.

BHumby-Jones asked representative bodies for their views on the new forms (drafts), which she agreed could be circulated to practitioners to get their comments as well. It was agreed that rep bodies would email their comments to BHumby-Jones by 11 November. **AP7-representative bodies**

Application processing. BHumby-Jones said that HMCTS had been finding it quite difficult to understand all the requirements that Means Testing had introduced; as a result a lot of work had to be redone. This had caused processing problems and in some areas, not just in London, processing teams had struggled to keep up. However, performance had continued to improve and it was expected that by the end of the year processing times would be back to normal.

RWarren said that he knew of a serious and complex Crown Court case, for which funding had been granted and which had been won by the representing firm, that, upon review, had been found not to be compliant with the Means Testing criteria; therefore funding would be recouped for the public purse, although an administrative error had been responsible for this situation.

RWarren asked the LSC to consider the serious consequences for a firm that would not be paid as a result of an administrative error at the means testing stage; he also asked that the LSC consider putting into place a mechanism or contingency plan to support a firm while the case was being assessed.

It was agreed that NPoulter would get the details of the case from RWarren and that an investigation of the events that led to this situation would be undertaken.

6. Operational update

NPoulter talked the CCCG through the operational update³. Due to the increased number of appeals, processing times of CDS5s had slipped outside the 5 day target. Extra resource was being allocated to do this work.

² [Volume and Value figures reports](#) is published on the LSC website

³ Operational updates can be obtained from CCCG members

AGFS claims were the main area of concern as processing times remained outside the 8 wk target; 200 of these were high value claims. A fresh recruitment round meant that an extra 10 caseworkers would soon be allocated to clear the backlog of graduated fees. The backlog consisted of 23k claims.

In response to a query from MBray, NPoulter explained that it took longer to process high value claims for both litigators and advocates. A junior caseworker went through a high value claim, identified the relevant information, made a recommendation and passed it to a senior caseworker for authorisation. Claims over 10k were referred to a senior caseworker and those over 100k went to NPoulter. Two senior caseworkers had been allocated to process high value claims only, thus reducing the backlog from 250 to 200 claims in the previous week.

Delays to processing claims were also incurred when more information had to be obtained from HMCTS and/or the CPS. This practice had been adjusted so that caseworkers asked sooner and chased more often, and claimants were notified that a delay was going to be incurred while additional information was being sought.

Furthermore, as a consequence of the backlog, the amount of correspondence received had increased from 100 to 900 items a wk. Caseworkers spent considerable time chasing bills, dealing with correspondence and answering emails, all of which slowed down the recovery process.

Another factor that slowed the recovery effort were the cases that had initially gone to the court for processing, with advocates following up sometime later when payment had not been received, which were disowned by the court who claimed never to have received them.

NPoulter and the Bar Council were working together to find out how many cases had been caught in this situation. Early indication suggested that thousands of claims had been affected and were still outstanding, adding by as much as 12% to the 2,800 claims being received every week. The Bar Council was collating a list of outstanding claims and had given chambers a deadline of 30 November.

It was noted that further discussions were taking place in relation to travel costs and that the outcome would be communicated when known.

In relation to the reduced phone service, NPoulter confirmed that this had been instrumental in helping reduce the backlogs for Mags court claims and LGFS claims. As AGFS claims were still outside of service standard, it would continue but would be subject to a further review in January. It had been noted that correspondence had gone up significantly as a result.

VHCC NPoulter gave an update on the number of record and bill audits, which affected payments; the target was 90% within 20 working days and the current performance was 65%. This was a considerable improvement on the 34% achieved in September.

M Shelley explained that the Complex Crime Unit (CCU) were planning an audit week, whereby resources were diverted to reducing audit backlogs.

Audits were being carried out during the whole of the current week to improve performance levels.

7. Employment status of duty solicitors

EAnnable said that contract managers' reports indicated that many firms did not employ their duty solicitors, who were often referred to as *consultants* and were self employed; this practice allowed firms to retain their slots but put them in breach of contract. Although a wide spectrum of definitions could be applied to the term 'employment', it was not acceptable that some duty solicitors did not appear anywhere in the firms records.

SO'Connor suggested that, in order to clarify what type of employment did or didn't comply with the contract, he and JSirodcar would put together some scenarios and discuss them with the group. **AP8**-SO'Connor and JSirodcar.

8. AOB

Text pilot EAnnable said that the DSCC had collated data on the Text pilot and would base its decision on whether to roll out the scheme more widely on that data.

DSCC was planning to improve its website in order to make it more user-friendly and with the aim of making available data and information that providers found useful. For this reason they asked providers to put forward their views and suggestions.

Time of CCG meeting RWarren asked whether it might be acceptable to members of the group to change the starting time of the CCG meetings from 14:00 to 15:00 as this would be beneficial to those members of the group that had to travel directly from court or from a long distance. As no one opposed this suggestion, all future meetings, starting from 6 December, would run from 15:00 to 17:00hrs.

Action Points		By Whom	By When
AP1	Examine the current format of the Volume and Value figures report and make suggestions on what data should continue to be included and what could be discontinued.	Rep bodies	6 Dec
AP2	Inform the CCG about the date when the LAC1 form becomes available electronically	MShelley	6 Dec
AP3	Find out whether CDS Direct could notify solicitors of a court hearing by fax	EAnnable	6 Dec
AP4	Find out whether work conducted in the Magistrates' court that does not attract a payment from the LSC would be included in a contract compliance audit	MShelley	6 Dec
AP5	Set up a working group to discuss and address the issues raised by practitioners.	JHislop	6 Dec
AP6	Find out whether providers could use CDS forms (Version 8) for longer than the grace period of 1 month	BHumby – Jones	6 Dec
AP7	Send comments to BH-J on the new CDS forms	Rep bodies	11 Nov
AP8	Produce scenarios of employment arrangements for duty solicitors to clarify what complies with the contract and what doesn't	SO'Connor- JSirodcar	6 Dec