

CRIMINAL CONTRACTING CONSULTATIVE GROUP

5 October 2005

Present: Rodney Warren (Law Society/CLSA), Rob Brown (LCCSA), Derek Hill (Legal Services Commission), Tim Collieu (Legal Services Commission), Andrew Bishop (CLSA), John Sirodcar (Legal Services Commission), Alice Mutasa (Law Society), Billie Lever Taylor (Legal Services Commission)

1. Carter Review / Crown Court Costs

The Lord Chancellor had written to the Law Society to confirm that the package of measures for the Crown Court has now been implemented. As the Litigators' Fee Scheme is due to be implemented in October 2006, these measures will apply for approximately one year. The Commission stated that Cracks and Guilties should have no direct effect on most solicitors, only on solicitor advocates.

The Commission confirmed that Lord Carter is still absorbing information for his review and is conducting it in an independent way. The Commission feels positive about the Carter review. LCCSA suggested that it would be helpful if Lord Carter could provide more detailed terms of reference. Practitioners are keen to engage with him, but are unclear how to do so meaningfully in the absence of a clearer focus. The Commission undertook to consult Jeremy Marlow about this. It pointed out that the review is intended to be open ended at this stage, but agreed to reflect to the Carter Team that practitioners would welcome an indication of the areas where Lord Carter would most welcome input (Action: Derek Hill).

2. CDS Direct Evaluation

The Law Society circulated a letter that is to be sent to the Commission about CDS Direct. The letter points out what the Law Society believes should be included in the monitoring process.

The Commission stated that a proper evaluation of the pilot would be made. It does not have a fixed view as to whether the pilot will be a success or not. The intention is to conduct a preliminary evaluation in February 2006 and the Commission agreed to make this available if desired. If the pilot is a success, the Commission will be keen to seek input on how the tendering process would work.

The Commission also stated that the management information that CDS Direct will generate would be unique and valuable.

The Commission stated that, post-pilot, it would consult on the form of any eventual rollout. The key questions would be who should be able to bid; what structure of organisations should be allowed to bid; and what should the minimum contract length be.

The CLSA pointed out that the allocation of duty work is highly sensitive. Once the management of telephone advice is devolved to a firm of solicitors, they will need to be able to show that they are being indisputably even handed. The Commission agreed with this point. It also stated that, where an attendance was necessary, this call would come from the call centre and not from a firm of solicitors. The Commission would also carefully audit any firm that delivered such a service to ensure no favouritism was taking place. In addition, the Commission stated that it might be possible to prevent those offering advice from attending the police station.

The Commission confirmed that the pilot would last for between 6 months and 12 months. There is as yet no date planned for a rollout.

3. CDS Bill

The Commission stated that there are many developments in this area. The framework document and draft regulations are due to be released on Monday 10 October. However, these documents need no lead force and were being laid before Parliament in an indicative way. The formal regulations will be laid much later.

The Commission explained that it wants the means test to be sensitive and to take proper account of a person's ability to pay. But, it also has to be practical. Any Crown Court scheme would have to be implemented at least 6 months after the magistrates' court scheme and would be a system of contributions. A contributions scheme does have some complications, as it is very difficult to withdraw legal aid half way through if, for example, a defendant stops paying. However, if you ask defendants to make a one-off contribution at the start, this has problems of its own. The Commission stated that it wants to have separate arrangements for very rich clients.

The third reading of the Bill is in the Lords on 24 October. The Commission is currently developing an implementation plan. The key issues are IT and staff training. There needs to be a relatively simple system where you simply key in a client's details and a result is returned. The LCCSA recommended that electronic submission of forms from solicitors to courts would be helpful and suggested that an application such as Excel could be used. The Commission suggested that the CDS implementation team should meet with the Law Society to look at the IT implications of the CDS Bill for solicitors (Action: Steve Parkin).

The CLSA suggested that the Commission should be careful to target only wealthy clients and avoid hitting the 'middle ground'. The CLSA believes that the Commission should target people, for example, with a second property or even just higher rate taxpayers (i.e. 40%). If you end up targeting people who will struggle to pay for representation themselves and may chose to go unrepresented you will increase costs elsewhere and the scheme will be unpopular.

The Commission stated that it is most likely that means will be assessed on trust and a sample of forms will be checked.

4. Crown Court Litigators' Fees

The provisional implementation date for this scheme is October 2006. However, consultation will have to begin much sooner, probably January.

5. Police Station Enhanced Rates (monitoring of spend on these)

The Commission is still collecting data for the above. It is difficult to determine how much of an impact statutory charging has had. The Law Society asked the Commission to pursue this issue. The Commission stated that it is not easy to examine this data and a sample of cases needs to be analysed. The Commission is looking at a representative sample of homicide and grave offences claims and will aim to circulate a note between November and December.

6. Reaccreditation

The Law Society stated that there is a longstanding agreement from the Commission to pay for accreditation and reaccreditation fees. This is estimated to be £2-£3 million. The Commission stated that it is committed to paying a contribution towards reaccreditation and therefore wants a transparent process. The Commission stated that a dialogue is needed. There cannot be a move away from a process of reaccreditation, but there must be a cost effective means of taking this forward. The onus is on the Law Society to resolve this.

7. London Price Competitive Tendering

The summary of responses to consultation is due to be published in the third week of October. The Law Society asked if the date could be brought forward. There a large numbers of solicitors gathering on 24 October and it would be helpful to have the document before then. The Commission agreed to look into this and will also email timescales to the Law Society (Action: Derek Hill).

8. Any Other Business

The Law Society asked when the evaluation of the PDS pilot would be published. The Commission stated that the report would be made available for comment by the end of the year. The Law Society also asked if anything had been resolved in relation to the concern that a PDS office was planned for Pontyprydd magistrates' court. The Commission confirmed that this office is not going ahead. Finally, the Law Society asked if anything had been resolved in relation to the alleged inequitable treatment of private firms in relation to the PDS on the Richmond and Northallerton scheme. The Commission stated that it believed this issue had already been resolved, but agreed to review this again.

The Commission agreed to find out the result of the consultation on Peer Review (Action: Tim Collieu).

The Commission stated that, as a result of the CDS Bill and the transfer of the responsibility for the grant of representation orders, it would be developing improved guidance on the Interest of Justice test. The Law Society welcomed this.

The Commission and the Law Society agreed to meet to discuss updating the list of offences for which enhancements have been abolished.

Finally, the LCCSA stated that it would be unacceptable to solicitors if any concessions were made to barristers as a result of their strike without there being an even handed treatment of solicitors. The Commission confirmed that no concessions had been offered and that both the LSC and DCA understood the interests of solicitors.