



Civil Contracts Consultative Group

Minutes

Date: Tuesday 28 July 2009, 15:00-17:00
Chair: Derek Hill/Ruth Wayte
Attendees: Sarah Kovach-Clark – LSC, Paul Newell – LSC, Michelle Leung – LSC, Terry Davies – LSC, Kerry Wood – LSC, Alison Harvey – ILPA, Carol Storer – LAPG, Karen McKay – Resolution, Linda Lee – Law Society, Richard Miller - Law Society, Andrew Caplen – Law Society, Alan Bean – ALC, Colin Stutt – LSC, Ann Lewis – ASA (attending for Richard Jenner)
Minutes: Sarah Wenban
Apologies: Richard Jenner – ASA

1- Previous Minutes and Action Points

All agreed minutes of April meeting are correct.

AP1 – ML – completed.

AP2 – CStu – not complete. This will be circulated asap.

AP3 – RW (LSC) commented that the setting of agenda items seems to be one-way and would like to develop a more two-way process with RM as the lead. RM indicated he was happy to do this.

Action - LSC to contact RM to take this forward future planning of meetings.

AP4 – PN – not complete. PN to do this asap.

AP5 – PN – RM pointed out that periodical billing of disbursements had been taken out of the latest draft of the 2010 specification consultation. PN was not aware of this omission and agreed in principle that it is right to introduce periodical billing of disbursements but with the caveat that it is affordable. LL asked if the LSC could share the calculations which DH confirmed he would be happy to do so along with LSC financial impact of potentially introducing this.

RM said the MoJ is happy for the LSC to make payments for work already done. DH pointed out that the Treasury would be happy in theory with staged payments provided they are within budget of the relevant department. But there was a likelihood that paying stage payments would increase cost substantially, which the LSC could not support.

Action – PN to investigate omission of staged billings of disbursements in the civil specification and come back to group.

Action – DH to send the staged billing of disbursements calculations and financial impact to group.

2. Civil Bid Rounds Selection Criteria - Update

KW updated the group regarding the civil bid rounds. Procurement plans are currently being uploaded onto the LSC website where every effort is being made to ensure the detail is correct. There will be a grid to show the numbers of matter starts available in each area. Criteria will be available in the fullest form when invitations to tender (ITTs) go out. There will be 3 parts to the tender:

- 1) PQQ to be completed by organisation – this will be the same for all procurement areas
- 2) Essential criteria, contained in the ITT for each category and procurement area
- 3) Selection criteria, contained in the ITT for each category/procurement area

If the number of matter starts bid for is equal to or less than the number of matters available, then all the matters will be allocated at the essential criteria stage, and there will be no need to go to selection stage. If more matter starts are bid for than are available, then we will use selection criteria. These will be applied in over-subscribed areas and firms will be given ranking order. Matters will be allocated based on this ranking. All details in relation to the parts of the tender to be published on 7 September on the LSC website.

Note - Since the meeting, the LSC have announced that the current civil contracts will be extended with the 2010 contracts due to start in October 2010 rather than April 2010. This means that the tender process will be delayed to late 2009/early 2010. The LSC will provide a more detailed timeline as soon as possible in the Autumn.

Procurement plans

The group asked for examples of essential criteria. KW explained it might be, for example, in a Family bid, the provider would need to demonstrate the ability to provide face to face services – i.e. to have permanent presence in procurement area by the time contract starts (1 April 2010). LL asked what happens if firm ends up not being able to provide this presence – others could be knocked out because of speculative bids. KW – explained that firms have to confirm details of presence to the LSC 6 weeks before the start of contracts. If it is necessary to reallocate New Matter Starts (NMS), the LSC may either re-tender (portion of NMS now unallocated and not start from scratch) or go to the next ranked firm.

The LSC does not expect there to be gap in provision

AB questioned how the LSC intend to stop speculative/over-bidding where people do this to ensure contracts where there are not many to allocate. KW responded that the LSC has considered this and that the criteria includes some prevention of this such as through the capacity cap where providers have to confirm a maximum ratio of caseworkers to number of matter starts they are bidding for. In addition the LSC will only allocate the full number of matter starts bid for if the provider can name the caseworker. If it is a vacant post, then only part of the NMS will be allocated until 6-weeks (before contract starts) stage, at which point the provider needs to be able to confirm that someone is in post. These processes are still being developed and defined but will be completed in time for the bid rounds to commence.

RM queried what the LSC would do there if there are matter starts available following the bidding process. RW responded the LSC are looking into such scenarios and that the process cannot prevent against over-bidding completely. RW stated the LSC would welcome ideas from the Representative Bodies on this and if they could advise their members to bid realistically for the over-arching benefit of the legal aid provider base.

KM suggested that there is a danger providers will have too few matter starts to be economic. RW pointed out that it is fairer to reduce the number of matter starts allocated than to allocate none at all. RM queried if unallocated matter starts are likely to be taken away. PN stated that the LSC could currently do this in the contract according to the clauses stated. The 2010 KPIs have a provision to ensure that providers use majority proportion of NMS allocated to help prevent

speculative bidding.

KM asked if providers will be notified of contracts in December which KW confirmed. [Clearly, this date will also now move, although the LSC remains committed to giving providers as much notice as possible.]

RW emphasised that this process is not designed to knock providers out, though we recognise that some providers may not be successful, particularly in areas where there is competition. If a provider is not successful, they will not be able to take on any new work from 1 October 2010, but they will usually be able to continue working and being paid for cases that they have already opened (remainder work) until they have been completed. KM asked for some examples of selection criteria. KW stated that they will vary by procurement area. For example, preference is given to providers who are members of The Law Society Children's Panel. KM questioned if the detail will be clearly set out with the scores and how to match the criteria, which KW confirmed. CS raised a query about unsuccessful firms entitlement to information on the tender, it was confirmed that there might be confidentiality issues in relation to sharing information from rival bids but that all unsuccessful firms would be entitled to receive feedback on their own bid, including their performance against the criteria relative to successful bids. We would also publish details of all contract awards at the end of the process.

RM asked how the LSC would deal with expanding firms with no capital which could run into financial problems and the criteria for examining finances. KW stated that with around 4000 bids coming in it is not possible to examine every provider's finances. CSto asked how bids were weighted according to what sort of work you do as members do not know how to prepare because they do not know what LSC are looking for. KW replied that in any open tender situation such as this there will be some uncertainties. However, we are trying to give providers as much information as possible and answer their questions.

KM requested the group be informed as early as possible if there are any timetable shifts/changes. DH responded it is the LSC's intention to keep representative bodies informed on this and that the LSC are currently drafting a response to a letter from The Law Society regarding this. This letter will also be circulated to the CCCG.

Action: DH will keep the group informed of timetable changes and circulate the response letter to the Law Society. The letter has been sent and copied to members.

3. Civil Contract including KPIs - Update (Colin/Ruth)

Civil Contract

CStu updated the group on the Civil specification. The LSC circulated a final draft of the standard terms on 15 July and are currently taking all the comments received into consideration. The LSC anticipates posting up a final draft of the standard terms on the LSC website by the end of July. The LSC are looking to publish the specification in August but cannot publish the Family Fees part of the specification. The LSC have three alternatives:

- have a short consultation
- publish contracts except for Family
- put contract as a whole on in August with the Family section as a draft, subject to consultation.

CStu confirmed there will be more clarity on the timetable when Family Fees are signed off by the Minister.

KM suggested helping with the process eliminating the outstanding issues before publication.

Action – SKC to liaise with KM on the outstanding Family consultation issues.

KPIs

SKC stated that a discussion paper was circulated in April 2009 and the LSC has taken on board feedback. Some changes have been made and these will be circulated in an update paper to the

group.

A large part of the concerns raised were around procedural safeguards. CStu explained that the Standard Terms draft had revised the approach to procedural safeguards. RW gave the example that the clause that says if you have 2 contract notices then we would terminate has been removed. The existing KPIs will not be used as selection criteria for 2010 contracts. The new KPIs will be monitored during the term of the contract and will not come into force until October 2011.

The Impact Assessment will also be part of the update paper.

SKC felt that practitioners should feed into the guidance that goes out to relationship managers on KPIs.

RM questioned how many firms do not meet the Family KPI requirements.

Action - SKC will include figures on proportions as part of the update paper.

4. Civil Fees Update (Sara)

Family fees

SKC updated the group. Lord Bach issued a Ministerial Statement stating that he is committed to harmonisation in principle but has delayed the final decision to allow him more time to be sure that the models used and the assumptions underlying them are as robust as possible.. MoJ will publish Family Fees in time for September bid round. The LSC has received lots of feedback which is being carefully considered.

The Phase 1 Fee Scheme Review proposals on family have been incorporated into so that advocacy and preparation for advocacy can be considered as a whole. The PI element of the Phase 1 review proposals will be published shortly and providers notified via email alerts etc. This part of the Phase 1 consultation proposals received only a small response.

RM asked for an update on rates, in particular for confirmation that the rates for 2010 would remain unchanged.

RW stated that the LSC's financial allocation for 2010/11 has not been confirmed yet by the Treasury/MoJ, so the LSC was unable to confirm the rates for future contracts at this stage. At the latest, rates would be confirmed on the opening of the tender, although the group was reminded that any rate change would have to be consulted upon first and therefore providers would have plenty of notice of any proposed changes.

AB asked if the LSC could be more specific about the timing of publishing the civil tender.

DH stated that the LSC are not in a position to confirm dates, but hope to be able to very soon and are still working towards September, and will give providers as much notice as possible.

CSto asked if there was anything comparable in complexity to the civil bid rounds?

DH stated that possibly the NHS in London where they had to write a complex ITT for care services from scratch.

5. Civil BVT - Update (Sara/Terry)

TD updated the group on Civil BVT. The LSC are committed to outlining areas where contracts could be terminated early to allow for the piloting of BVT in certain categories. We are developing a discussion paper on why the LSC is considering BVT and what our approach would be to piloting.

It is anticipated the pilot will start in 2011 and would last for a minimum of 12 months. The pilot would be fully evaluated and if it proved successful it could provide the model for national rollout from 2013. The LSC are considering two alternative models although variants on these may be developed as we move forward. One model is the traditional one-off sealed bid tender where the

provider enters a bid for the volume or NMS at the price a provider wishes to bid. The second model would involve a multi-round open auction where providers enter a bid for the volume of NMS at the preset price the LSC offers. If the total for NMS exceeds the number available for that procurement area, there will be a new round with a lower price. The areas of law this will cover are Family, Immigration/Asylum, Mental Health and Social Welfare Law. The focus is on improving quality and access and not on driving down the price.

PN added that most SWL work is done at controlled rates. The LSC have a restricted budget, as do local authorities and therefore there is need to maximise the return from a finite resource and to ensure access. Demand outweighs available funding in this area and BVT could provide a mechanism for maximising efficiency not saving money.

TD said that the LSC are looking at how to outline the pilot areas:

- need to find out what types of BVT models would be appropriate
- looking at pockets of work that would be attractive to providers
- looking at provider concentration
- range of models for sustainable consultation
- distribution of case costs and to what extent they are provider or court driven
- client movement to access services

AH questioned if the criteria will be based on geographical areas.

TD confirmed there may be work streams that could be bid for on a national basis. For example, there may be particular detention centre for Immigration/Asylum or a particular hospital for Mental Health, but SWL work would be in geographical areas. The LSC are also looking at what the reasons were for the significant variance between costs that we see in localised area for example between London Boroughs.

KM expressed she would like to feed into this

SKC stated that the LSC will circulate the paper within the next couple of weeks and would appreciate feedback on the principles and areas of law to delineate areas. A separate meeting can be convened to take this forward. SKC confirmed she is leading on the overarching project but liaising with PN.

Action - SKC to liaise with KM and circulate paper for discussion as soon as possible.

6. Joint Commissioning - Update (Paul Newell)

KM asked for clarification on what Joint Commissioning is. PN explained that this was where the LSC and Local Authorities joined together to commission and fund legal aid services in a local authority area. The LSC have a statement about our position on CLACS and CLANS which is going through the sign off process by the Commissioners. The first wave of CLACS is currently underway. The LSRC research report will be out in December 2009, which looks at both the process for establishing Community Legal Advice centres and the outcomes. The Welsh Assembly Government Feasibility Study will be published in September 2009. The LSC are not going for a major rollout of CLACS and CLANS beyond 2010 and are reserving the right to make decisions on future roll out until after the award of 2010 civil contracts have been awarded. East Riding tender will be out next week. West Sussex, Wakefield and Barking & Dagenham tenders to follow.

The Representative Bodies asked about the timing of the CLAC/CLAN tenders and whether they would include family work. PN explained that the CLAC tenders will be happening at the same time as the 2010 civil contracts tender. In Barking & Dagenham and Wakefield, both private and public Family work will be included. No decision has been taken as yet for West Sussex, but this will be made at the end of August after local authority debate.

PN explained that the LSC will be looking at other models for establishing integrated services, e.g.: working with local authorities, considering consortia models etc and intends using the model tactically to address concerns about quality and access etc.

7. Relevant Issues Arising from Sub-Group Meetings (Paul/Sara) The group agreed most of the issues raised from Su-Group meetings have been discussed.

AOB

The group raised concerns with the clause within the civil specification allowing the LSC to impose restrictions on the number of licensed work certificates a provider can undertake. It was felt that this would be a major change in the nature of the contract which might make it harder for providers secure finance from their banks, especially in the current economic climate, as their future income stream could not be guaranteed for the life of the contract. CStu responded that this provision already existed in current contracts and needed to be retained although the LSC had no current plans to impose such restrictions (except as a sanction in individual cases). However the LSC would look again at the procedural safeguards in this clause and confirmed that such a system would not be introduced in the scheme as a whole without consultation with the representative bodies

The group agreed that future meeting dates also should be scheduled.

Action: LSC to set up 2009/20010 meeting dates.

Summary of Action Points

| | Action | By Whom | By When |
|------------|--|----------------|----------------|
| AP1 | LSC to contact RM to take this forward future planning of meetings | LSC | Next meeting |
| AP2 | PN to investigate omission of staged billings of disbursements in the civil specification and come back to group | PN | ASAP |
| AP3 | DH to send the staged billing of disbursements calculations and financial impact to group | DH | |
| AP4 | DH will keep the group informed of timetable changes and circulate the response letter to the Law Society. | DH | |
| AP5 | SKC to liaise with KM on the outstanding Family consultation issues | SKC | |
| AP6 | SKC to liaise with KM to feed into outlining of BVT pilot areas and circulate paper for discussion on BVT | SKC | |
| AP7 | LSC to set up 2009/2010 meeting dates | LSC | ASAP |

Date of next meeting: Monday 26 October 2009, 15:00 – 17:00 at the Legal Services Commission, 4 Abbey Orchard Street