



The Law Society



**Crime Contracts Consultative Group (CCCG)
Minutes**

10 January 2012

When:	Tuesday, 10 January 2012, 15:00 – 17:00		
Where:	The Legal Services Commission. 4 Abbey Orchard Street, London SW1P 2BS VC - Brigitte Humby-Jones; LSC; Elaine Annable-LSC; Nick Poulter – LSC		
Chair	Neil Lewis – LSC		
Present	Alice Mutasa – TLS Alison Cecil-Smith - LSC Elizabeth Gibby - MoJ	Greg Powell – LCCSA Matt Shelley – LSC Mike Jones – CLSA	Rodney Warren - TLS Shumi Mitra - LSC Steve O'Connor – LSC Vicky Kemp – LSRC*
Minutes	Grazia Trivedi - LSC		
Apologies	Avrom Sherr – IALS Carol Storer - LAPG David Keegan-LSC	Jim Meyer – LCCSA John Sirodcar - LSC Paul Keleher QC	Gus Ghataura – ILEX Mark Lucraft QC Raj Chada - SAHCA

*Legal Services Research Centre

Actions from the last meeting		By Whom	By When
AP1	Produce a paper with options for improving the way in which CDS Direct notify solicitors	JSirodcar	31 January
AP2	Continue to investigate the reasons behind the discrepancy in the number of defendants recorded as <i>unknown</i> in the Crown Court	MShelley	Closed
AP3	Obtain the details of 6 large providers from Elaine Annable so that the finance team can get their views on the proposals	SMitra	Closed
AP4	Find out what technical problems were affecting the Text pilot after it had been extended nationally and circulate a note to CCCG members	EAnnable	Closed

NLewis welcomed all present.

1. Minutes and actions from the previous meeting.

The December minutes were approved and would be published on the LSC website¹

AP1. Completion date 31 January 2012

AP2. Covered below in Issue 7

AP3. The finance team had researched what impact the proposed changes to the *Payments to Solicitors and Barristers* might have on the 15 largest firms. They found that 14 of them had one primary bank account for transactions with the LSC. Therefore the change would not be a major issue for large firms with several offices.

¹ www.legalservices.gov.uk > Criminal Defence Service > Crime Contracts > Criminal Contracts Consultative Group > Documents

It was agreed that it would be useful to obtain practitioners' feedback on these proposals. EAnnable would ask Contract Managers to survey a sample of their firms and feedback their views. **AP2-EAnnable.**

AP4. EAnnable said that when the DSCC rolled out the Text Pilot nationally in December, a significantly high number of calls had been generated by the texts and DSCC did not have sufficient resource to deal with that many calls, therefore the pilot had been suspended.

A meeting was scheduled with the DSCC on 12 January to discuss the outcome of the pilot. MJones asked whether the text message service had been offered to all Duty Solicitors or whether they needed to request it as this would affect take up and the volume of calls. **AP3-EAnnable**

2. Bridewell Legal Advice Study (BLAST)

A copy of the Executive Summary of the BLAST report had been circulated to members. In summary, VKemp outlined the key issues arising which included the marginalisation of local defence practitioners in the police station concerned, particularly as they were excluded from the main custody suite.

Within such arrangements she also commented on the lack of challenge by the defence over some inappropriate police practices, which included detaining suspects inappropriately and also with unduly long delays in some cases.

VKemp said that discussions were currently taking place with the local agencies with regard to setting up a second phase of the initiative. This would be subject to the local police and solicitors agreeing to address the main issues raised in the interim report which had prevented the first phase from being successful.

GPowell said that the issues described were in part the result of the introduction of fixed fees, which caused solicitors to adopt a more passive role. Furthermore, he said that with a 24 hour clock there was no incentive on the part of the police to deal with cases quickly, hence this could lead to long delays. VKemp acknowledged these difficulties but pointed out the 6 hour and 15 hour reviews conducted by inspectors, were supposed to help limit the time people were spending in custody. While it appears that these reviews are ineffective in leading to the early release of suspects, in a second phase the inspectors could be asked questions on the carrying out of reviews and whether these were used to put pressure on the police to release suspects.

GPowell suggested that custody sergeants were in a difficult position to act as independent arbiters, particularly as they had responsibility to try and ensure that due process was observed between two opposing sides: police officers and legal advisers. VKemp said that in the past defence solicitors had helped to provide support to custody sergeants by challenging inappropriate decisions, such as bail conditions, remand decisions and outcome disposals which were unfair and/or inappropriate. However, where solicitors were excluded and marginalised from the pre-charge process, it seemed that such pressure was no longer being exerted by them.

On the judicial side, because most solicitors did not hold a contract in relation to civil actions against the police, GPowell said they no longer had the knowledge or experience to make a complaint against police officers for issues such as: detaining suspects for longer than was necessary; for not giving appropriate disclosure; for withholding evidence etc. It was also noted that the period of detention, and the amount of disclosure provided, was not always proportionate to the seriousness of the offence.

VKemp said that a second phase would help to highlight the importance of some of these issues. In the short-term, the intention at Bridewell was to provide a framework within which legal advisers could

engage more constructively with the police early on in the pre-charge process so as to provide appropriate safeguards for their clients. To that end, a second phase would only be viable if duty solicitors were allowed access into the main custody suite and their representations were taken into account by the police when making decisions.

More generally, the intention of the study was also to highlight the importance of involving the defence early on in the pre-charge process. It is felt that this could have benefits not only for suspects in providing an opportunity for an early release, but also to help reduce the inefficiencies and delays in the current system, with the potential for achieving cost savings.

MJones felt that compliance with the regulations set by PACE had been slipping because custody suites were increasingly staffed by civilians rather than police officers.

RWarren asked how the benefits of the study could be extended more widely. VKemp said that because a second phase was likely to follow, circulation of the interim report was restricted at this stage. In order to oversee progress during a second phase, and to consider the wider implications of the findings for police station legal advice more generally, VKemp suggested that a national forum could be set up once Phase 2 was underway. This could be formed as a research advisory group, with policy-makers, stakeholders and academics being involved as a resource to provide guidance and oversee this work as well as to help disseminate the findings.

3. Crown Court Means Testing (CCMT)

CCMT Collection and Enforcement - BHumby-Jones talked about the LSC policy in relation to the collection and enforcement of Income Contribution Orders (ICOs)² from convicted offenders.

Clients that had been acquitted were refunded their contributions within a few days of Rossendales Ltd (the LSC's collection and enforcement provider) being advised of the 'acquitted' verdict.

CDS Forms – CDS14 (V9), CDS15 (V9) and CDS15c would become operational on 1 February 2012. Old versions (V8) would be accepted for 3 months after the current stocks had been exhausted (approx at the end of Feb), which was expected to be around the end of May. Because of the significant changes to the forms, it would not be possible to use V8s and V9s forms in one application.

The layout of the new forms was more logical, making them easier to use and reducing the risk of applicants making mistakes when completing them. The new format was designed in a way that would make it easier to complete the forms electronically in the future. Feedback from the profession about the new forms had been mainly positive, however past experience indicated that it wasn't until they were fully operational that any real problem was identified.

RWarren said that changing the forms so obviously from a visual perspective was very helpful because it was easier to distinguish the different sections; he also welcomed the 3 months extension during which the old forms could be used. He reiterated that the profession was very keen to have as few form changes as possible. He again requested that the LSC change its current practice of reviewing them twice a year, in April and October, in favour of a change in April only. BHumby-Jones appreciated that form changes caused practitioners a good deal of inconvenience, however if problems came to light once the forms became operational, and they often did, the LSC had no choice but to correct them.

² Details of the policy are included in the (Crime)'OperationalUpdate-January2012' which can be obtained from representative bodies

GPowell asked whether it was still necessary to specify whether the value involved in an offence (CDS14 (V9)-section 25) was between £30k and £100k because, after remuneration had been cut by 10%, this no longer mattered. NLewis said that he would clarify the point with BHumby-Jones outside of the meeting and an update would be circulated to the group if required. **AP4-NLewis/BHumby-Jones**

4. Operational Update³

NPoulter talked the group through the processing times data in the *Operational Update*. In response to a query by MJones, NPoulter explained that a number of claims had been received for breach of a Crown Court Order, with a Crown Court Rep order attached. The validity of Crown Court Rep Orders for breaches had been questioned, and MoJ had now confirmed that a Crown Court Rep Order was insufficient to validate a claim. Technically speaking, these claims were ultra vires. The Defence had, however, acted in good faith in relation to these claims and had believed that the Rep Orders had been granted correctly. Indeed, the LSC had also been of the view that the Rep Orders had been granted correctly. This issue had been escalated, and authority had now been received by the LSC Executive to pay these claims. The LSC Service Development team was writing some guidance on this issue, which would be sent to providers and the courts, to clarify the situation. Once the guidance had been issued, Claims with Crown Court Rep Orders would no longer be accepted (from a date to be confirmed) for breach of a Crown Court Order. The claims waiting to be paid would be processed by the end of the following week. MJones requested that the LSC be very clear in the guidance about when the Crown Court could issue a Representation Order and when it could not.

Evidence Provision Fees (EPF) - NPoulter said that there had been some delay in processing these claims, which were originally designed to be validated electronically. Validation of these claims, to decide whether a provider was entitled to £45 or £90 when claiming for additional evidence on the CCMT, was now done manually.

A process had been introduced to pay the graduated fee as quickly as possible before moving on to pay the EPF. The LF1 form would be sent back to the provider informing them that the EPF would be paid upon final validation. It was estimated that the backlog of 200 EPF claims would be cleared quickly.

Claims Rejects - Of the 6k claims received each week, 5-10% were rejects, which put a strain on resource. The top three reasons for claims being rejected were: the form wasn't signed, the Representation Order had not been sent, and supporting evidence was not included. NPoulter stressed the importance of driving down the number of rejects. The LSC planned to bring up this issue at the forthcoming Provider Reference Group meetings.

Applications Rejects were 20% of the total received nationally however, in relation to the self-employed and complex applications, the rejection rate was 40%. The main cause of rejection was missing information within the forms. It was hoped that the improved layout would help to reduce the rejection rate of applications.

Late Payments – There was discussion about the recent correspondence between The Law Society and the LSC regarding late payments' interest and the approach to the issue of the Practice Note. NPoulter said that, if operational staff were given the task of working out and paying interest, there would be an impact on overall claim processing times. The LSC asked whether representative bodies could provide some feedback on how providers felt about processing times. AMutasa confirmed that the proposed Practice Note applied to civil cases only, and did not apply to Crime.

³ The (Crime)' *Operational Update-January2012*' can be obtained from representative bodies

For criminal law practitioners, the main concern was that claims should be processed within the target time and acknowledged that there had been an improvement on the previous year, and restated their thanks to the criminal teams for the improvement.

The only area where practitioners felt that the LSC should be less rigid was in relation to bills having to be submitted within 3 months from the date of the end of the case. It was suggested that the LSC should look at what went on behind the scenes before rejecting claims that exceeded the 3 month deadline. NPoulter said that, if a practitioner gave a valid reason for submitting a bill too late, the LSC would accept it, and that this provision was in the Funding Order, and was being followed.

It was acknowledged that letters attached to claims explaining why they had been sent late, could (and often were) lost, therefore it was better to write on the claim itself. NPoulter would consider the issue of letters becoming detached from a claim and issue guidance on a process to be followed.

The LSC stated that they were bound to adhere to what was specified in the Funding Order, i.e. the 3 month rule. RWarren asked if this issue could be discussed, particularly in relation to defendants without a financial interest in their case. It was agreed that this meeting could be taken off-line.

5. Criminal Justice System (CJS) Efficiencies

NLewis explained that fortnightly meetings between The Law Society and Peter Lewis (CPS Chief Executive and CJS Efficiency SRO) had been arranged and confirmed with RWarren that in general there was closer engagement between defence practitioners and the CJS Efficiency Programme.

NLewis said that information had been published at the end of December, which gave the profession a clearer idea of the key programme milestones and updates on the issues highlighted by the CLSA.

RWarren explained that defence practitioners wished to be kept informed about the progress made by the LSC's work with the CPS, to ensure that the LSC were aware of all the issues relating to defence practitioners, and to have informed discussions.

AMutasa pointed out that, at the Criminal Procedural Rules Committee meeting in December, it had been suggested that the rules be amended to give greater latitude to the Crown with regard service of evidence electronically. However, following feedback from the recently appointed Law Society representative on the CPR Committee, the proposal had been withdrawn.

AMutasa went on to explain that at the same meeting it had also been suggested that the LSC amend the contract to facilitate such a procedural change. This gave rise to serious concerns amongst the profession. NLewis explained that the LSC had been asked to consider amending the contract but had not at this stage made any decision to do so. NLewis said that any change to contracts would be subject to consultation with representative bodies in the usual way.

6. Crime Lower

Rota Production – MJones had been informed that some duty solicitors had been given slots on Good Friday. The LSC said that some courts had indicated that they would be sitting on Bank Holidays and therefore a duty solicitor had been allocated. MJones also reported that Manchester's new rota, which started on 15 January, had no duty solicitor slots allocated on 14 January. SOConnor said that this had been due to an administrative error and had been rectified.

Feedback had also been received from a provider who felt that allocation of Saturday's duty slots was done inappropriately, despite the fact that the slots were drawn randomly. This provider wrote about

this to the email address on the rota but had not received any response, giving the impression that there was no one to talk to or to ask for help. SOConnor said that he would look into this and ensure that a process was in place to monitor responses; he would then report back to the CCCG. **AP5-SO'Connor**

The issue was raised about the lack of a process that duty solicitors could follow to inform the LSC that they no longer worked as duty solicitors, resulting in their names staying on the rota. SOConnor said that he would take this action away and report back to the CCCG. **AP6-SOConnor**

BHumby-Jones said that, two weeks before a new rota was published, a list of duty solicitors was also published to give practitioners the opportunity to inform the LSC of any changes to their status / details. RWarren did not agree that this was a good way to address the problem of departing duty solicitors because the list could be used by some members to expose others' irregularities, thus creating more confusion and more problems. Representative bodies would contact SO'Connor with their suggestions for a system that could work well and requested that a written validation process be in place by May, in time for the next rota. **AP7-Rep bodies**

E Annable asked the representative bodies to keep in mind that rotas were refreshed and re-issued each time a change in duty solicitors' circumstances was flagged up to prevent the Duty Performance team being inundated by calls concerning the membership of the new rota.

MJones requested that the DSCC be asked to stop calling providers' offices on Bank Holidays. SO'Connor would find out whether this was because the phone calls were made by an automated service. **AP8-SO'Connor**

Magistrates Courts - SO'Connor said that there had been some questions about Magistrate courts standard fees. As part of the Legal Aid Review programme there had been an amendment to the Category 1 fees which were primarily for guilty pleas in Magistrate courts. The MoJ's intention had been to split this into Summary Only offences and Either Way offences, with a slightly higher payment for the latter. However not all Category 1 cases split evenly into Summary Only cases and Either Way cases, i.e. Breach of Proceeding.

SO'Connor would provide representative bodies with a table listing the cases that did and didn't split evenly, for the purpose of directing providers (for billing purposes) to bill the Summary Only fee in those matters where there wasn't an Either Way element.

He asked that representative bodies look for any technical difficulties that could arise from this and let SO'Connor know before the information was shared externally. **AP9-Rep Bodies**

7. Crime Higher

Unrepresented Clients - MShelley reminded the group of his report at the last meeting, which showed that figures for unrepresented clients in the first 6 months of 2011 were consistent with the figures for the previous 2 years.

MShelley had researched the reasons why the representation status for a number of defendants was recorded as 'unknown' and also looked into whether it was in any way linked to the decrease in the number of legally aided defendants in the same period.

He found that the reason for this was that, when a case progressed from Magistrate court to Crown court, if the representation status was unknown at that time, the field in the database was left blank and not updated. MShelley had instructed MoJ and HMCTS to bring up to date the data on the system

and to rectify the process so that, when the paper work relating to representation was received, the offender's status was updated.

By the time the next Volume and Value figures report was presented to the CCCG in March, data for the first 6 months of 2011 should have changed. MShelley pointed out that this did not explain why the 2009/10 figures in the report still showed a number of defendants with representation status 'unknown' and would enquire further.

AMutasa asked for the names of the people responsible for monitoring the data because The Law Society wanted to monitor the number of unrepresented offenders. Vicky Blair was the contact at MoJ. The name of the person conducting the PIR would be confirmed later and in the meantime any queries or concerns should be sent to MShelley who would forward them on.

9. AOB

Delay in payments – MJones referred to the recent delay in SMPs and pointed out that any irregularity in payments to practitioners caused great concern. The LSC acknowledged this and said that they had informed providers of the January delay, and the reasons for it, on the LSC Update of 5 January.

LSC Website conversion programme – ACecil-Smith said that the LSC had been working with MoJ with the aim of transferring their website content to www.justice.gov.uk, which was expected to happen in the course of the following few weeks.

The LSC was keen to involve representative bodies and providers in this project and asked for feedback and for volunteers to *user-test* the new site. A 'Proposed site map for legal aid content on Justice.gov.uk' table and a copy of what the Legal Aid Landing Page might look like would also be circulated electronically. **AP10-GT**

RWarren was keen to see how the integration of Civil and Crime in the new website was going to improve navigability.

Criminal Funding Order – EGibby said that the MoJ was considering a review of the CDS Funding Order; a statutory consultation would commence in the following few weeks with the amended Order coming into force on 1 April.

The Law Society had sent a list of queries to the LSC and MoJ, who were going through it and making comments before responding. MShelley agreed to respond to AMutasa by the end of the week.

Provider Reference Groups – NLewis said that a new round of PRGs would commence at the end of February and agreed to circulate a list of PRG dates. **AP11-NLewis/GT** would circulate dates and locations of the forthcoming meetings.

Action Points		By Whom	By When
AP1	Produce a paper with options for improving the way in which CDS Direct notify solicitors	JSirodcar	31 Jan
AP2	Obtain feedback from firms re proposed changes to the way firms are paid	EAnnable	31 Jan
AP3	Report back to the CCCG re the difficulties experienced by DSCC during the Text Pilot national roll out	EAnnable	7 Feb

AP4	NLewis to clarify the position in relation to the £30k to £100k value of an offence with BHumby-Jones and a note to be circulated to the group if required.	NLewis/ BHumby-Jones	asap
AP5	Check whether DSCC has a process in place to check correspondence to the duty solicitors email box and report back to the CCCG	SOConnor	7 Feb
AP6	Find out whether a process could be in place for practitioners that no longer wanted to be duty solicitors	SOConnor	7 Feb
AP7	Suggest a process to be used by duty solicitors to inform the LSC about their withdrawal from the rota and feedback to SOConnor	Rep Bodies	asap
AP8	Find out why DSCC contacts duty solicitors' offices on Bank Holidays and report back to CCCG	SOConnor	7 Feb
AP9	Look at the table of Category 1 cases and feedback to SO'Connor if any technical difficulties could be found	Rep Bodies	asap
AP10	Circulate the new LSC website documents electronically	GTrivedi	Closed
AP11	Circulate dates and locations of forthcoming PRGs	NLewis/GT	Closed