

**Minutes of the Meeting of the VHCC Working Group held on 12 May 2009  
at Outer Temple Chambers, 222 Strand, London.**

**Present:** Michael Bowes QC, Bar Council (MB) – until 5.30pm.  
Prof Martin Chalkley, University of Dundee, (MC)  
Tim Colliou, Legal Services Commission, (TC)  
Jo Cooper, Solicitors' Association of Higher Court Advocates, (JC)  
Simon Hayllar, Ministry of Justice, (SH)  
Robert Heard, Legal Services Commission, (RH)  
Derek Hill, Legal Services Commission, (DH)  
David Keegan, Legal Services Commission, (DK)  
Mark Lucraft QC, Bar Council, (ML)  
James MacMillan, Ministry of Justice, (JDM)  
Paul Mendelle QC, Bar Council (PM)  
Jim Meyer, Law Society, (JM)  
Keith Milburn, Crown Prosecution Service, (KM)  
Alice Mutasa, Law Society, (AM)  
Matthew Shelley, Legal Services Commission, (MS)  
Adrian Vincent, Bar Council (AV)

**Action**

**1. Welcome and Apologies**

Apologies were received from: Gary Brown, Abbas Lakha QC, Barbara-Ann Tweedie and Rodney Warren.

The Group welcomed TC and RH to their first meeting, who had taken over the roles of Cris Scotter and Nigel Field respectively. The Group recorded their appreciation for contribution that Mr Scotter and Mr Field had made.

**2. Minutes of Previous Meeting**

The minutes of the meeting of 2 April (Annex 1) were approved.

**3. Report from the VHCC Sub-Group**

PM reported that the Sub-Group had met on several occasions and had made progress towards offering a fresh design for a VHCC payment scheme that was closer to a Graduated Fee Scheme than the consultation proposal, and was designed to be acceptable to advocates and delivered within the total budget.

The Sub-Group's thinking was still evolving but a grid had been drafted to produce a graduated class of case for the advocate based upon objective criteria, calculated as a combination of the seriousness of the case and the role of the defendant within that case.

In addition to the 'category grid' the Sub-Group were looking at the other elements which would form a graduated fee, such as pages of

prosecution evidence, divided by type of material.

The Sub-Group had considered a gradient of stages of payments in a case, to produce the equivalent of cracks & guilts, refresher rates etc. They were considering paying a percentage of the overall fee according to the stage that the trial had reached, so that an advocate who represented a defendant at a trial would receive a higher basic fee.

MC said that he had compared the draft framework against the data in the 88 case database of historic cases to see whether the framework would produce figures that were within a broad range of acceptability. The data on those cases had been collected for the purpose of analysis for the 'core tasks' scheme of the first consultation paper and therefore only the broadest of estimates had been possible. It would be necessary to have the data from the latest data collection exercise before any proper testing and refinement of the new draft model would be possible.

#### **4. Data collection**

The Group noted at Annex 2 the data collection form with the covering letters from the Bar Council and the Law Society.

MS reported that the LSC had identified 56 VHCC case contracts that had closed or were closing in the period January – May 2009. This amounted to the work of about 70 advocates. The LSC had sent out data collection forms to the solicitor firms and individual advocates in 20 contracts so far and the rest would be sent out over the next couple of weeks. Roughly 30 cases closed each month so the data collection forms could continue to be sent out as an ongoing process.

MS said that some solicitor firms who had received a form to complete had telephoned the LSC to say that had not heard about the exercise. He therefore asked whether the Law Society could put some form of announcement on their website. AM agreed to contact the Law Society Communications Team to request this.

AM

PM said that if the Bar Council was provided with the list of barristers who had been written to, the Bar Council could write a letter to the barrister's clerk asking the clerk to chase-up the completion of the form.

MS/PM

#### **5. Draft VHCC Contract**

PM reported that Bar Council representatives had met with the LSC to discuss a 'slimmed down' draft VHCC advocate's contract. These discussions had been positive.

MS reported that the LSC had been having similar meetings with Law Society representatives to discuss the litigator's contract.

JM said that solicitor advocates should be involved in the discussions over the draft advocates contract. The Group agreed that JC should be included in those negotiations.

MS/JC

**6. Schedule of division of responsibilities between litigators and advocates**

MS said that Cris Scotter had sent out a spreadsheet drafted by JM in 2008 which set out the list of tasks in a VHCC and seeking views on: which tasks tended to be the responsibility of the litigator; which the responsibility of the advocate; and which might be undertaken by either. Feedback received so far had been that there were fewer areas of overlap than had originally been imagined. He undertook to collate the responses and send out a revised schedule to JC, JM and PM who would consult as appropriate and then respond to MS.

MS  
JC/JM/PM

DH reported that the issue of a division of responsibilities was also one that the Group reviewing the Litigators' Graduated Fee Scheme were considering. Neil Lewis of the LSC was leading that exercise.

**7. Next steps**

i.) As the data comes in from the data collection forms, it would be entered into a spreadsheet and shared with SH, MC and JM to analyse. MC would use it to help to inform the continuing work of the Sub-Group.

SH/MC/JM

ii.) In addition to the scheme being devised by the Sub-Group, the consultation document would also need to offer alternative possibilities:

- Something similar to the current scheme.
- An extension of the Revised Advocates' Graduated Fee Scheme beyond 40 days to capture a proportion of VHCCs. The Group agreed that the LSC would offer ideas for this to the next meeting.
- A revised version of the consultation scheme. The Group agreed that MS would study further the consultation responses to see which of the concerns might be addressed.

Legal  
Services  
Commission

MS

**8. Date of next meeting**

The working group would meet again on Tuesday 30 June at 5.00pm in Conference Room 4 at the Ministry of Justice, 102 Petty France.