

**Minutes of the Meeting of the VHCC Working Group held on Monday 17th August 2009
at the Legal Services Commission, 4 Abbey Orchard Street, London**

Present: Derek Hill, Legal Services Commission (Chair) (DH)

Prof Martin Chalkley, University of Dundee, (MC)
David Keegan, Legal Services Commission, (DK) -[Video]
James MacMillan, Ministry of Justice, (JDM)
Paul Mendelle QC, Bar Council (PM)
Matthew Shelley, Legal Services Commission, (MS)
Barbara-Ann Tweedie, Bar Council (BAT)
Alice Mutasa, Law Society (AM)
Sarah Alborn, Legal Services Commission
Jim Meyer, Law Society (JM) – [Phone]
Claire MacNamara, Legal Services Commission (CM)
Marie Bray, Bar Council (MB)

Apologies : Jo Cooper
Mark Lucroft
Tim Collier
Abbas Lakhar
Simon Hayllar

Action

1. Minutes of Previous Meeting

The minutes of the meeting of 28th July were approved.

2.. Reviewing Sub Group Scheme

AM reported that the Law Society had not yet managed to provide comments on the Sub Group paper. JM stated that they could provide an oral commentary.

AM stated that the general comments from SACA were that the proposed scheme disadvantaged the junior Bar and solicitor advocates. Jo Cooper wished to ask the Group how widely the scheme could be circulated as the Law Society consider it imperative that they gain as wide a view as possible on the scheme.

JM stated that the general consensus from the Law Society was that the proposal was inadequate. Based on the refresher rates, JM felt that the proposal was one that supported Silks and not solicitors, and therefore, JM agreed with the paper produced by MS.

JM also stated that case categorisation was also viewed negatively. JM had spoken to three people who considered case categorisation as unworkable.

Regarding the 'defendant's role', JM believed that a conflict of interest could arise. An advocate would get more money the guiltier his client was. This would put advocates in the position of being able to claim more money, if they were able to talk up the culpability of their client. As case categorisation applies at all levels, it would affect both advocates and solicitors. JM stated that just using a position on indictment was a blunt gage and would lead to argument. JM reported that a wider group would need to consult on the scheme.

MS recognised that all parties wished to make changes to the proposal and suggested that maybe through adaptation; some of the ideas put forward could be used in a new scheme.

PM questioned how many individuals JM intended to consult. JM replied that he wished to consult the 12 people on the SACA committee in addition to every solicitor firm on the current panel, which were 258. JM stated that if this did not happen, there would be one sided opinions. JM put forward an argument of no case categorisation and stated he had support on this argument.

PM expressed his concern that to consult 258 individuals will end up being a pre consultation, consultation. PM agreed to consultation with SACA. SA stated that she was wary of having an extensive pre consultation with many litigators when the scheme was one for advocates. PM agreed with this stating that advocates would be annoyed by this. JM stated that he could reduce the 258 list to approximately 20, however, with the scheme as it was, the Law Society would not support the consultation. JM stated that he felt the pre consultation would take no more than a week; however, he strongly felt that the scheme could not go out as it was.

The Chair informed the Group that the final consultation would be a LSC document and therefore, the LSC would have to make the final decision as to what should be included. The paper would have to be fit for purpose. The Chair was of the view that there was no time to have a full pre consultation, and therefore, SACA members should be consulted. The Chair saw the input of SACA as beneficial as SACA and the Bar could work together to ensure that there was a correct balance between advocates and litigators.

PM reported that JM was not the first person to raise concerns; however, the structural point was the classification point. PM stated that classification had been omitted once before, and it had not gone well with solicitors or barristers. MS stated that those who were for classification were the fraud specialists.

The Chair stated that the point of a consultation was to obtain views. When the consultation goes out, the LSC could put forward more than one idea.

JM stated that he wanted clarification that it would be made clear in the

consultation that the Law Society was not in agreement with the proposal. JM stated that the whole tenure was that the consultation would be a joint document, and therefore, he wanted the viewpoints of the Law Society to be made clear.

PM asked JM whether the Law Society were rejecting case categorisation altogether. JM replied no, however, he felt that the pre consultation would produce responses in favour of no categorisation.

The Chair stated that in terms of the defendant's role, it would be difficult to measure this until the end of the case. To have to do this would put litigators in a difficult position.

PM stated that he welcomed every suggestion to improve the scheme, as the aim was to produce a co-ed scheme.

The Chair suggested that JM do a quick consultation as the scheme could not go ahead with the disapproval of the Law Society. PM stated that he did not want litigators to find out detail of the scheme before the Bar did. PM stated that if JM were to consult with a wider range of people, he would like to consult with members of the CBA.

Action

JM agreed to put together a list of firms that he wished to consult with and send to PM. PM agreed and stated that he would consult with the CBA under confidentiality provisions. Both to do this with the aim of finding out the acceptability of the scheme.

MC continued the discussion by providing an update on the data collection. MC stated that he had received 58 responses, of which 28 were usable. The 28 forms would enable MC to identify the various factors in the draft scheme and would provide enough data to begin putting numbers in boxes.

Action

The Chair asked MC whether he could begin work even with the Law Society's concerns. MC replied that the case classification issue needed to be rectified as soon as possible, however, he could begin work. MC stated that he required payment data from the LSC. MS agreed to provide this to MC.

PM reported that the response from the Bar had been very disappointing. PM put forward a suggestion that the consultation could go out with the tone that the information had been untested. PM stated that through the consultation, Barristers may realise that they can provide data, and therefore, the consultation itself could cause a response from the Bar.

SA expressed her concern that the lack of present data could produce fees so low that it will cause uproar.

MS stated that he liked categorisation; however, he saw it as impossible

to comment on the financial viability of the scheme as the rate attached to Level C and pages of prosecution evidence needed to be known.

The Chair questioned how calculations would be made where there was more than one level. JM stated that conspirators tended to be jointly liable and therefore, the scheme could struggle were defendant's blame each other. JM considered there to be few too cases for swings and roundabouts.

PM put forward a suggestion of having several levels of page count and certain categories of page evidence. PM stated that these two factors could make a case more serious. Nevertheless, PM was aware of the flaws put forward by this suggestion.

MS agreed with the notion that the complexity of evidence could make a case more complicated, however, not the number of pages.

PM stated that the advantage with using page count and type of evidence is that it is objective. JM stated that if using page count, there should not be any categorisation.

MS stated that he was in agreement with the use of categories of page evidence. The use of expert evidence could lead to specialist practitioners dealing with a case.

The Chair questioned whether the level of preparation for a solicitor was different according to a case. JM answered yes, in terms of time for preparation and complexity, but not the reading of papers or liaising with clients.

SA put forward a suggestion of having no categorisation for litigators, however, having categorisation for advocates. JM agreed with this, however, stated that some fraud specialist would like case categorisation, some would not.

The Chair asked whether the difference in a defendant's role was more important for advocates than for solicitors. PM answered yes, as regardless of the defendant, a solicitor tended to do the same work. For an advocate, a defendant's role is important as it has an effect on the advocate in court.

The Chair stated that before the scheme goes out, the Group has to be convinced that funding is not disproportionate. The Group would need to find out the viewpoints of SACA. JM stated that he had spoken to members of SACA and they were concerned about the split between the junior and senior members of the Bar. However, they had not commented on the 'defendant's role'

The Chair concluded that more comments were needed and the Bar and the Law Society needed to agree something so that the Law Society could consult.

Action

PM suggested splitting up the scheme components and putting them into a spreadsheet. Comments could then be put next to the components and circulated. MS agreed to put the scheme into spreadsheet format.

3. LSC Options

MS referred to the paper he had produced on the Benchmark Scheme. He informed the Group that the paper provided information and was to be read alongside the 'automated task list' information he had circulated.

MS stated that he would be grateful for any comments on the paper via email. MS stated that the purpose of the scheme was to be an alternative to that being produced by the Bar Sub Group. The scheme could work for both advocates and litigators.

AM stated that she would circulate MS's paper to some of her committee members.

4. Litigator Sub group

MS stated that paper had arisen from an attempt to try and change the VHCC definition. The Litigator sub group paper gives a summary of what was discussed at the LSC meeting with the Law Society.

MS stated that the issues identified were purely for litigators. MS stated that more work was needed and he welcomed comments from the Law Society.

5. Timetable

The Chair reported that the Bar Council were happy with the timetable, however, the Law Society were not. The Chair referred to a letter he had received from Richard Miller expressing his disagreement.

AM informed the Group that they were not happy with the short time period, and in particular the time for the contract consultation. AM stated that they are currently consulting on a criminal contract and the drafting is inadequate and therefore the consultation was proving to be time consuming. AM stated that if the VHCC contract ended up being like this, there may not be enough time to deal with all issues.

MS assured AM that it would be unlikely that there would need to be a lot of work done. MS stated that it was likely that the group would work on the contract drafting prior to the 4 week consultation and therefore, during the consultation period there should be very little to deal with.

SA stated that were the scheme to be ready earlier than the date envisaged, it would be published earlier.

MS reported that it would take some time to have information on the paper and then to do a complete impact assessment. MS stated that they would

need to look at the entire case profile across barristers, litigators and diversity groups. MS stated that the 23rd November is the last possible date to get the scheme out for the 14th July, and therefore, of all matters had been dealt with prior to the 23rd November, then the scheme would be released early.

The Chair stated that the LSC would make their best endeavours to get the scheme out quickly. SA stated that if all parties were in agreement, it was likely that they would get a quick endorsement from the Commission.

Action

The Chair concluded that if the LSC could work to an earlier date, they should and the timetable date would be the fall back position.

6. Date of the next meeting

The Working Group set a provisional date to meet on the 7th September at the Bar Council.