

**Minutes of the Meeting of the VHCC Working Group held on 30th June 2009
at Ministry of Justice; 102 Petty France; SW1H 9AJ.**

Present: Rodney Warren, (Chairman)
Prof Martin Chalkley, University of Dundee, (MC)
Tim Collieu, Legal Services Commission, (TC)
Jo Cooper, Solicitors' Association of Higher Court Advocates, (JC)
Simon Hayllar, Ministry of Justice, (SH)
Derek Hill, Legal Services Commission, (DH)
David Keegan, Legal Services Commission, (DK)
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)
Abbas Lakha QC (AL)
Barbara-Ann Tweedie (BAT)
Marie Bray, Bar Council (MB)

Action

1. Minutes of Previous Meeting

The minutes of the meeting of 12 May were approved. The following was identified:

Item 4 – Data Collection

AM stated that she had not contacted the communications team as she had been snowed under with the Best Value Tendering paper (BVT). AM stated that she would go and do that if necessary.

PM stated that the CBA had written to barristers and to heads of chambers on the first list. Gary Brown had emailed barrister's clerks. PM stated that all 45 people on the first list had been phoned and approximately half had sent the forms back. PM informed the group that Desmond Brown had drafted an email which would go out to barristers on the second list on 1 July. The Bar Council Sub Group were phoning all counsel on that list

Bar Council Sub
Group

AL informed the group that those he had spoken to had said that they would send back the completed forms. PM stated that the response had been disappointing and that the letter from Desmond should make clear how critically the data is needed.

SH stated that having looked at the responses from the completed forms, one area needed clarification. SH stated that it should be made clear on the forms whether the hours allowed or the hours paid for were required. MS stated that he will ensure that this point is clear in any data collection forms. SH stated that he felt it should be hours paid for.

Item 7 – Next Steps

JM stated that i) had been completed.

MS stated that there was still some work to be done in relation to ii).

3. Report from the VHCC Sub-Group

PM reported that the Sub-Group had finished drafting the outline of the VHCC Scheme and it had been circulated, however, the Sub-Group were not going to bring it forward to the main steering group as the scheme had not been tested against any data. PM stated that there may be aspects which might seem alarming and unless the scheme has been tested against data, it may not be considered a runner. PM stated that he hoped to have sufficient data in July.

DK asked whether there was the possibility of bringing forth an outline. PM stated that the scheme draws on experience of the Graduated Fee Scheme (GFS) and the VHCC scheme; however, to get into detail, the scheme would only become accessible by testing it against data.

MS asked at what point the scheme could be tested. Is there requirement for 100% of forms? SH stated that the recovery of 30 – 40 forms would be useful. MC agreed. SH informed the group that he had received about 10-12 forms towards that 30-40.

AL stated that he believed that the group would recover 30-40 forms, as those he had spoken to had not returned the forms due to work commitments. MS stated that the response rate had increased over the last week.

DK stated that if the response rate increased at the rate it had been, the group would potentially have 30-40 by mid July. DK stated that the group should begin testing by mid July at the latest

4. **VHCC Contract**

PM stated that progress had been made on the contract. PM had had some meetings with Jackie Hislop and since then, had asked Michael Bowes for a specialist input. Sean O' Sullivan, a specialist in contract law, had taken a look at the contract. PM had a meeting with Sean O Sullivan on the 17th June and Sean had agreed to attend a meeting with Jackie Hislop and PM on the 22nd July. PM stated that he is confident a contract would be negotiated.

MS stated that he hoped the contract would gauge everybody's views and that solicitor advocates would be involved in the discussions. MS asked whether JC would be available to attend the meeting on the 22nd July as the contract had moved on since the last version JC had seen. JC stated that he may be available, but if not, he would send a replacement.

JC

PM stated that because of the alterations made so far, the contract was not an easy document to follow. MS stated that he would ask Jackie to circulate a fresh copy. MS stated that a meeting to take forward panel members would be conducted with Jackie. The Chairman asked that AM be kept updated.

5. **Alternative VHCC Scheme Options**

MS informed the group that his paper explored the alternative options for a VHCC payment scheme for a consultation paper. The paper outlined what the options might look like. MS invited the group to discuss the pros and cons of each option and asked that an agreement be made as to whether the options could go into the consultation paper.

Option 1- Benchmarking

JM stated that there were no surprises with this option as it had been discussed a few times before. JM saw no problems with this option. PM agreed.

Option 2 – Extended AGFS

JM stated that this option was a little more controversial. There was a close correlation between the LGFS, AGFS and VHCC contract. JM asked whether with this option, there would not be a VHCC contract for

litigators – litigators would have to have an AGFS or a LGFS

MS stated that this was not the case; however he was in agreement that this option did cause complications in terms of work shifting.

JM stated that he had reservations about the 10,000 page cut off. He felt that litigators would have to be careful and he recognised that the 10,000 page limit was chosen as it was the AGFS cut off point. JM stated that the Law Society have not done any modelling regarding this as they are waiting for work from the Sub-Group, however, JM stated that he did not consider Option 2 viable. MS agreed that in order to model Option 2, data would be needed for testing.

The Chairman asked what the preferred approach would be. MS stated that he wanted to get the views of the Bar on option 2. Did the Bar think it was a viable option?

PM stated that he was not sure how it would work. The graduated fee does not pay a significant proportion of the case. The more VHCC's fall into graduated fees, the greater the problem would become. AL stated that there would be a problem of advocates doing work which is not paid for under the graduated fee. PM stated that it was difficult to determine with a case whether it would be unused material heavy or not and thus this option may exacerbate the problem. AL stated that if Option 2 were to encompass bolt ons for tasks which are not covered by the graduated fee, it may work.

PM asked MS on his views regarding the 10,000 page cut off. MS stated that he feels the scheme will sit nicely with LGFS and AGFS if the cut off is 10,000 pages. MS stated that it would be a more logical approach when looking at other schemes

SH stated that pages seem to be a driver of complexity. JM stated that he is reluctant to agree to just looking at pages as this cuts out audio and video evidence. JM suggested converting hours of video and audio into nominal pages. A calculation could be made where evidence would be considered in units. This would encompass all material, not just pages.

Option 3 – Status Quo

PM stated that this option would represent a failure. The Group agreed.

AL stated that this option would have to be avoided and he was questioning whether the option should be included as it was not a realistic option. MS stated that a 'no change' option had to be included.

JM stated that he believed a graduated fee for advocates would be agreed. It may be popular or unpopular, but it would not be a failure.

6. Next Steps

MS stated that he would carry on exploring the AGFS Options however; he would have to wait for data to come back. MS stated that he would start to do some modelling on what was received so far.

MS

7. Any Other Business

MS referred to the timetable. He stated that the 30th June was a provisional date on the basis that the sub group were to devise a scheme to meet the 1st April 2010. MS stated that any daily delay on the scheme pushed the deadline back by a day. MS saw the second timetable as a more realistic timetable. (*Timetable dated 26th June*)

MS stated that he would like agreement from the Law Society and the Bar Council that they would sign up to the timetable before the scheme goes to consultation.

The Chairman asked whether the contract consultation would run consecutively to the policy consultation. MS stated that this may be possible for the litigator contract as we would propose very little change to their scheme. However, litigators might want to consider certain elements of the benchmark scheme for themselves.

AL asked whether there may be option for a hybrid between Option 1 and 2. He asked whether the deadline could be moved back in order for people to have time to review this.

The Chairman suggested that the timetable be reviewed at the next meeting in July.

JM stated that it may be beneficial to do some warming up in order to get people in the right frame of mind before the consultation. DH agreed that the group need to get out and make sure people understand the scheme.

MS suggested that those presenting the sub-group scheme be part of the presentation panel at any consultation roadshows.

DH suggested a DVD as the explanation of a complex system could come across well.

Action Point(s)

The Group agreed to come to the next meeting with action points on how to communicate issues.

8. Date of the next meeting

The Working Group agreed to meet again on the 28th July at 5.00pm at the Ministry of Justice, 102 Petty France.