



The Law Society



Civil Contracts Consultative Group (CCCG) Minutes

12 September 2011

Date:	Monday, 12 September, 15:00-17:00hrs		
Where	LSC Boardroom, Abbey Orchard Street, London SW1P 2BS Tele Conference: Steve Starkey-LSC		
Chair:	David Keegan – LSC		
Attendees:	Alison Harvey-ILPA Ann Lewis – ASA Anne Graham – TLS Beatrice Prevatt - QC Carol Storer– LAPG	Dave Emmerson – Resolution Eleanor Druker - LSC Henry Amadife – LSC Jenny Beck - LAPG Kerry Wood – LSC Kevin Westall - MoJ	Nicola Jones-King -ALC Rachel Rogers - Resolution Richard Miller-TLS Richard Jenner-ASA
Minutes:	Grazia Trivedi (LSC)		
Apologies:	Alan Bean– ALC Andrew Caplen – TLS Avrom Sherr - IALS David McGrady – ILEX Deborah Challis – LSC	Diane Burleigh - ILEX Ian Bugg – Bar Council Jan Luba – Bar Council John Sirodcar – LSC	Neil Lewis – LSC Richard Charlton – MHLA Ruth Wayte (LSC) Vivien Gambling – HLP

Action Points from the last meeting		By Whom	By When
AP1	Circulate a list of contracted providers to all CCG members	KW	Closed
AP2	Circulate CCG's original ToR with questions	NL	Closed
AP3	Rep bodies to send their views to GT re ToR	Rep bodies	Closed
AP4	Find out the current position re MS and report findings to CCG	JS	Taken forward
AP5	Send nominations for a working group to look at JLuba's proposed changes to the VHCC contract to GT	Rep bodies	Taken forward
AP6	Find out the overall timescale for an appeal	SS	Taken forward
AP7	Circulate electronic copies of backlog recovery measures	GT	Closed
AP8	Civil Billing information – circulated with the minutes	SS	Closed
AP9	Clarify what work the new rates will apply to – in the minutes	NL	Closed
AP10	Find what the definition of access point was and inform AH	KW	Closed
AP11	Send information about IAS allocation exercise to RM	KW	Closed
AP12	Novation to be discussed further at following meeting	RW	Taken forward
AP13	Clarify position on experts – in the minutes	NL	Closed

DKeegan welcomed everyone to the meeting.

1. Minutes and actions from the previous meeting

The minutes were approved and would be published on the LSC website

AP4. Matter Starts. This action was carried forward.

JSirodcar had been unable to complete a paper for the CCG because he was waiting for more information. In July the LSC had published a stats pack which included Matter Starts (MS) figures; however the CCG was waiting to know why the number of MS in 20010-11 had dropped by 20% compared with the previous year.

DEmerson said that the information would be useful to providers preparing to bid in the family tender. KWood did not agree that global trend was an influencing factor; providers bid for as many MS as they intended to deliver. It was requested that JSirodcar circulate an update within a week of his return from leave. **AP1-JS**

- AP5.** VHCC Contract. No nominations had been received. BPrevatt stressed that the forthcoming reforms were going to affect everyone; therefore it was important that a working group be set up to consider the changes proposed by JLuba.

There was concurrence that the main concern was in relation to civil non-family and non-clinical negligence categories and that the working group should be representative of these categories, which were mainly public law, housing and actions against public bodies. Rep bodies agreed to enquire who amongst their members was interested in taking part **AP2-Rep bodies** and asked for a meeting date to be set.

It was agreed that the best time would be between 14:00 and 15:00 on 14 November, the date of the following CCCG meeting. LAPG put forward Nicola Macintosh and Beverly Watkins, the Law Society's nomination was Russell Conway.

- AP6.** Financial Appeals. An overall timescale for (bill application) appeals was not currently available. SStarkey explained that when an appeal was received it joined the backlog; at present the oldest Appeal item in the backlog was 68 (working) days old. The LSC would continue to work on producing statistics on appeal timescales.

At the appeal stage, the case would be reviewed by a different caseworker to the one that had arrived at the original determination; the reviewing caseworker considered the points made in the appeal but it should be noted that often additional information was provided which enabled the appeal to be allowed at the review stage. It's only if the caseworker reviewing the decision was not prepared to authorise that the appeal would be sent out to an independent adjudicator.

Between April and June 84% of all appeals had been dealt with on caseworker review and 16% had gone to a full appeal. The LSC did not have a timescale for the latter, i.e. how long it took the adjudicator to determine the appeal and respond with a decision; SStarkey estimated it took between 3 and 6 wks. The CCCG worked out that the timescale for a full appeal was approximately 6 months.

SStarkey said that on review and generally following receipt of additional information, 59% of appeals were granted. The grant level of cases that went to full appeal was 18%, part-grant was 30% and refusal 52%.

Everyone agreed that, if providers supplied more detailed information when submitting a bill and if caseworkers' screening was more dependable, the number of appeals that were granted on review (59%) would be reduced or eliminated.

Rep bodies asked that the LSC keep a record of recurring issues that led to claims being rejected and relay them to providers through the LSC's 2wkly updates. SStarkey said that a new database to manage appeals was going to be introduced and the system would be able to collate such information. In the meantime he would ask his team what the most common issues were and update the CCCG.

Between April and June, 44,881 claims had been processed and of those 1,927 were appealed on (4.3%). There wasn't at present a target for appeals processing time as the LSC's resources were focusing on clearing the backlog; however this was considered to be a priority.

Disbursements. SStarkey was still dealing with the CCCG's request for data on disbursements and whether assessment rates could be separated out from the total global costs to give a breakdown of profit costs and disbursements. The above actions would be taken forward. **AP3-SS**

AP12. Novation. This action was taken forward to the next meeting. Guidance would be produced and circulated by the end of September. **AP4-RW**

2. Integrated Delivery Programme (IDP)

A link had been circulated to where updates on IDP had been published (Is<about us>provider reference groups>Documents)

3. CCCG Term of Reference (ToR)

Some rep bodies had sent comments on how the ToR might be amended to reflect the LSC's move to become an executive agency and the reduction of discussion forums available to the profession.

RMiller asked KWestall whether MoJ envisaged continuing to engage with the profession in the way the LSC had done through the CCCG. Most of those present agreed that, although the MoJ were the policy makers and the LSC its operational arm, both would continue to be key players. It was therefore in the representative bodies' interest to continue to engage with both, especially because policy and operations often overlapped and implementation became an issue.

KWestall explained that MoJ's Justice Policy Group was in the process of reducing by around 20-25% and, as part of its strategy for working within a much smaller resource envelope, would be adopting a flexible working approach. This involved moving away from the traditional standing policy teams and adopting a project based method of working which meant that unless a particular policy area was being actively worked upon, no resources would be routinely allocated to it. That did not mean that issues would not be addressed where appropriate and necessary but it would mean that MoJ would be unlikely to create an equivalent group to the CCCG to meet regularly, although it would continue to make full use of existing groups – such as the CCCG – where appropriate.

Given the ongoing work to implement the legal aid reform changes, there would clearly be an active policy engagement in this area for some time, but it was likely that most of the active engagement would be undertaken by the individual policy teams working on the Bill with representative organisations like the Law Society and the Bar Council and other groups as necessary and relevant to particular proposals/areas. For example, officials dealing with family law had already had meetings with a number of groups represented around the table.

MoJ was also intending to ensure that a policy representative did attend future meeting of the CCCG but it seemed unlikely at this stage that it would set up a single separate group to discuss policy issues. However, he agreed to discuss this further with colleagues in policy group.

DKeegan said that the long term future had to be considered when determining the ToR. After further discussion it was agreed that at this time the ToR should remain a 'work in progress' document. The following year the CCCG would focus on practical implementation and making things work. NLewis would draft this into the ToR. **AP5-NL**

4. Members views as to how the LSC could improve the training of its Contract Managers and Auditors by involving the profession.

CCCG would send their views to JSirodcar

5. Contract Notices

CCCG would send their views to JSirodcar

6. Experts fees

ALewis asked whether the limit of £25ph on interpreters' fees was intended to apply to telephone services such as Language Line. If the limit did apply it could effectively prevent the use of such services. In some areas, this would increase overall costs.

ALewis also asked how the experts' guidance rates had been arrived at. KWestall said that the rates were based on guidelines that the LSC had developed over a number of years and that its caseworkers had been using. A 10% cut was then applied to these rates. Where a specific expert had not been prescribed in the Order, the LSC were required to make payment in respect of that expert with reference to the new rates. These rates would apply to certificates issued on or after 3rd October 2011 and did not apply to certificates issued before that date.

The new Funding Order specifically authorised the LSC exceed these rates and pay what they considered reasonable to address circumstances that required specific/unique skills. The Order did not require prior authority to be obtained in these cases but any provider wanting/needing to pay an expert more than the specified rates would need to be able to provide evidence that they met the criteria for an exceptional case.

The MoJ had involved the professions (both expert and legal) in discussions about what the experts' fees should be but very limited feedback had been received and the only definitive guidelines available were those used by the LSC. These rates represented the first step in the process of managing spend on experts and MoJ intended to continue to liaise with the professions in order to move towards a detailed graduated fees scheme.

There was discussion around the note circulated to the CCCG by VGambling of the Housing Law Practitioners Association (HLPAs) which explained why, if experts' fees were pegged at £50 per hour, *'the pool of experts currently available to tenants will be decimated'*. There were requests for clarification as to how the figure of £50 had been arrived at because the profession had not been aware that guideline rates had existed.

KWestall said the minister had decided that £50 was the correct amount of money to pay for this type of service. If current providers were no longer prepared to accept the rate on offer, a search should be made for a provider that was. It was expected that this approach would drive down prices.

KWestall explained that where a joint expert was commissioned, the effect of the new order was that the LSC was permitted to pay a *pro rata* share of the specified £50 fee regardless of the level of fee agreed by the other party unless the exceptional criteria were satisfied. DKeegan confirmed that applicants submitting prior authorities or joint bills reported the total cost and hourly rate plus the apportionment, so the full hourly rate was considered by the LSC.

The LSC agreed to look at the LSC data set for Housing to find out on what the current rates were. **AP6-DK**

The LSC was keen to put in place a clear and efficient system to deal with the new rates - applicable to new cases only, from on 3 October. It was suggested that the LSC hold a general meeting with representative bodies to discuss procedures and the general approach to the new rates so that representatives of specific interest groups could give the information to their members afterwards. **AP7-DK**

7. Novation

This was carried forward to the next meeting. Guidance would be circulated by the LSC at the end of September. **AP4-RW**

8. Legal Aid Reform (LAR) communications

On 5 September the LSC had sent information to all providers about online training and transitional arrangements.

The LSC asked for feedback from providers about the information given so far, about any additional support that would be useful and about any issues.

The LSC had issued a Cost Assessment Guidance and was consulting with the Law Society and Bar Council therefore all queries relating to experts' rates would be dealt with in the FAQs document.

AHarvey requested that the rest of the CCCG be included in the consultation including on any future Funding Orders. KWestall confirmed that the purpose of this statutory consultation was purely to consider whether the drafting of the Orders effectively achieved the policy which the government had announced that it was implementing. It was not a further opportunity to discuss the policy itself.

Responses from other bodies to previous consultations tended to focus on attacking the policy only. This pattern had been repeated during the recent consultation on the new Funding Order where several groups in addition to the Bar Council and Law Society had responded to the consultation. However, none of them made any comments at all on the drafting of the Order.

KWestall confirmed that, while MoJ would obviously consult different groups in relation to policy matters, as appropriate, consultation on the drafting of any subsequent Funding Orders would be limited to the Law Society and Bar Council. However, both organisations were free to circulate the Funding Orders to their members if they wished to.

HAmadife was asked to check with the LSC's legal team whether the Cost Assessment Guidance could be circulated and inform the CCCG of the outcome. **AP8-HA** DKeegan clarified that these were revisions existing LSC documents and not part of the MoJ Funding Orders consultation.

9. Orderly withdrawal from the market

RMiller said that it was not clear what would happen if in the current situation a firm failed to win a contract, or chose to withdraw.

With regards to consortia, the contract specified that, if one or more members of the consortia were lost the contract failed unless the member(s) could be replaced. In view of certain categories going out of scope within the following year, it would be hard to know whether a (i.e.) welfare benefits provider would be willing to be part of a consortium.

KWood said that if a consortia lost the welfare benefit provider, in certain circumstances the LSC would allow them to continue with the contract i.e. someone else could join the consortia if they had been awarded a contract in that tender round or they could do the work themselves.

The LSC would not award a contract without a tender process unless it was a very temporary arrangement and a tender round was imminent. It was the LSC's main concern to be fair towards all those providers that had bid honestly and by the rules.

Rep bodies asked the LSC to give some general understanding of how they would approach the situation so that members could be informed about what to expect. KWood suggested that CCCG send her their concerns so that she could address them and issue guidelines. **AP9-Rep bodies/KW**

10. Operational Update

The cut in telephone service hours had been in place for 8 wks and during that time substantial reductions in the backlog had been accomplished. Some work streams were still outside target but significant progress was being made.

Efforts should continue to be made to persuade providers not to make routine chaser calls as this clogged the system; it was hoped that, as the backlog was cleared, less providers would need to call.

SStarkey gave the following stats:

- amendment to extensions: reduced by 60%
- F1 forms: reduced by 30%
- APP3: reduced by 20%
- Means work: reduced by 20%
- POAs had never dropped out of target. Paper apps were processed within 10 days and e-forms within 2 days
- tax bills: reduced by 5%
- Claim 1: reduced by 24% (from 9,854 to 7.500)

Representative bodies thanked SStarkey and his team for making such progress in clearing the backlog. The LSC's executive team would be reviewing the telephone service reduction measure in the near future.

11. AOB

No AOB

Action Points		By Whom	By When
AP1	Find out the current position re MS and report findings to CCCG	JSirodcar	Closed-22 Sep
AP2	Send nominations (to GT) for a working group to meet on 14 Nov to discuss civil non-family VHCC contracts.	Rep Bodies	Asap
AP3	Update CCCG on progress made to obtain: <ul style="list-style-type: none"> • statistics on appeal timescales • frequently missing information that contributes to a claim being sent back to a provider and an appeal being lodged (to be circulated to providers via an email update) • data on disbursements 	SStarkey	14 Nov
AP4	Issue guidance on Novation	RWayte	Closed-18 Oct
AP5	Draft agreed reference into ToR	NLewis	14 Nov
AP6	Look into the data set for Housing	DKeegan	14 Nov
AP7	Set up a general meeting with representatives of all interest groups to discuss procedure and approach to the new rates	DKeegan	Closed-10 Oct
AP8	Circulate the Cost Assessment Guidance to the CCCG <ul style="list-style-type: none"> • Costs Assessment Guidance. Nov 10 • Narrative and Guidance • Exceptional Funding 	HAmadife	Closed-15 Sep
AP9	Forward concerns arising from the tender to KWood who could then issue guidelines for providers	Rep bodies KWood	14 Nov

Date of next Civil-CCG Meeting	Monday, 14 November 2011
Time	15.00 to 17.00
Venue	LSC, 4 Abbey Orchard Street