

CRIMINAL CONTRACTING CONSULTATIVE GROUP

Present: Rodney Warren (Law Society/CLSA), Katherine Pears (Legal Services Commission), Tim Collieu (Legal Services Commission), Alice Mutasa (Law Society), John Sirodcar (Legal Services Commission), Steve Wedd (CLSA), Billie Lever Taylor (Legal Services Commission)

Apologies: Rob Brown (LCCSA)

1. Immigration At The Police Station

The Commission recently met with the Immigration Law Practitioners' Association, the Police Leadership & Powers Unit and the Home Office Immigration and Nationality Department to discuss the above. At this meeting, the question was posed as to whether the detainee is arrested, or held under immigration authorities' powers of detention. This has implications in terms of whether what is being considered is a civil or a criminal matter, the issue being essentially one of clarity rather than cost. The Commission is aware that criminal solicitors have concerns that immigration issues are being reported via the DSCC with the result that practitioners find themselves providing advice in areas where they may not be competent.

New criminal offences came into force on 22nd September 2004 under sections 2 and 35 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and are particularly relevant to criminal practitioners advising clients in Heathrow and Uxbridge. The Commission has agreed to a request from ILPA to copy guidance issued by ILPA to all duty solicitors on the above schemes. The ILPA will be producing an article which will be referred to in a future Focus on CDS publication.

A further meeting has been arranged for the 28th February 2005 between the Law Society, the Commission and ILPA.

2. CDS Direct

There has been agreement within the Commission on a number of issues and a Consultation response is being sent to the professional bodies. In essence, there is agreement as regards the single flat fee of £8 for all calls passed to a solicitor from CDS Direct and agreement that indictable only cases would be excluded. The Commission is keen to meet the go live date of 2nd May 2005 and London is to remain outside the pilot.

However, the Commission pointed out that the necessity for a formal 6-week consultation period and 6-week notice period in order to amend the contract to include the £8 fee might affect the go live date. It was noted that it is possible to implement CDS Direct but not pay £8 fee at first. However, it was felt that this might not be desirable. Instead, it was proposed that the Commission might be granted a reduced consultation period as the contract amendments to give effect to the pilot were consulted on as part of the initial Consultation paper.

The Law Society expressed a need to consider this outside of the meeting in order to allow the Access to Justice Committee to reflect upon it. The Commission pointed out that the changes to the contract are relatively minor and are in the profession's favour. The Law Society undertook to provide a response in 24 hours.

The Law Society again expressed concern about cases where an initially less serious crime migrates into a more serious crime. In such cases – i.e. where it is subsequently found that CDS Direct in fact should not be involved - the Law Society suggested that the £30 fixed fee should be triggered so that the case is treated as a new case as distinct from the original one. However, the Commission pointed out that this logic could be applied the other way round too – i.e. a more serious case might ultimately migrate into a less serious one. Given that there is no cap for this it is felt that it would be inconsistent to provide one in the first instance. However, the Commission volunteered to monitor how often this kind of situation arises. The Law Society explained that it is unlikely that their position will change on this point.

It was agreed that a meeting will take place on 25th January and Rodney Warren will attend this.

3. Reaccreditation

A meeting has taken place between John Sirodcar and Julie Swann of the Law Society. Julie Swann is to pursue agreement to the process and timing of reaccreditation within the relevant Law Societies, after which she and John Sirodcar will meet again. The Commission explained that the earliest implementation date for reaccreditation would be October 2005.

4. Price Competitive Tendering for London Suppliers

A pre Consultation launch meeting is taking place on 20th January with the Law Society concerning the above. The Consultation paper has been cleared with Lord Falconer and the consultation paper is due to be launched on 28th January. Meetings are planned with all the key stakeholders prior to the launch.

5. Civil & Criminal Contract Changes

The Commission had nothing more to report. The Law Society pointed out that there has been concern from the Access to Justice Committee that the proposed contract changes are consequent on other changes that are still being debated and therefore may be subject to further change.

The Commission stated that, although it has been a positive move to have changes to the contract restricted to April and October, there needs to be a degree of flexibility in order to allow for adaptation to this new mode of operating. It was also pointed out that the reason for the tight schedule for

contract changes has been having a second consultation on CDS Direct in order to incorporate the suggestions made in response to the first one.

6. Accredited Representatives Consultation

The Commission explained that it has had around 120 responses to this consultation with many helpful comments made. All responses have now been considered and the initial feeling is to propose proceeding with all the recommendations (but with some changes) with the exception of the 50% cap on representatives. Around 80% of respondents were not in favour of this. However, the Commission expressed a desire to nonetheless continue the dialogue on this issue and to arrange a further meeting with the professional bodies.

John Sirodcar will summarise all responses (anonymously) and a consultation response will be issued by the end of January.

7. CJC Pilot

The Law Society will provide their response shortly. It was agreed that both the Law Society and the Commission would get feedback from the ground to bring to the next meeting.

8. CDS Bill

The second reading of this Bill, already postponed to 1st February, has now been put back again. The Commission is still hopeful to get it through the next parliamentary session, especially as it is a short bill and only concerns an enabling piece of legislation, but the time scale is now very tight. The Commission will know shortly if it is likely to go through this parliamentary session.

9. CCMF

Representatives from the Law Society and practitioners have attended workshops on the Effective Trial Management Programme. It is a process that requires active involvement from all parties in the Criminal Justice System and will involve added bureaucracy for practitioners. This has the potential to make it a considerable cost driver for legal aid. The Commission expressed a need for a channel of feedback to be established for them to feed to the DCA. The Commission is to supply the Law Society with a contact name.

The Criminal Case Management Framework document is also being redrafted to include the recommendations of the Criminal Procedure Rules Committee. However, the Law Society noted that there are issues about confidentiality and privilege. Although there may not be any breach of confidentiality, a solicitor, in some instances, could face the possibility of a sanction from the Court whilst fulfilling their obligations to the client.

10. Warrants

The Law Society pointed out that the issue of warrants could have potentially significant consequences in that anyone arrested on a warrant could face imprisonment. This would put increased pressure on the fund and there are implications for court duty solicitors too. LCJBs are to be encouraged to produce reports of all warrants issued in order to allow forward planning.

11. Fathers for Justice

The Law Society pointed out that any new legislation in relation to parental rights could lead to additional criminal funding and it is therefore necessary to be alert to any developments here.

12. Date of Next Meeting

The next meeting will take place on 2nd March 2005.