

CRIMINAL CONTRACTING CONSULTATIVE GROUP

8 June 2005

Present: Rodney Warren (Law Society/CLSA), Rob Brown (LCCSA), Katherine Pears (Legal Services Commission), Alice Mutasa (Law Society), Maryvonne Islip (Legal Services Commission), Steve Wedd (CLSA), Billie Lever Taylor (Legal Services Commission)

Apologies: Tim Colliou (Legal Services Commission), Derek Hill (Legal Services Commission)

1. Competitive Tendering

The Commission stated that it has received over 300 responses to its consultation document. The responses are well thought-out and considered and the Commission thanked all those who took the time to respond. It is likely to now take to the end of June to consider all responses and identify next steps. Proposals will then be presented to the Commission and the Lord Chancellor. Although it is difficult to indicate the expected timetable until the above has been concluded, it is expected that a further period of consultation will be necessary. The Commission stated that there would be an opportunity for discussion with The Law Society before any further formal consultation takes place.

The Commission explained that the competitive tendering workshops held had been well attended. The feedback from the workshops would be treated as part of the response to consultation. The CLSA asked if there had been any positive reactions to the consultation. The Commission replied that there had been a mixed response. The Law Society expressed a desire to be informed about any other dialogues that the Commission is continuing with other groups about competitive tendering.

The Commission has commissioned a separate piece of research to support the Equalities Impact Assessment. Among other things, this research will examine the ethnic make-up of the London supplier base, as well as its client base. The Commission is keen to involve the Equality and Diversity team at The Law Society in this work. The Commission is also tendering for a further piece of economic work, looking primarily at procurement models. The Commission agreed to contact the Law Society to provide further details about this work.

The LCCSA asked if the Commission's plans would stop at lower criminal work. The Commission replied that this is the case currently, but in the medium term there is a need to look at the interface with crown court work and VHCCs.

2. CDS Direct

The Commission stated that, in recognition of the ongoing concern of The Law Society and other representative bodies, it has been agreed that CDS Direct will not be implemented before October. The Commission is writing formally to Greg Lewis at the beginning of the week commencing 13 June 2005 to confirm this. The Law Society asked if there has been any resolution on the outstanding issues surrounding CDS Direct. As regards section 58 PACE, the Commission stated that it had received advice from counsel to the effect that the pilot proposals do not breach PACE. Similarly, as regards the waiver issue, it is considered that the design of the pilot is

such that a waiver is not needed. There are, however, a number of sub issues revolving around more practical matters that still need to be resolved and further discussions are welcomed.

The Law Society acknowledged that it is keen, post Clementi, to ensure the sharp distinction between the regulatory and representative arms of the Society.

3. Crown Court

The Commission clarified that the Graduated Fee Review combines reviewing the changes made to the very high cost cases scheme last year and a more general review of the graduated fee scheme. The Commission undertook to confirm current DCA progress in more detail to The Law Society.

As regards the Litigator Fee Structure, the Commission is still in the process of examining possible models. It is studying the Northern Ireland model to establish whether any elements can be adapted for the England and Wales context. In the short term, the Commission is looking at ways to remove some of the escapes from the crown court standard fee for very short cases – i.e. those lasting one to two days.

4. Reaccreditation

The Commission understood that The Law Society consultation paper on reaccreditation has gone to The Law Society Council. The Law Society explained that it went back to the standards board and got as far as the main board but, before going to the Council, needed further review.

The Commission asked what the next steps are. The Law Society stated that it believed that, in the long term, there needs to be a move towards reaccreditation, but until there is a more settled position, reaccreditation should not be activated. However, this is not to say that there cannot be discussions as to how it might look. The Commission is to continue dialogue with Mike Barstow at The Law Society. The Commission reiterated its position that it supports the principle of reaccreditation but is concerned to ensure that the process does not impose undue burden or cost on the profession.

5. North East Duty Schemes

The Law Society stated that it had been informed of concern about inappropriate arrangements relating to the Richmond and North Allerton duty scheme. The concern amounted to a belief that the scheme is being run in such a way that favours the PDS, while destabilising private practice. The Commission agreed to investigate this.

The CLSA also drew attention to an issue at Brighton magistrates' court, relating to instances where more than one duty solicitor is working at night. It is felt that, contrary to the local instructions, the Duty Solicitor Call Centre (DSCC) sometimes contacts duty solicitors in such a way that favours one over another. The Commission explained that each scheme has different local arrangements; but John Sirodcar (Head of National Duty Solicitor Schemes) is to be requested to speak to the DSCC to resolve this issue.

6. CDS Bill

The Commission stated that the second reading of the Bill in the House of Lords is to take place on Monday 13 June. All going to plan, it is intended that the Bill will pass to the House of Commons in October. The earliest that it is likely to get Royal Assent is the end of this year. The Commission explained that it is currently working on implementation with HMCS as there are important staffing, resource, training and IT issues to be considered.

Once the primary legislation has been passed, the Bill needs secondary legislation and this is more complicated because it considers the finer detail of the Bill. The Commission agreed to pass copies of the updated framework policy document to The Law Society.

The Law Society stated that it is not opposed to means testing. However, it was concerned by a DCA press release that appeared to suggest that the Commission could become involved in determining representation orders. The Commission stated that this was not the case. It is envisaged that the grant of representation orders will become an administrative function undertaken by the court under a Service Level Agreement rather than a judicial one. There will, however, be an appeal to magistrates.

The LCCSA is of the opinion that the function should remain judicial, as it does not consider it appropriate for the state to decide who should be represented. The Commission stated that the right of appeal to magistrates would remain as an important safeguard and indicated that, in practice, courts already treat this function as largely administrative.

The Law Society asked whether the criteria for the Interests of Justice test would remain the same. The Commission stated that the Bill makes no changes to the test. However, it did not rule out the possibility of it ever being changed. Although the Commission acknowledged that there needs to be a degree of local flexibility, in the long-term it considers there must be greater consistency in the application of the test across courts. This will mean working closely with courts to produce clearer guidance that is user-friendly and to monitor local performance.

The LCCSA expressed a desire to be consulted on any new guidance and the Commission replied that the representative bodies would be consulted. The Commission also indicated that it would ask Oxford University, which is currently conducting research into the Interests of Justice test on behalf of the Commission, to talk to The Law Society, as it would be helpful to have practical input.

The CLSA asked whether the estimated £35 million savings from means testing is a realistic figure. The Commission explained that the Institute for Fiscal Studies had independently examined the figures using a different approach and had come up with a comparable estimation of savings to DCA. Savings are expected both from those who are ineligible for funding and from those who are deterred from ever applying - for example, through not wishing to disclose their means.

The Commission added that it intends to improve the operation of RDCOs. Although it is intended that means testing will ultimately be extended to the crown court, it is also looking to strengthen RDCOs. The LCCSA suggested that the DCA be asked to arrange proper judicial training on RDCOs.

7. Community Justice Centre

The Commission has prepared a consultation response on the above, which it will circulate to The Law Society. The Commission explained that the CJC pilot is up and running, but not in the original form proposed. The Commission is to meet with the centre's judge to determine whether any changes are needed to the defence funding regime and arrangements as well as to obtain feedback. The Commission is exploring the possibility of including CLS services in the centre as well.

8. Engaging the Defence

The Commission explained that the Office for Criminal Justice Reform (OCJR) has prepared guidance for all Local Criminal Justice Boards asking them to consider local engagement of the defence. This guidance has been delayed, but is to be issued shortly. The Commission suggested that The Law Society might include something in their newsletter to help identify practitioners willing to attend the meetings.

The Law Society stated that solicitors travelling costs to meetings are sometimes limited to £25 and requested that this be changed to allow reasonable costs to be claimed. This would be a matter for the OCJR

The Law Society also pointed out that there had been some talk about reducing the number of meetings from four per year to two per year. This would lead the meetings to be so disjunctive as to be pointless. The Law Society urged the Commission, if it has the chance, to influence this.

The Commission and The Law Society are to work jointly to support this positive development.

9. Contract Consultation Process

The Commission provided a handout outlining the consultation process for the October contract amendments (attached). Consultation begins on 27th June and there are no major changes. Changes already consulted on – e.g. CDS Direct, will also be circulated for information. The Commission stated that it has not been made aware of any consultation on the civil side. It agreed to provide two copies of all consultation documents to each representative body.

The Commission stated that it is keen to make the consultation process as effective as possible and it considers it essential that meetings are held with The Law Society (and other representative bodies as appropriate) during the consultation period. The Law Society agreed to provide available dates to the Commission.

PROPOSED CONSULTATION PROCESS

General Criminal Contract - Amendments to be Implemented in October 2005

The Legal Services Commission proposes the following approach for consultation on changes to the General Criminal Contract to be implemented during October 2005.

Consultation with the Law Society and other Representative bodies will commence on 27 June 2005. This consultation will last for six weeks and will end on 8 August 2005. In addition all consultation documents will be available on the Legal Services Commission website.

The Legal Services Commission wishes to make this consultation as effective as possible and request that meetings are arranged with the Law Society during the consultation in order that any issues can be resolved during the consultation process.

Although there was consultation on amendments to be introduced from April 2005 (primarily to support CDS Direct and the outcome of consultation on police station attendances) these changes were not implemented and will now form part of the package of changes from October 2005.

The current status of the April 2005 consultation and proposed way forward is given below:

General Criminal Contract	Final amendments resulting from consultation will be circulated with the outcome of consultation on 27 June 2005. These changes will be implemented from October 2005.
Criminal Bills Assessment Manual	Amendments as a result of this consultation were implemented on 30 April 2005. An outcome of this aspect of the consultation has already been published.
Duty Solicitor Manual	Minor changes implemented to match amendments to Police Station Register and Duty Solicitor Arrangements from 30 April 2005. Other amendments will be incorporated from October 2005
Police Station & Court Duty Solicitor Cost Assessment Manual	Minor changes implemented to match amendments to Police Station Register and Duty Solicitor Arrangements from 30 April 2005. Other amendments will be incorporated from October.

The following documents will be issued on 27 June 2005:

- Final set of Contract amendments resulting from earlier consultation to be introduced in October 2005.
- Copy of outcome of consultation.
- Consultation document containing the following:
 - Proposed amendments to the General Criminal Contract
 - Proposed amendments to the Criminal Bills Assessment Manual
 - Summary of changes to the Police Station and Court Duty Solicitor Manual
 - Summary of changes to the Duty Solicitor Manual
- Copies of the Police Station & Court Duty Solicitor Cost Assessment Manual and Duty Solicitor Manual showing:
 - amendments that have been consulted on and will be implemented from October;
 - additional changes forming part of this consultation.

The two sets of amendments will be shown in different colours to differentiate.