



## Civil Contracts Consultative Group

### Minutes

**Date:** Wednesday 25<sup>th</sup> February 2009, 15:00-16:00

**Chair:** Sara Kovach-Clark - LSC

**Attendees:** Natalie Pedley – LSC; Michelle Leung – LSC; Paul Newell – LSC; Patrick Reeve – LSC; Ruth Wayte – LSC; Anthony Cox – LSC; Oliver Bayntun – LSC; Andrew Caplen – TLS; Karen Finlay – MoJ; Carol Storer – LAPG; Linda Lee – TLS; Richard Miller – TLS; Vivien Gambling – HLP; Derek Hill – LSC; Richard Jenner - ASA

**Minutes:** Rachel Akins - LSC

**Apologies:** Alan Bean – ALC; Richard Charlton – MHLA; David Emmerson – Resolution; Anna Graham – TLS; Caroline Little – ALC; Robert Wright – MoJ; Alison Harvey - ILPA

SK-C (LSC) welcomed those present and gave apologies.

#### **Agenda Item 1- Phase 1 Fee Schemes Review Report**

SK-C (LSC) gave a brief introduction to the proposed final report. The report covers all areas set out in Appendix 9 of the Deed of Settlement regarding the impact post-Phase 1 Fee Schemes implementation as follows: volume of new matter starts, diversity impacts on providers and clients, cost neutrality and fee levels, disbursements, exceptional cases and Family structure. The report found no significant areas of concern with sustainability or client access under the fixed fee schemes. The LSC intend to consult on only minor changes to the scheme in respect of Personal Injury (PI) work and amendments to specific areas within Family work, this is set out separately in the Consultation Paper.

SK-C (LSC) welcomed comments on the report. RM (TLS) commented that the report excludes longer cases and is therefore an unrepresentative sample upon which to base a study on. A further analysis of longer cases would provide a broader picture than the small cohort it currently has. RM (TLS) therefore could not support the report, as there are limited conclusions that can be drawn from it. SK-C (LSC) advised that the review was carried out in accordance with the Deed and that there were constraints on the amount and type of data was available.

LL (TLS) suggested that historic data be studied over a longer period to include the more difficult and complex cases, as the full span of cases should be looked at to see if there is any link between the fixed fee and the work done.

OB (LSC) brought the groups attention to the 'Cumulative Impact Assessment: Legal Aid Reform Programme (Phase 1)' which is the crime and civil impact assessment of the Phase 1 fee Schemes that was published when the fees were originally consulted on. This includes an analysis on a full year worth of billed cases. OB (TLS) circulated a copy around the room for information. A copy of the publication can also be found at

[www.legalservices.gov.uk/criminal/transforming\\_criminal\\_legal\\_aid.asp](http://www.legalservices.gov.uk/criminal/transforming_criminal_legal_aid.asp)

LL (TLS) expressed particular concern about how much time is being spent on a case compared to what is being paid. AC (LSC) explained that the same amount of time would be spent in total but for different matters and this information cannot be looked at in isolation from the rules they operate under.

NP (LSC) advised the group that the review contains as much data that could have been drawn at the time of writing, including two additional months worth of data than was originally planned. The impact that Phase 1 Fee Schemes have had on the longer more complex cases can be seen if distribution of cases are looked at, for example in the social welfare law category where the majority of cases under the fixed fees should have been reported within the timescale of the review.

It was queried why the full cohort of cases could not be studied and S-KC (LSC) explained that even if a full sample were used this would still not show any correlation between the time spent on the case and what was actually paid on the bill. PN (LSC) advised that there has to be an assumption that practitioners' behaviour has not changed since the scheme was introduced.

NP (LSC) informed the group that every effort has gone into comparing like with like cases and including more complex cases into the comparison. The LSC has been clear from the outset that only cases opened and closed post-Phase 1 Fee Schemes were implemented i.e. after the 1<sup>st</sup> October 2007 would be included. This is so that only cases billed under the fixed fee schemes would be used to compare against previous years. If all cases billed were included in the post-fee schemes data then it would inadvertently include cases billed under the old fee schemes as well as fixed fees in the data set.

LL (TLS) believed there would have been a more satisfactory response to the report if it had stated that no firm conclusion could have been drawn. NP (LSC) commented that as much feedback as possible is wanted which is why the report is shared with stakeholders and a consultation is carried out. Based on the data reported by providers to date where over 630,000 claimed cases had been looked at, the LSC is confident as possible at this point in time regarding the impact of the fixed fees findings.

RM (TLS) agreed with the caveats but advised there were still a few more constraints and limitations that needed to be included. The LSC agreed to include them where possible and RM would look to circulate some wording to the LSC as soon as possible. In addition, there were some concerns on the tone in some areas of the report.

**Action - To insert agreed wording on limitations and constraints with Richard Miller**

**Action - Amend tone of wording in report and consultation documents**

AC (TLS) highlighted the need to ensure the provider base remains stable and that people have access to justice.

CS (LAPG) expressed concern for practitioners choosing to tackle simpler cases to make more money. NP (LSC) assured that case diversity is being checked, and the case mixes with outcome codes show no significant changes.

ML (LSC) gave the example of homelessness cases where the CCG had previously raised concerns. On further investigation shared with the CCG in January 2009 it was found that there was no negative impact on how these cases were impacted upon after the fee schemes were introduced.

PR (LSC) assured that the amount of average claims against fees has been looked into and there have been no change in the amount of average costs.

LL (TLS) commented that although this has been found, monitoring the negative is impossible to measure and there is no way to prove practitioners are risk-assessing clients.

NP (LSC) directed the group to Table 18 Section 8 within the report, which shows the amount of profit costs claimed before and after the fee scheme.

ML (LSC) highlighted how the costs in the October Interim report compared to present report have not changed considerably, which is 14 months worth of analysis compared to 10 months.

VG (HLPAs) expressed concern for the time recording of cases. However there has been no feedback from exceptional cases about time recording.

Concern was also expressed for lower level personnel delivering the work e.g. fee earners. LL (TSL) advised it would be helpful if within the paper the constraints on the review were listed.

The Group recognised that qualitative analysis such as time recording and the level of personal scope were beyond the scope of the review.

RM (TSL) recently learnt that there was an under spend on Legal Help in the last financial year and that the amount of matter starts had reduced.

ML (LSC) stated that there was a downturn in December 2008 for NMS but that this is an annual seasonal change.

PN (LSC) also explained that only 85% of the years allocation comes through therefore making the figures or the work undertaken look less than they were.

VG (HLPAs) directed the group to page 16 in the report and the NMS figures on London Procurement Areas. There has been a dramatic increase on the need for advice, which with the review figures raises very serious questions about access to justice.

NP (LSC) stated that although there are the highest increases and decreases in London for practitioners giving advice, clients are more likely to travel around. An analysis that was carried out on postcodes has shown this. There are also other reasons for the fluctuating numbers e.g. staff being on maternity leave, or reductions in the level of staff numbers.

**Action – LSC to circulate information gathered on where clients access advice.**

## **Agenda Item 2 – Draft Consultation Document**

SK-C (LSC) gave a summary of what the draft consultation document proposes to consult on and welcomed comments.

RM (TSL) advised that there are a number of concerns for some of the phrases used within the document, which are found on:

Page 5, Page 6 (section 1.5), Page 7 (section 1.14 and 1.15), Page 17 (section 4.8, 4.11 and 4.22), and Page 21 (section 4.33)

RW (LSC) assured that the document is to be amended and re-drafted.

CS (LAPG) queried whether the draft would show tracked changes.

SK-C (LSC) confirmed that the parts amended would be highlighted

It was queried whether there will be a further review at the 2 year point.

RW (LSC) advised that if the TSL came up with a proposal the LSC would consider it but given that the LSC needs to have finalised fee schemes in place for the civil bid rounds and the civil contracts in 2010 and the well-publicised restrictions on amendments, it might be difficult to have an affect on those contracts without early termination, which would be costly and disruptive.

CS (LAPG) queried whether the work being carried out by practitioners is being mapped geographically and the amount of matter starts within this work calculated. It would be useful to have a monthly or quarterly figure that could show trends as this would help to interpret anecdotal evidence. NP (LSC) stated that the “Civil Contracting report” shared with the Law Society looked at this at a high level and the LSC would look to share this with the group where possible.

**Action - Look into sharing of the Civil Contracting Report**

## Summary of Action Points

	<b>Action Point</b>	<b>By Whom</b>	<b>By When</b>
<b>1</b>	To insert agreed wording on limitations and constraints with Richard Miller	SK-C	6 <sup>th</sup> March
<b>2</b>	Amend tone of wording in report and consultation documents	ML	6 <sup>th</sup> March
<b>3</b>	LSC to circulate work done on clients travel patterns	SK-C	27 <sup>th</sup> March
<b>4</b>	Look into sharing of the Civil Contracting Report	ML	27 <sup>th</sup> March

**Date of next meeting: Tuesday 28<sup>th</sup> April 2009, 15:00-17:00, at Abbey Orchard Street**