



Civil Contracts Consultative Group (CCCG) Minutes

14 November 2011

Date:	Monday, 14 November 15:00-17:00hrs		
Where	LSC Boardroom, Abbey Orchard Street, London SW1P 2BS Video Conference: Debra Challis - LSC Tele Conference: Steve Starkey-LSC; Alan Bean- ALC		
Chair:	Ruth Wayte (LSC)		
Attendees:	Adam Griffith - ASA Alison Harvey-ILPA Andrew Caplen – TLS Ann Lewis – ASA Beatrice Prevatt - QC	Carol Storer– LAPG David Keegan – LSC Damian Norville - LSC John Sirodcar – LSC Kerry Wood – LSC	Kevin Westall – MoJ Neil Lewis – LSC Nick Lewis - MHLA Richard Miller-TLS Vivien Gambling – HLP
Minutes:	Grazia Trivedi (LSC)		
Apologies:	Avrom Sherr – IALS Dave Emmerson – Resolution Rachel Rogers - Resolution	David McGrady – ILEX Ian Bugg – Bar Council	Jan Luba – Bar Council Richard Charlton – MHLA

Action Points from the previous meeting		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

RWayte 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

Actions

AP1. Discussed under item 6

AP2. Closed

AP3. Discussed under item 5

AP4. Discussed under item 4

AP5. Discussed in AOB

AP6. Housing. D Keegan said that no specific data existed for Housing experts' rates. The rates introduced on 3 October were based on the LSC's benchmark rates. It was agreed that the LSC, MoJ and representatives from the CCCG would meet to discuss experts' rates further. V Gambling agreed that she would take whatever evidence she could get to help the LSC and MoJ understand the difficulties incurred in Housing. GT would set up a meeting. **AP1-GT**

In response to a query, K Westall confirmed that the MoJ had received a letter before action (for Judicial Review) from the Consortium of Expert Witnesses, which focused on the rationality behind the London/out-of-London rates' split.

Prior Authority A specialist team had been set up at the LSC's Cardiff office to process Prior Authority applications in Family and Housing. A new *CLS App 8a* form had been introduced to improve the process¹.

The LSC said that the current process was designed to function mainly with (civil) certificated work; a process for controlled work (affecting Mental Health cases) was being investigated. **AP2-R Wayte (LAR)**

2. Implementation Delivery Programme (IDP)

The IDP solution was undergoing a systems test before a full test at the start of 2012 and a pilot launch in mid 2012. An External Implementation Group (EIG) comprising stakeholder representatives for the programme was being set up to consider how best to approach providers in relation to implementation, communication strategies, training material and issue resolution. Membership of the EIG will include a number of the representative bodies in the CCCG, with monthly meetings expected to take place during the pilot. D Norville would circulate the ToR and membership for the EIG as soon as possible after the meeting. **AP3-D Norville**

3. Family Tender

Family Tender. K Wood said that letters to unsuccessful providers had been sent the previous Friday; notifications to successful applicants would start to be sent out the following Wednesday.

In this tender providers had generally bid for a sensible amount of matter starts so the fierce competition which had been a feature of previous rounds was not as much of an issue. It was expected that the LSC would be able to accommodate the majority of bids, either through the tender or through the usual contract management process for awarding supplementary matter starts

Although these were initial figures - heavily caveated as the process was not complete, it appeared that bids for MS were broadly similar to the current provider base. 94 offices had bid for a licence only contract, 580 had bid for less than 50, just over 1k had bid for up to 150 and 540 had bid for more than 150. Only 3 Procurement Areas (PAs) had ended up with less than 5 providers - the same as before the tender; the LSC did not deem it necessary to re-tender in these PAs.

Although there had been more providers bidding for work than current offices with contracts, the overall net result was likely to be 100 less offices than before; 300 providers that had previously held a contract did not bid in this round; there had been a large increase in applications in the London area, which resulted in an additional 132 providers, many of whom had never had a family contract before.

¹ Information on the *Legal Aid Reform - Civil experts' Fees* and the *CLS App 8 form* can be found on the LSC website: [www.legalservices.gov.uk/About us/Our publications/LSC update email/issue #114](http://www.legalservices.gov.uk/About%20us/Our%20publications/LSC%20update%20email/issue%20#114) (27 Oct 11)

In 18 PAs the amount of MS awarded was less than what was currently being used. In most cases the under allocation was minimal and not deemed to be an issue. However the LSC will keep this under review and take appropriate action where necessary.

Housing Tender. Prior to the tender 162 providers held a Housing contract; 311 firms bid in the current round and 267 had been successful. As a consequence, Housing provision had increased in 53 PAs. In London there had been more competition resulting in less than 50% of providers being allocated the number of MS they had bid for, although a minimum of 50 was guaranteed, subject to validation and the outcome of the appeals process. In 29 PAs less MS than were currently being used had been allocated; however, as there were other social welfare providers in those areas, the LSC would not take any further action except keep the situation under review.

4. Novation

The '*LSC Novation Policy*' had been circulated prior to the meeting; it set out how the LSC was currently dealing with Novation issues. The CCCG was asked to send their comments on this paper to GT by 28 November so that it could be published and made available to the profession. **AP4-Rep Bodies**

5. Operational issues

Restricted telephone help line. The LSC asked that the period of reduced telephone hours, introduced on 25 July to help reduce the backlog faster, be extended to 6 January 2012. Reduction of the telephone service had freed 450 hours of caseworkers' time so that the backlog had been reduced significantly; the LSC's view was that an extension was needed to deal with the remaining backlog.

There was discussion about the advantages and disadvantages of continuing with the reduced telephone service. It was agreed that the telephone service would continue to be restricted until the end of January 2012. S Starkey was asked to provide the CCCG with an update showing what progress had been made since the telephone service had been reduced. **AP5-S Starkey.** (This has been done: '*Progress of Backlog Reduction measures*' and '*Civil Billing information*'² were emailed to the group the day after the meeting).

Representative bodies pointed out that, although the telephone service was open for two hours, i.e. from 3 to 5 in the afternoon shift, calls that were waiting to be re-routed to a processing centre were cut off at the end of the shift. Therefore a call had to be made at least ½ hour before the end of a shift to ensure that it would be answered.

It was suggested that the recorded message at the outset could be changed to give callers more helpful information, i.e. give an email contact. S Starkey was asked to circulate the message that was being used so that members could make suggestions for improvements. **AP6-S Starkey.** It was also suggested that the LSC issue guidance to the profession through their 2-wkly email updates.

LSC data on appeals The computer system currently available to the LSC did not provide data on the time taken to process (financial) appeals. A Harvey suggested that a sample of appeals could be taken, and an average processing time estimated based on the sample. It was acknowledged that a sample of appeals was not a good enough source to obtain reliable information; furthermore, this work would take resource away from processing claims.

² These papers can be obtained from members of CCCG

LSC approach to rejects A new and fairer way of dealing with Soft Rejects, when the information needed could not be obtained over the phone, and the LSC's guidance wasn't specific about the requirement, would be adopted by the processing team. A *Priority Return Form* would be sent to the provider with information relating to the missing information. Attaching the *Priority Return Form* to the missing (work) item would ensure that it would go to the front of the queue when sent back to the LSC. The form could also be used when a provider felt that the claim had been rejected incorrectly.

It was agreed that too much resource was tied up dealing with hard rejects. Representative bodies said that some caseworkers were more prone than others to opt for a hard reject and some of the decisions were questionable; they asked that the LSC look into individual caseworkers' records.

The LSC said that a good complaints process was in place and providers should make use of this if unhappy about a caseworker's decision. Members were asked to refer particularly serious cases to GT.

It was agreed that S Starkey would issue, before the following CCG meeting, a backlog progress report, any available data on appeals, providers' FAQs and proposals on how to deal with queries in 2012. **AP7**-S Starkey

R Miller asked why the LSC asked for copies of disbursement vouchers with bills that had already been assessed by the court. S Starkey said this was a NAO requirement to show that all the money was properly authorised. The LSC was aware that this process involved a duplication of work and was working with the courts to address the issue.

6. Matter Starts (MS)

Letters to providers. The LSC had sent out letters to providers that had used less than 85% of MS allocated and was receiving responses. The LSC would not issue termination notices to any firm that had a relatively small proportion of unused MS but would focus on those providers that had used less than 25%; in some instances these firms' bids had knocked another bidder out of the tender process.

In response to a query, R Wayte agreed to confirm the methodology regarding the allocation of NMS for the period of the contract extension.

Representative bodies expressed their concern about the way the LSC was planning to allocate NMS, the effect unused NMS would have on KPIs and what providers should expect from February. The LSC explained that no decisions had been made in this area at present.

Number of NMS in 2010-11 J Sirodcar said that the main reason for the decrease in allocation of NMS in 2010/11 compared with 2009/10, was the reduction of usage from 96% at the end of 2009/10 to 83% by 31 March 2011. The most significant fall in usage over the previous year was around the start of the 2010 civil contracts and the JR challenge to the family tender. In response to a query, the LSC said that providers could apply for more MS if they had run out, and could have up to an extra 50% of their allocation for Mental Health and Asylum which were priority areas. For other categories of law, availability of NMS in the procurement area would be considered.

Rep bodies asked the LSC to reintroduce the monthly civil contracting report; the LSC said that the resource for this work was no longer available but that it might be possible to produce a report on allocations of MS using existing data analysis that the Central Commissioning team used to review capacity, at less frequent intervals.

7. Contract managers' training.

J Sirodcar asked members to send him feedback on contract managers' performance and/or any areas where they felt they could benefit from training.

8. What happens to closed, archived files when a firm goes into administration?

A Harvey said that the SRA was known to always intervene in cases where the provider was regulated by the SRA and ensure that a home for the files was found. In the case of IAS however, the SRA said that it had had no jurisdiction and the administrators were running out of money to maintain the old files. ILPA members making requests for the files had been told that they could not have them and that solicitors acting for the administrators were going to ask a judge to make a decision about their future. That an application might be made to a judge, ILPA was aware of from the creditors' meeting and that this could mean destroying them. A Harvey had been in correspondence with John Sirodcar about this and expressed concern that he appeared to contemplate the destruction of the files with equanimity. J Sirodcar expressed dissent and A Harvey indicated that she was pleased that he had changed his view.

There had been no mechanism to enforce the Office of the Immigration Services Commissioner's Code of Standards which requires advisors to retain the files for six years. This situation showed that a Client Care letter written by an OISC-regulated advisor did not have any weight if a firm went bust. A Harvey agreed to send a copy of an OISC client care letter to J Sirodcar.

A Lewis informed the CCCG that the SRA had been given the task to give a view to the Legal Services Board as to whether 'special bodies' should continue to provide 'light touch' regulation for NfP firms beyond 13 April. This was the date set in the Legal Services Act for NfPs organisations to become Alternative Business Structures and be regulated as such. NfPs were currently going through a transitional period, which exacerbated the problems A Harvey talked about. The issue of what kind of regulation should apply to a NfP organisation would have to be addressed because they did less legal work than the average ABS. It was understood that the LSB would be issuing a consultation paper giving their view of how this issue was going to be handled.

R Wayte expressed doubt that a judge would order the destruction of the files.

A Harvey suggested that the issue of protecting the client be dealt with at the outset in the contract between the Legal Services Commission and the firm, by ensuring that the organisation complied with insurance provision, financial regulation, etc, so that the client would be protected and the files would not be destroyed until after six years.

NB – Matters arising

An application is now before the Chief Registrar in the bankruptcy court. ILPA, the Law Society, the Solicitors Regulation Authority and the OISC have been joined to the application. The full hearing will be 27th February and in the meantime discussions are ongoing. ILPA suggest there is a letter before the court from the Commission saying that it takes the view that the files could be destroyed. John Sirodcar doubts whether that is correct. The LSC have expressed no view re

destruction but have said that files can be recreated and that the LSC is not responsible for file storage.

9. AOB

Terms of Reference The draft of a revised ToR had been circulated before the meeting and there was discussion about its content. The following changes were agreed:

- Purpose
 - b. Substitute the word 'urgent' with 'important'
- Standing items
 - Operational update with a written report circulated before every meeting
 - Matter Starts with a Volume and Value figures report similar to the one produced for the CrimeCCG. A sample of the type of information available would be brought to the January meeting **AP9-S Starkey**
 - Feedback from representative bodies
 - Implementation Delivery Programme (IDP)
 - Commissioning update

Consultations with representative bodies about future plans for contracting and procurement RWayte said that it had been agreed at the CCCG that it was preferable to limit the amount of meetings at which the LSC discussed their plans; this was for a variety of reasons, such as who should be invited and how to avoid offending anyone that expected to be included. Also it had often been the case that when discussing plans for the future people assumed that they had already been implemented, which wasn't helpful. Meetings like the CCCG were an early engagement to discuss new ways of working and were not set policy therefore should be kept confidential.

Deadlines Members requested that actions arising from the meetings be given a deadline of 10 days prior to the following one, giving the CCCG enough time to prepare for discussion. It was agreed that when the agenda was sent out at least a week in advance, an update of the actions would be included.

VHCC contracts BPrevatt asked that a new meeting be scheduled in January for the working group to meet again to discuss the proposed amendments to the VHCC non-family contract. RWayte would update on this at the next meeting.

Action Points		By Whom	By When
AP1	Set up a meeting to discuss experts' rates. (This has since been set up for 21 November)	GT	closed
AP2	Look into the issue of Prior Authority applications for controlled work	R Wayte	31 Jan 12
AP3	Circulate the Terms of Reference for the (IDP)External Stakeholder Group	DNorville	Closed
AP4	Send comments to GT on the <i>LSC Novation Policy</i> paper	Rep bodies	Closed
AP5	Update the CCCG with a report on <ul style="list-style-type: none"> • backlog recovery since the telephone service was reduced and • civil billing processing times 	S Starkey	Closed
AP6	Circulate <ul style="list-style-type: none"> • the telephone message being used so that members could make suggestions for improvements • a backlog progress report • appeals processing times • FAQs • proposals for dealing with providers' queries in 2012 	S Starkey	6 January
AP7			
AP8	Send a copy of the letter to the IAS administrators to J Sirodcar	A Harvey	asap
AP9	consider what reports might be possible to inform CCCG on capacity and provision	K.Wood	6 January
AP10	Timetable a meeting for the working group to discuss the VHCC non-family contract proposed amendments	RWayte	Update at the next meeting