



**Civil Contracts Consultative Group (CCCG)  
Minutes**

**16 January 2012**

Date:	Monday, 16 January 14:30-17:00hrs		
Where	LSC Boardroom, Abbey Orchard Street, London SW1P 2BS		
Chair:	John Sirodcar – LSC		
Attendees:	Adam Griffith – ASA Alan Bean - ALC Anne Graham – TLS Alison Cecil-Smith - LSC Carol Storer– LAPG David Keegan – LSC	Ian Bugg – Bar Council Kerry Wood – LSC Kevin Westall – MoJ Neil Lewis – LSC Nick Lewis – MHLA	Rachel Rogers – Resolution Shri Mukundagiri - LSC Sonia Routledge – ILPA Steve Starkey - LSC Vivien Gambling – HLP Wendy Hewstone - TLS
Minutes:	Grazia Trivedi (LSC)		
Apologies:	Alison Harvey-ILPA Andrew Caplen – TLS Ann Lewis – ASA Avrom Sherr – IALS	Dave Emmerson – Resolution David McGrady – ILEX Jan Luba – Bar Council Richard Charlton – MHLA	Richard Jenner – ASA Richard Miller - TLS Robert Latham – Bar Council Ruth Wayte - LSC

Actions from the previous meeting		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	Closed See post- meeting note on pg 3
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"> <li>backlog recovery since the telephone service was reduced and</li> <li>civil billing processing times</li> </ul>	S Starkey	Closed
AP6	Circulate <ul style="list-style-type: none"> <li>the telephone message being used so that members could make suggestions for improvements</li> <li>a backlog progress report</li> <li>appeals processing times</li> <li>FAQs</li> <li>proposals for dealing with providers’ queries in 2012</li> </ul>	S Starkey	Closed
AP7			
AP8	Send a copy of the letter to the IAS administrators to J Sirodcar	A Harvey	Closed
AP9	consider what reports might be possible to inform CCCG on capacity and provision	K.Wood	Taken forward
AP10	Timetable a meeting for the working group to discuss the VHCC non-family contract proposed amendments	RWayte	Taken forward

JSirodcar welcomed everyone to the meeting.

## 1. Minutes and actions from the previous meeting

Notification of some changes to the Nov minutes by ILPA had been received on the day of the Jan meeting, therefore the CCCG would need a few more days to consider them before a final version

could be published on the LSC website.<sup>1</sup> Post meeting note: this has been done and the minutes have been published)

AP1-AP3-AP4- AP5-AP8 Closed

AP2 the LSC had not yet finalised proposals in relation to Prior Authority applications for controlled work. **Post meeting note:** The current position is that no prior authority process will be introduced for controlled work. Instead, evidence supporting the claim for exceptional circumstances should be retained on file in case of assessment (see Costs Assessment Guidance, para 3.4).<sup>2</sup>

AP6 and AP7 Discussed under Item 3

AP9 Discussed under Item 5

AP10 the LSC could not be definite about the timing for work to be done on the VHCC non-family contract amendments. This would be communicated as soon as was possible.

## 2. Security Measures to Protect Personal Data

JSirodcar reported that there had been a number of incidences when data had been lost by providers and the Information Commissioner had fined the individual providers. JSirodcar recommended that the representative bodies consider publishing advice to their members. The LSC's requirements in the contract were clear.

## 3. Operational Update

Appeals There was discussion about the *National Civil Appeals Backlog Summary* report.

The LSC had been focusing its resource on reducing the overall time taken to process appeals and on reducing the Appeals backlog. A comparison between the November and January positions showed considerable progress had been made.

The oldest appeals did tend to be on the billing side but it was accepted that this was something that the LSC should seek to address. One of the issues that the LSC had was that cases that went out to Adjudicators could take some time to be returned. The LSC had tightened their control processes in this area which now included sending more frequent reminders. Whilst there was no official target in this area, the LSC aim was to move to a position in which all appeals were processed within 40 working days. In an attempt to speed up the process, adjudicators had been offered the opportunity to work at their local LSC office to complete this task.

In relation to Mental Health appeals, there was a national shortage of adjudicators. A recruitment exercise for MH adjudicators was currently underway. With the help of MHLA the LSC had received approx 30 expressions of interest. The oldest MH appeal waiting for a decision was dated 11 November 2010; the oldest case with a complete case note waiting to go to an Adjudicator was dated 8 November; the oldest case sitting with an adjudicator was dated 29 July and the oldest returned but not yet finalised was dated 4 October.

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<sup>1</sup> [www.legalservices.gov.uk](http://www.legalservices.gov.uk) > Community Legal Service > Civil Contracts > Agreement with the Law Society > Civil Contracts Consultative Group

<sup>2</sup> [www.legalservices.gov.uk](http://www.legalservices.gov.uk) > Community Legal Service > Guidance on fees and funding > Documents > Costs Assessments > *Costs Assessments Guidance 2010 – Revised Oct 2011*

SStarkey did not have current data on the National Immigration and Asylum Appeals but agreed he would obtain the figures and pass them onto SRoutledge to show the current position. **AP1-SStarkey-Closed**

It was agreed that the LSC would include additional Appeals data on their oldest Dates section of the website. This would show the oldest appeal dates in the conventional civil categories (excluding the specialist teams), and one for immigration, VHCC and Mental Health.

SStarkey agreed to include in future reports the % of decisions that were reversed on Appeal and of those decisions what percentage were granted or part granted.

Billing There was discussion in relation to the Billing report (which related to Claim 1 Categories: Taxed bills, phase 1 and phase 2 Fixed Fee). Looking at assessment levels overall, there had been an increase around August 2010, which reflected the tightening of Financial Stewardship controls; the % reductions then stabilised. From October 2011 the assessment rate had increased again, which coincided with the introduction of the new fixed fee schemes.

Rejects Continued to impact on processing times and were a significant drain on resource. In October, 3,900 bills (22% of the total intake) had been rejected, together with 3,050 applications (15% of total intake). If 'further information' requests were included for Applications i.e. a request for a bank statement, then the rejects level would be closer to 40% of the total intake. The outcome of this situation was a great deal of duplicated work, not only for the LSC, but for firms that had a high volume of bills rejected. Halving the volume of rejects would free up significant resource to process bills and would greatly improve turnaround times.

During the following couple of months Contract Managers would be visiting providers with the highest volume of rejects in order to improve awareness. Following that, the worst offenders would be targeted robustly.

Rejects levels for bills submitted by advocates were on a par at just over 20%. It was agreed that data for claims by advocates would be included in the next report. **AP2-SStarkey**

**Post meeting note** – November rejects for Claim 5/5a - 14% with 2,383 claims being rejected

Improvements in reject levels did take place around the time that the LSC had engaged with providers at PRG meetings. When the requirement to submit disbursement vouchers for disbursements of £20 or more was introduced in May 2011, the number of rejects had steadily increased, and was currently the main reason for them. Whether the bill itself was to be authorised by the LSC or the courts, a copy of the invoice was required. If the bills were to be paid without a valid disbursement voucher, the NAO would record the value as a material loss against the LSC, which may contribute towards accounts qualifications.

Reject guidance In their efforts to reduce the volume of rejects, the LSC had produced a 'Provider Error Guidance Summary' which pulled together the main causes of error and provided guidance on completion of forms and supporting evidence. The LSC would publish this guide and asked for the rep bodies' help by: circulating the guide to their members; contributing towards keeping it up to date; coming forward with ideas on making further improvements.

An issue was raised regarding circumstances in which an applicant was clearly shown to qualify for a passportable benefit but their partner didn't, even though they were clearly in receipt of such benefits.

It was agreed that, if examples of this situation could be provided, SStarkey would look into why it might be happening.

In the LSC Update of 9 November, guidance had been issued in relation to Taxed bills submission, including what documentary evidence needed to be submitted with these claims. The article also included an analysis of the courts' assessments of tax bills and regulatory requirements such as disbursement vouchers, claiming the correct rates, complying with cost limits, and using the correct fee schemes. If these requirements were not met, then the claim had to be sent back via the provider to the court to have the assessment certificate adjusted. The LSC were working with the courts to improve their level of compliance with the fee schemes.

Bill intake volume In June the processing team had re-categorised some of the billing activities and streamlined the way in which bills were processed; Because of this, volumes appeared to have dropped up until Nov-Dec, at which point the number of CLAIM 1s picked up significantly as a result of the introduction of the new fixed fees, and in particular phase 2 fees. The new fees schemes gave providers greater opportunities to claim because both interim claims and POAs were permissible. This increase in volume would potentially impact on processing times, unless a significant reduction in rejects could be achieved.

The report showed that, following the introduction of backlog reduction measures, including reduced telephony in July, the time taken to process bills had consistently been reduced. In Sept 90% of bills were processed within target (30 working days). In December 97% of claims had been processed within target. Representative bodies agreed that the figures were heartening.

Greeting message The LSC agreed that with effect from the beginning of February they would no longer cut off calls that hadn't been answered by its cut off times. This addressed a concern that was raised by the rep bodies at the previous meeting. For this reason there was no need to change the greeting message.

Providers' FAQs Most telephone queries tended to be case specific. The calls that were deemed unnecessary related to queries that were non-urgent, for instance where the provider had not first checked the LSC's current processing date information, which could be found on the LSC website.<sup>3</sup> Others related to matters that providers or their supervisors should know, i.e. how should they exercise devolved powers. It was agreed that FAQs which had been circulated to the group should be published.

Progress of Backlog Reduction measures Since the recovery measures had been introduced the billing backlog had been reduced by 51% with 97% of all bills being processed within 30 working days in December. Due to the low intake over the Christmas period, a large chunk of backlog had been cleared. In addition staff were working on full overtime, an arrangement that would continue at least until the end of the current financial year.

Progress had been made on Exceptional Case 1 claims. NIAT claims processing time had been reduced from 16 weeks to 47 working days and the expectation was that they would be within the 30 working days target by end of Feb. MH claims processing time had been reduced from 48 working days to 31, with the number of MH caseworkers involved in Exceptional case assessment substantially increased.

Rep bodies agreed that such progress was very positive and were anxious to share the report with their members.

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<sup>3</sup> [www.legalservices.gov.uk](http://www.legalservices.gov.uk) > CLS > Pay rates and fee schemes > Payment and processing dates

Considerable progress had been made in relation to legal and means representations (backlog reduction of 56%), applications, means, amendments and prior authority requests. The 450 hours gained from the reduced telephony and the overtime had succeeded in considerably reducing the backlog.

SRoutledge said that NIAT had consistently been very helpful and timely in dealing with queries by email rather than by phone, and perhaps providers should be encouraged to use this method of communication. The LSC was in favour of this and agreed that general and case specific queries would be better dealt with by a caseworker via email. This would also give the practitioner proof of specific information having been received. The new electronic system that was going to be introduced as part of IDP would contain all the information about a case in one place, including what stage the case was at. All this information would be readily and easily available to providers.

The LSC emphasized that the answers to the majority of telephone queries could be given by a supervisor or could be found on the LSC website. When the telephony was running at normal hours, 10.5k calls a week were handled, compared with 6k during reduced hours. The LSC were not in a position to start answering over 10k calls a day and maintain the current level of progress in backlog reduction.

The issue of returning to a full telephony to the detriment of providers' financial position by way of slowing down processing times and backlog reduction had to be carefully considered. It was agreed that the reduced telephony would remain in place with all calls waiting in a queue being answered even after the cut off time. It was also agreed that a small sub-group would meet before the March CCCG meeting to discuss at length the issue of finding alternative methods of communications. Representative bodies would send nominations to GT who would organise a work session. **AP3-Rep bodies - Closed. AP4-GT - Closed**

VHCC bills There was discussion about VHCC bills. If a high cost claim was submitted in accordance with the agreed case plan, it would be processed without issues. The LSC said that it was not acceptable for practitioners to conduct a case without an agreed case plan and then trying to justify one after the event. The LSC was looking into tightening the controls to prevent this from happening. SRoutledge pointed out that, as a case progressed, new work became evident and providers could not always adhere to the agreed case plan. The LSC said that, because they had to deal with about 12k cases a year, a process had to be in place and followed.

The LSC was looking to create forms of graduated fees to deal with VHCC cases. They raised the issue of developing one above fixed fees that providers could be sure to receive.

Rep Bodies felt that the new £10k default limit was a positive move. They asked if all cost limits could be increased to £10k on existing public law cases with 'no questions asked'. DKeegan said that such a measure would cause major administrative issues. The amendments would still require processing, which would deflect caseworkers from processing immediate work on VHCC cases, and would delay real work that had to be done at this time. He suggested that it would be preferable if providers applied when they reached the £5k limit, which would spread the work out. In practice, within a year this would no longer be an issue as the cases would have concluded and the new cases would be coming through the higher default.

#### 4. Commissioning update

Family tender the LSC had received 2,444 complete bids from individual offices from 1,662 organisations. Of these 182 were unsuccessful in whole or in part. The LSC received 121 appeals. It was hoped that all the appeals would be processed by the end of the current wk. **Post meeting note:** applicants that appealed against decisions by the LSC have all been notified of the outcome of their appeal

New Matter Starts allocation-3<sup>rd</sup> Schedule- For Schedules running between 1 Feb 2012-31 Jan 2013, NMS allocation had been based on 100% of usage reported between 15 Nov 2010 and 31 Oct 2011, plus an estimate of usage for the final month.

In relation to Mental Health, where in 3 Procurement Areas during the life of earlier schedules some MS had been redistributed as a result of withdrawals by some providers, any increase had been rolled over into the 1 Feb 12-31 Jan 13 schedule for affected providers. Because the Legal Aid Reform Bill was progressing through Parliament it was not yet known when new contracts to implement changes resulting from legal aid reform would start in 2013. Therefore it was not possible to foresee what period schedules from February 2013 would cover.

Representative bodies asked the LSC for some assurances in relation to giving additional MS to providers that were running 'hot' and asked for more, if in their Procurement Areas there were providers that were running 'cold'. The LSC said that allocating additional MS would expose them to an unacceptable financial risk, while taking back unused MS from 'cold' providers to give to 'hot' providers would cause significant administration and appeals and could not be completed quickly. Requests for extra MS would be considered in MH and Asylum form providers irrespective of other providers MS usage in the procurement area.

Some Housing providers had expressed concern about the small number of Housing MS allocated to them. The LSC said that this was the result of competition in some Procurement Areas, where a large number of firms had bid for a Housing contract. It was the LSC's view that MS allocation was not currently a problem.

Timetabling for 2013 contract consultations The LSC was aware that they needed to be clear about what was going to happen and when, however timescales were not in their hands. The Bill's progression was key to everything else.

The LSC hoped to publish the Standard Terms and Conditions shortly, and specifications possibly in March. The Law Society requested that rep bodies be involved in a pre consultation, if possible. JSirodcar said that he would ask Ruth Wayte to update on the position at the next meeting. **AP5-RWayte**

Specialist Support Contracts Some practitioners felt that Specialist Support, contracts for which funding had been *pulled* by the LSC without consultation, had been the source of useful specialist information and was missed. The absence of this service could potentially prevent: cases from progressing along the right track; practitioners getting a quick answer when struggling with a case and getting information which could not be obtained anywhere else. JSirodcar explained that the Specialist Support contracts had not been *pulled* but had ended and had not been renewed.

As this issue might be subject to legal considerations, the LSC could not enter into further discussions on this matter.

Immigration interim tenders The LSC had invited tenders in Plymouth, Bristol, Norfolk and Suffolk where issues with the provision of Immigration services had been identified. Contracts had been offered in all these areas. Notifications had been sent out before Christmas and appeals from unsuccessful applicants were now being considered. Contracts that successfully passed validation would commence on 1 Feb.

## 5. Volume and Values

Civil contracting reports would become available again in April 2012. It was not known what specific information would be included in these reports.

Capacity and provision reports At the previous CCG meeting rep bodies asked the LSC to look into the possibility of producing these reports however, due to the workload associated with the tenders, it had not been possible to action this request. KWood asked that this action be carried forward to the following meeting and asked rep bodies to send her any ideas they might have on the type of information they wished to see. **AP6-KWood**

## 6. Experts

Prior Authority (for a higher rate). The LSC had set up a team in Cardiff to deal with requests for prior authority in the context of the Legal Aid Reform. Approximately 100 applications were received per week; it would take a few more months to ascertain what the average flow was going to be.

250 requests had been determined so far. Of these, 45% had been granted; 20% had been part granted (i.e. the codified rates would be applied as and when); 35% had been refused and of these 10 had gone to cost assessors for review on appeal (of these, 2 cases had been granted the exceptional rate and 1 case had been part granted). At this stage the volumes of requests appeared low in proportion to the number of certificates.

There was evidence that, especially in family, expert psychologists and psychiatrists were working for the rate on offer, while difficulties had emerged in relation to specialists like paediatric radiologists. The LSC was working to produce a blueprint of the different types of radiologists and corresponding rates.

Turnaround times for determinations were: 3-5 days for urgent cases (coming up for hearing within a wk) and 10-15 days for non-urgent ones. With the exception of one specific case in housing, representative bodies agreed that the system had been working well.

Housing VGambling reported that It was proving very difficult to find housing experts that worked for the rate on offer. If a practitioner applied for prior authority and was refused, the case would have to continue without the benefit of an expert's opinion.

VGambling knew of just one surveyor in London that worked for the standard fixed rate, however he had a waiting list of 2 months and now accepted only cases from providers that had instructed him before. HLPAs had asked that surveyors' rates be reviewed.

KWestall explained that surveyors' rates had been based on the only evidence that had been available at the time. This evidence, provided by the LSC's figures, had shown prices paid and volumes relating to the evaluation of properties in criminal cases and for which, it had been accepted, a very low level of surveyor was likely to be required.

In December HPLA had provided the LSC and MoJ with detailed information and evidence, to support their argument for a review of the fees. The LSC said that this material had been very helpful. The Cardiff team had started to collate information from prior authority requests, i.e. the most common types of requests received and the reasons why in certain cases practitioners asked for a higher level of expert. This information would be used to consider the levels of differentiation within the existing rates.

The current order already set this out in some specific areas where information already existed, for example accountants. The MoJ intended to work towards a similar level of differentiation in other cases where this was relevant, subject to them being able to gather the necessary information. It was hoped that it would be possible to bring forward proposals for further defining expert rates in the summer

In the interim period the LSC would be working on clearer guidance to staff and practitioners as to what type of prior authority request was likely to be successful and for what reason. If a non specified category of expert was asked for, the LSC would match it to the nearest in the order.

ABean circulated an amended *Standard Fees Clause for Insertion in Letters of Instructions to Expert Witnesses who are instructed Under CLS Funding Certificates Issued on or after 3<sup>rd</sup> October 2011*. He asked the LSC whether they would endorse this version of the document. NLewis said that he would take this action away and get back to ABean. **AP7-NLewis-Closed**

There was a brief discussion about the rates in London, which tended to be more diverse than outside. HPLA had given information to the LSC about surveyors' rates, and their typical total price, in London and outside. The LSC would consider these and try to produce a sensible group of rates that combined both in and out of London prices, plus try to define 'true *exceptionality*' in terms of total cost.

VGambling asked whether there could be some flexibility in the way that requests were determined in view of the forthcoming improvements to their structure/order. The LSC and MoJ would look carefully at the information given by HPLA and report back at or before the next meeting. **AP8-DKeegan**

DKeegan and KWestall thanked HPLA for providing the LSC and MoJ with such level of detail, i.e. rates paid around the country from a sample of approx 50 files; this gave a much better understanding of what the market rates were.

CStorer pointed out that practitioners were at risk of being accused of professional negligence as a result of not having access to the right experts. The LSC acknowledge this and said that the right balance had to be found between the pressure from the centre to control rates and market rates.

The LSC had been formally asked whether it was possible, under the contract, to pay a higher rate for a medical expert in negligence cases. DKeegan would update the CCCG as soon as the LSC had made progress in this matter. **AP9- DKeegan**

Language Line Representative bodies were concerned about Language Line's charges being higher than the market rate. JSirodcar and DKeegan would be looking at this issue and report back at the next meeting. **AP10- JSirodcar and DKeegan Closed** (See *Language Line Note*- sent by JSirodcar)

## 7. VHCC Update

Discussions on the Family 1 Counsel Pilot had started in Aug-Sep 2011; this pilot applied to care cases only, which employed an external advocate. To date over 200 firms had asked for more information on the pilot and the LSC had invited firms to use the model on 170 cases. Within that group 20 cases had been found to be unsuitable, in 20 cases the solicitor declined to go down that route; just fewer than 30 case plans had been approved; 9-10 more cases were under negotiation. It was expected that about 10-20 cases a wk would be found to fit the criteria.

The LSC was now working on an Events model where the advocate at the main hearing was employed by the firm. DKeegan said that there would be a meeting with the interested solicitors. **AP11-DKeegan**

## 8. Integrated Delivery Programme

There was discussion about the LSC's plan to pay solicitors and (employed) barristers at firm rather than office level. Representative bodies did not have any objections provided it was made very clear to what office each payment related to, and asked that a separate notification/reconciliation be issued for each office payment, which made a clear reference to the case. CStorer asked for assurances from the LSC that payments would not be adjusted within a firm when money was recouped from one (or more) of its offices.

SMukundagiri said that the 'netting off' principle meant that only one payment would be made to a firm that used one primary back account with the LSC, and confirmed that a separate statement for each office would also be sent, reconciling the accounts. If within a firm one office owed money to the LSC, the amount would be deducted from the total payment made to the firm as a whole.

Although representative bodies were not in favour of the 'netting off' method, the LSC pointed out that recovery of money was allowed under the contract. Nick Lewis asked that the LSC give warning to firms that this was going to happen so that they could prepare. JSirodcar would find out whether only firms that were taking part in the IDP pilot were going to be included in the 'netting off' process from June 2012, or whether all firms were going to be included **AP12-JSirodcar**. If all firms were to be included, the LSC would ensure that the change would be properly and clearly communicated.

## 9. AOB

LSC Website conversion programme – ACecil-Smith said that the LSC had been working with MoJ with the aim of transferring their website content to [www.justice.gov.uk](http://www.justice.gov.uk), which was expected to happen in the course of the following few weeks.

The structure of the LSC website would be changed to help users find what they needed easily and quickly. The new site would also reduce duplication between civil and crime pages, i.e. forms, payment dates, tenders, eligibility rights and others.

The LSC asked for volunteers to user-test the new website before it went live, in order to get feedback.

PRGs. JSirodcar said that PRGs would start again soon and that invitations were about to be sent out to practitioners.

Rejects level for the Bar. IBUGG asked for this information before the end of January. JSirodcar said he would inform SStarkey who could provide the information. **AP13-SStarkey-Closed**

Action Points		By Whom	By When
AP1	Pass Appeals data for NIAT to Sonia Routledge	SStarkey	Closed
AP2	Civil Billing Information: <i>Mar-09</i> I. Include data on Bar claims. II. Conventional civil claims to be shown separately from specialist Categories	SStarkey	Closed (CCCG 03/02)
AP3	Send nominations for a working group to meet and discuss alternative methods of communications between providers and the LSC.	Rep bodies	Closed
AP4	Set up a work session with the CCCG sub-group to discuss alternative methods of communications between providers and the LSC.	GT	Closed
AP5	Ruth Wayte to update rep bodies regarding pre-consultation re the 2013 contract	RWayte	12 March
AP6	Consider what reports could be produced to inform the CCCG about capacity and provision	K.Wood	2 Mar
AP7	Check the Standard Fees Clause and give feedback to rep bodies	NLewis	Closed
AP8	Consider whether a measure of flexibility could be applied when determining requests for prior authority	DKeegan	asap
AP9	Update CCCG on medics experts rates for clinical neg cases	DKeegan	asap
AP10	Look into rates charged by Language Line and report back to CCCG	JSirodcar-DKeegan	Closed- (CCCG 03/info/7)
AP11	Meet with interested solicitors to discuss an Events model where the advocate at the main hearing was an employed by the firm	Dkeegan	12 Mach
AP12	Check which firms would be subject to the 'netting off' method of payments in June and inform CCCG	JSirodcar	2 Mar
AP13	Send data on rejects for the Bar to JBUGG	SStarkey	Closed