



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

12 March 2012

Date:	Monday, 12 March 14:30-17:00		
Where	LSC HO, 102 Petty France, London SW1H 9AJ Teleconference: Richard Miller – TLS; Debra Challis - LSC VC: David Keegan – LSC; Steve Starkey - LSC		
Chair:	Ruth Wayte - LSC		
Attendees:	Adam Griffith – ASA Alan Bean - ALC Carol Storer– LAPG Alison Harvey-ILPA Andrew Caplen – TLS	Ann Lewis – ASA Kathy Hartup – LSC Kelly Ellis - LSC Kevin Westall – MoJ Lisa Levy – MoJ	Melena Ward-LSC Mark Strutton - BC Neil Lewis – LSC Rachel Rogers – Resolution Vivien Gambling – HLP
Minutes:	Grazia Trivedi (LSC)		
Apologies:	John Sirodcar – LSC Kerry Wood – LSC David McGrady – ILEX Wendy Hewstone – TLS	Avrom Sherr – IALS Nick Lewis – MHLA Jan Luba – Bar Council Richard Jenner – ASA	Ian Bugg – Bar Council Dave Emmerson – Resolution Richard Charlton – MHLA

Actions from the January meeting		By Whom	By When
AP1	Pass Appeals data for NIAT to Sonia Routledge	SStarkey	Closed
AP2	Civil Billing Information: 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 negligence 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 JBug	SStarkey	Closed
AP14	Timetable a meeting for the working group to discuss the VHCC non-family contract proposed amendments	RWayte	Ongoing

RWayte welcomed everyone to the meeting.

1. Minutes and actions from the January meeting

MStratton requested that the January minutes be ratified to show that action 10 on page 2 had not been closed. This action would be carried forward until a date could be agreed upon to discuss the VHCC non-family contract proposed amendments. **AP1-Post meeting note:** As has been discussed previously, it is not possible to finalise a date for this action in the short term as resources are concentrated on the implement of LASPO. This action will be closed and listed for review in September.

AP1, AP2, AP3, AP4, AP10, AP13 had been closed

AP5 Discussed under item 4.

AP6. AHarvey asked whether it was possible for the LSC to provide the group with information regarding matter start usage (and capacity). AGriffith added that the group would also have liked to view reports on matter starts' capacity because representative bodies had found that some providers were not willing or able to take on clients.

RWayte said that this type of report would not be very helpful because the LSC would be receiving the data 1 to 2 months after the fact; it was not going to be a good use of resource to do this.

DChallis said that matter starts usage was not an indicator of capacity. However representative bodies reiterated that it would have been useful to know what the LSC planned to do to address under usage of MS and whether they would consider clawing them back for redistribution.

RWayte said that usage carried out in a set period of analysis was the only data relevant to this issue, and that this was something for the contract management team to consider. RWayte said that a paper updating the group on the matter starts situation would be brought to the following meeting for discussion **AP2-** JSirodcar

However RWayte pointed out at that, so far, only anecdotal evidence had been given to the LSC, which was not enough for a proper analysis to be done. RWayte asked representative bodies to give, in good time for the paper to be prepared, some concrete examples of instances when providers had not agreed to take on a case i.e. names of providers, dates, circumstances. **AP3.** Rep bodies

AP7. NLewis had responded to ABean with regards the clause. ABean said that he was drafting a response that would be sent to NLewis. **AP4-**ABean

AP8. *AP9* In immigration, providers had been claiming higher rates for interpreters than for translators so the LSC was working to clarify the situation. ABean asked what work was being done with Expert Witness Body representatives to fill in the gaps in the scheduled list of experts.

ABean said that he understood that MoJ had stopped dialogue with the Consortium of Expert Witnesses' following their Pre-Proceedings letter which had been issued in September. However, he also understood that this action had not proceeded and so wanted to know if this dialogue would start again now that the prospect of litigation had been removed.

KWestall said that he had written a letter to Judith Freeman to request some additional information and expected dialogue to resume. However, the current codified list of experts represented the expert types most frequently paid by the LSC and adding additional types was not going to be a priority unless it was clear that there were practical/operational issues. MoJ policy and legal resources were fully focussed on supporting the implementation of the LASPO Bill which was the key departmental priority over the next 12-months or so.

Work would however continue around the issues relating to prior authority applications, such as specialist medical experts and housing disrepair surveyors fees, where there appeared to be some issues. It was currently unclear how any changes in these areas would be taken forward as there was limited data in some areas and any changes could potentially impact on both the tenders needed to introduce the LASPO changes and on the IDP programme.

ABean said that, anecdotally, there seemed to be a large number of complaints from practitioners about the number of hours within which a particular task was expected to be done; this didn't correlate with how long historically it took.

It was accepted that policy makers would have looked very carefully at whether or not a reduction in fees would lead to an increase in the number of hours taken for completing a specific task, however the question was asked: who was making the decisions about the maximum number of hours needed to complete a specific task?

DKeegan said that caseworkers reached their own judgment on the hours to be allowed as there were not a set of benchmarks at this time. However, the LSC would welcome any feedback from practitioners that could help caseworkers to gain a better understanding.

KWestall said that the case management team were monitoring the prior authority applications they received to get a clear understanding of trends – including in particular the types of cases where higher fees were being sought, the reasons for that and the number of hours being routinely requested. The data from this exercise was being shared with MoJ analysts but it may be some time before a full data set was available. ABean asked KWestall that the MoJ treat this issue as a priority because public law cases were being held up due to this problem. KWestall asked that representative bodies provide specific examples of family cases including names, facts, etc, where applying for prior authority had been a problem in order for MoJ to understand the issues. **AP5** Representative bodies.

VGambling said that the prior authority scheme wasn't working well. Providers felt that they were worse off when asking for prior authority because case workers only paid the standard rate and capped the number of hours claimed. This resulted in applications showing as having been granted when they were not granted in full.

DKeegan said that work was continuing on establishing the correct rates for medical experts and a measure of flexibility was being exercised in this area. Work was also continuing on a review of surveyors' rates in housing disrepair cases.

VGambling said that in housing cases the majority of providers were not applying for prior authority because they expected that their claim for a specialist fee that was in excess of £50 per hour would be refused and that the number of hours would be capped. Some providers took the risk of paying the surveyor's fee themselves and others didn't avail themselves of an expert, to the detriment of their client's case.

The LSC acknowledged that this matter had been discussed for sometime at CCG meetings, however the representative bodies – with the exception of HLPAs, had only ever given anecdotal evidence to support their claims that the prior authority scheme was flawed; this was not enough to justify a review of the scheme.

Unless providers made a written application for prior authority and appealed against decisions, the LSC wouldn't have the evidence that a problem existed.

KWestall pointed out that as had been made very clear during the recent consultation, the reason that the current fees had been introduced was that providers had consistently failed to provide data on fees paid, etc, when asked. He confirmed that ministers would not approve any changes to the current fees unless there was a

firm evidence base. HLPa had produced detailed evidence in support of a review of surveyors' fees – both DKeegan and KWestall thanked HLPa for this data which was now being considered and a response would be given to VGambling by 23 March **AP6-DKeegan**

Both MoJ and LSC outlined that the prior authority process was a key means of monitoring trends in order to identify problems and get a better understanding of particular types of cases and experts that needed to be paid a different rate. If practitioners did not make use of the prior authority application process and, in particular, did not appeal against decisions with which they disagreed, LSC/MoJ officials would lose their primary source of early data on the operation of the fees system and it would be highly unlikely that any early changes could be agreed.

The only alternative approach would be to follow the HLPa model with representative bodies obtaining data from a range of their members, which could then be cross-checked against LSC case data. Any data gathered would need to be of a similar volume and detail to that recently provided by HLPa.

As KWestall set out, MoJ were currently not planning to revise the funding order until April 2013 when a new order was needed under the LASPO Bill anyway. However, subject to sufficient reliable data being available in the meantime it would potentially be possible for the LSC to identify and agree with MoJ a workable set of rates that could be used to respond to relevant prior authority applications where it was clear that higher rate(s) were appropriate.

RMiller said that Representative bodies had previously asked that a prior authority scheme be set up for experts' fees in controlled work. RWayte said that this was not part of the Legal Aid Reform (LAR) project brief, which focussed on changing the system rather than modifying current processes and that the focus currently must be the implementation of the Legal Aid Reforms.

RMiller said that it was because of the changes in funding regulations that these measures were needed. KWestall said that the regulations did not require providers to apply for prior authority in relation to this issue and there was no requirement for the LSC to run a prior authority system for expert fees in relation to legal help. If providers decided that it was necessary to pay a higher expert rate, they could do so and the reasons for their decision would then have to be documented on the case file so that the LSC could subsequently decide whether exceptional circumstances applied to the case and either grant the higher rate sought or cap payment at the codified rate as appropriate.

The LSC would find out whether this was in accordance with the NAO's requirements and feed back to the group. **AP7. Post Meeting Note:** The LSC is required to ensure that payments made are accurate and reflect work actually undertaken. We will discuss with Provider Assurance and provide an update at the next CCCG meeting (NLewis).

AP11. The LSC had met with advocates. The VHCC team were looking at more files and had met with the BC to discuss fees and case plans; a spreadsheet had been set up to log old claims.

DKeegan would email ABean requesting the file information he needed from solicitors advocates. **AP8-DKeegan** and **ABean** would procure a minimum of 20 files.

A new information pack was being worked on in which all the schemes would be consolidated. The website would also be updated. DKeegan would meet with representative bodies to discuss the documentation.

He said that time taken to process grants was still too long and more work was needed to improve this.

AP12. Post meeting update. The current view is that 'netting' will go live no earlier than the autumn. A final decision will be made by the Finance team who are developing a formal communications plan to support this. (Kellis)

2. Commissioning update

The family tender was closed. A total of 156 firms – made up of just over 200 offices, had bid for a contract. The failure rate had been approximately 9%.

CStorer asked for clarification on the planned visit to Hinkley on 14 March, as some providers had been confused about the purpose of this open day.

The LSC explained that the open day at Hinckley, where the telephone operators' centre was located, had been arranged for the benefit of providers that might be interested in delivering specialist telephone advice under the reform proposals, to see how the *triage* system worked. It was confirmed that the open day was in relation to new contracts from 2013 and did not relate to the recent interim tender for CLA services.

The telephone advice contracts were distinct from the Specialist Support contracts; the telephone service was a helpline that offered specialist legal advice, including casework, to clients eligible for legal aid; the term specialist in this case referred to specialist areas of law.

Providers that might be considering bidding for the 3 year Specialist Telephone Advice contracts, due to start in April 2013, ought to have found a visit to Hinkley useful.

CStorer said that providers as well as the LAPG committed had found the narrative on the LSC website unclear¹; some terms and acronyms used were unfamiliar to providers that had not been involved with telephone services.

The LSC would review the content of the webpage regarding CLA telephone advice **AP9** - MWard

Post meeting note: The LSC have reviewed the wording that was put on the website regarding the Hinkley open day and do not consider that there was any ambiguity.

3. Integrated Delivery Programme

Kellis updated the group on the IDP programme. Since the previous CCG the IDP team had been engaging with an External Implementation Group to ensure that any issues relating to the programme were identified and resolved, that training requirements were addressed and to assist in process development.

47 organisations had expressed their interest in taking part in the IDP (6 months) pilot in the North East in the autumn; it was expected that most would be invited to join it.

The major structure of the IT system itself had been finished and the built-in functionality and data could now be added on. The system would then be extensively tested.

The LSC intended to retender the majority of the civil contracts in time for the Legal Aid Review. It had been proposed that, as part of the contractual changes being introduced in those contracts, a clause in the current contract in relation to *Delivery Transformation* and electronic working be drafted in to add more clarity over the electronic working requirements. This initiative would be shared with the group along with the other changes.

4. Volume and Value figures. Discussed under AP6, above.

5. Legal Aid Reform (LAR) implementation

2013 Legal aid out of scope and related issues RMiller said that with some categories of law going out of scope, some providers would chose to finish remainder work and some would not. The issues arising from this

¹ www.legalservices.gov.uk > Community Legal Service > Tender > CLS telephone advice

situation, i.e. clients left without representation, needed to be discussed so that a process could be put into place to address it. RWayte agreed with this, and would discuss the issue with the LAR team once the Bill had been passed. This item would be added to the following meeting's agenda.

6. Feedback from representative bodies

AGriffiths asked about the LSC statement which said that they would be consulting with representative bodies about the March tender. MWard said that the LSC would be meeting with practitioners and representative bodies the following Friday to discuss the recent Family tenders and lessons learned.

Following that, a timetable for engagement with representative bodies about the future tender programme would be prepared; the progression of the Bill would have a bearing on the timetable. Discussion would not be in the form of a paper, but would be a working engagement.

RMiller asked for clarification about the LSC's reference in the draft standard terms to the abolition of the *cost appeal committee*. RWayte said that the thought process behind this was that, if the LSC no longer existed, things like the *cost appeal committees* would be *commissioner appeal bodies*; these were part of the LSC's internal governance arrangements. To streamline processes and make some savings, the *commissioner appeal* set-up would no longer be available.

Real issues of principle, as opposed to a provider's independent appeal against a cost adjudicator's decision, would be dealt with either within the CCCG or via correspondence with the LSC head office. This would better capture the real problems rather than dealing with an individual complaint which may or may not be indicative of a wider trend. The LSC would provide a paper for the next meeting. **AP10-LSC**

Post meeting update. The LSC's position on the costs appeal committee will be dealt with in the LSC's response to the 2013 Standard Terms consultation which is expected to be sent to the rep bodies at the end of this month.

[RWayte left the meeting/ NLewis acting Chair for remainder of meeting]

7. Operational update

SStarkey talked through the Civil Billing data that had been circulated before the meeting. Payments were being processed within target (8weeks). The only delays likely to be experienced were in respect of VHCC claims where a case plan had not yet been agreed. SStarkey clarified that the 8 week processing target included rejects. Time essentially ran from the point of receipt of the claim to the decision point to either reject or authorise the claim. If a claim was rejected it would exit the system and start again when resent with the additional information.

The level of rejects was still very high and slowed down processing times. CStorer said that one of her members had said that civil claims for her firm were taking 11 weeks despite regular chasing. This provider was also concerned that claims were returned after 8-9 weeks requesting more information. SStarkey said that this was likely to be a VHCC claim because at the current round of PRG meetings providers had been unanimously in agreement that the work was flowing smoothly. SStarkey offered to look into this particular case however this was not possible because the provider wished to remain anonymous.

SStarkey updated the group on the outcome of the CCCG working group meeting that took place a few days before to discuss telephone working hours and finding ways of improving the LSC's customer service in general. AHarvey asked that the minutes be circulated to the CCCG. **(Post Meeting Note:** This was done the next day)

With regards communications between providers and the LSC, there were three dedicated email addresses that providers could use for legal, finance and means testing enquiries, although currently the LSC were unable to accept emails with attachments unless these were specifically requested by the LSC. SStarkey agreed to collate a list of the different mechanisms available to providers to get in touch with the LSC. **AP11** –SStarkey

Post meeting note: The LSC covered this in an email alert to providers on 28th March #125. The update was split into e-mail contact and phone contact. The link to the overall update is: <http://lscupdate.org.uk/t/4P-R4UO-552IZCXO31/cr.aspx> It was agreed that the reduced telephone service should be kept under review.

AOB

VHCC CStorer asked when VHCC family and non family meetings would be taking place. DKeegan said that he would set up a meeting with Family Reps to take forward VHCC Family procedures. **AP12**-DKeegan.

CCCG meetings. In February RMiller had sent a letter to RWayte with suggestions from representative bodies on how to make the CCCG meetings more productive. There was discussion about these suggestions.

It was agreed that meetings would be held at The Law Society and the LSC alternatively and would chaired by the host organisation. VC and teleconference facilities would be made available whenever possible to facilitate attendance. Representative bodies asked to have the meeting room available for an hour prior to the meeting in order to prepare, however this was not possible at 102 Petty France due to meeting room space being at a premium.

It was suggested that agenda items be separated into civil and family, with common interest topics in the middle so that members could attend when their relevant subjects were covered. It was agreed that, before each meeting, either NLewis or RWayte would go through the agenda with their representative bodies' counterpart and decide how it should be organised.

It was agreed that papers would be circulated no later than 5 working days before each meeting, with *information only* papers separated from those relevant to the agenda. Actions would be circulated promptly after each meeting and minutes at a later date.

Representative bodies wanted to know to whom they should speak when practitioners raised individual queries with them, which they would like to discuss with the LSC but which they did not feel were sufficiently serious to be added to the CCCG agenda.

It was agreed that such queries should be channelled through GTrivedi in order to maintain a centralised record of such concerns, to assist in consistency of answers, and to help identify any patterns of concerns.

GTrivedi would log the questions received between March and May to determine whether queries, and the answers to them, could be appended to the minutes for wider circulation. **AP13**

Immigration. Alison Harvey asked to be informed about the outcome of the meeting convened by the immigration detainees' organisations that was working with the LSC to look at how the exclusive contracts were working in detention (removal) centres. She asked what the LSC were doing to address the problems that were raised there. NLewis said that he would take this action away and update AHarvey **AP14**-NLewis. **Post meeting note:** emailed to AHarvey with the minutes

DirectGovNet ALewis said that some of the information on the *DirectGovNet* legal aid page was incorrect and needed to be amended. It was agreed that ALewis would send the information to the LSC so that the changes could be made. **AP15. Post meeting note:** The webpage has now been amended as per ALewis' suggestions.

Actions from this meeting		Lead	By When
AP1	Agree a date to meet and discuss the VHCC non-family contract proposed amendments Post meeting note: As has been discussed previously, it is not possible to finalise a date for this action in the short term as resources are concentrated on the implement of LASPO. This action will be listed for review in July.	RWayte	9 July
AP2	Produce a paper updating the group on the matter starts provision and the possibility of regular reports	JSirodcar	Depending on AP3
AP3	Provide concrete examples of instances when providers had not been able to take on a case because of NMS cap, i.e. names of providers, dates and context.	Rep bodies	asap
AP4	Feedback to NLewis response Re the <i>Standard Fees Clause</i> .	ABean	asap
AP5	Provide KWestall with specific examples of family cases including names, facts etc, where applying for prior authority had been a problem	Rep bodies	asap
AP6	<ul style="list-style-type: none"> DK to review HLPAs data and provide update to KW re review of surveyors' fees. DK/KW to respond to VGambling. (Circulate to the rest of the group when agreed) 	DKeegan	Closed
		KWestall	Closed
AP7	Confirm that NAO accept the Prior Authority process. Post Meeting Note: The LSC is required to ensure that payments made are accurate and reflect work actually undertaken. We will discuss with Provider Assurance and provide an update at the next CCG meeting (NLewis).	NLewis	14 May
AP8	<ul style="list-style-type: none"> DKeegan to email ABean with the types of files needed from solicitors advocates and ABean to procure a sample of at least 20 files 	DKeegan	Closed
		ABean	30 March
AP9	Review the content of the CLA telephone advice webpage re open Day at Hinckley. Post meeting note: The LSC have reviewed the wording that was put on the website regarding the Hinkley open day and do not consider that there was any ambiguity.	MWard	Closed
AP10	Circulate a paper on the future of cost appeals Post meeting update. The LSC's position on the costs appeal committee will be dealt with in the LSC's response to the 2013 Standard Terms consultation which is expected to be sent to the rep bodies at the end of this month.	LSC	Closed
AP11	Circulate a list of the different mechanisms available to providers wishing to contact the LSC and issue a guidance. Post meeting note: The LSC covered this in an email alert to providers on 28 th March #125. The update was split into e-mail contact and phone contact. The link to the overall update is: http://lscupdate.org.uk/t/4P-R4UO-552ZCXO31/cr.aspx	SStarkey	Closed
AP12	Set up a meeting with Family Reps to take forward VHCC Family procedures	DKeegan	Closed
AP13	Log the questions received between March and May to determine whether queries, and the answers to them, could be appended to the minutes for wider circulation	GTrivedi	4 May
AP14	Provide an update to AHarvey regarding the issues raised at a meeting with the immigration detainees' organisations in October 11 re the exclusive contract in detention centres. Post meeting note: This was sent with the minutes	NLewis	Closed
AP15	<ul style="list-style-type: none"> Flag up the incorrect text on the <i>DirectGovNet</i> web to the LSC Ensure that the changes are made Post meeting note: The webpage has now been amended as per Anne Lewis' suggestions	ALewis KHartup	Closed

