



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

17 September 2012

Date:	Monday 17 September, 10:00 – 12:00		
Where	The Law Society, 103 Chancery Lane, London WC2A 1PL		
Chair:	Richard Miller – TLS		
Attendees:	Adam Griffith – ASA Alan Bean - ALC Alison Harvey-ILPA Andrea Melegaro-LSC Ann Lewis – ASA Carol Storer– LAPG Debra Challis - LSC	David Keegan – LSC Grazia Trivedi-minutes Jan Luba – Bar Council Kathy Hartup – LSC Kelly Ellis-LSC Kerry Wood – LSC Kevin Westall – MoJ	Linda Lee – TLS Rachel Rogers-Resolution Ruth Wayte – LSC Sarah Stephens – HLP Sarah-Jane Bennett-BC Simone Hugo-Lake - LSC Steve Starkey – LSC
Apologies:	Avrom Sherr – IALS David Emmerson-Resolution	Elizabeth Gibby – MoJ Joy Merriam - TLS	John Sirodcar – LSC Neil Lewis – LSC

Actions from July's meeting		Lead	By When
AP1	Communicate the links re civil bill rejects to their members	Rep Bodies	Closed
AP2	Provide a list of the worst rejects offenders for counsel, if possible.	D Challis	Post meeting note: The LSC's Management Information system does not at present identify the 'worst' chambers Closed
AP3	Provide information on concluded disrepair cases & housing providers	D Keegan	Post meeting note: MoJ have confirmed that they are currently finalising discussions on the data supplied by HLP and the LSC with a view to responding to HLP by the end of August. Closed
AP4	Circulate the list of 47 IDP pilot providers	D Norville	Closed
AP5	1. Ascertain what guidance the LSC auditors were using in relation to Level 2 fees. 2. Draft guidance re: <ul style="list-style-type: none"> • VAT • Level 1/Level 2 claims • claim for exceptional cases • establish eligibility 	J Cable	1. Post meeting note The LSC's On-Site Audit team has received training on the approach that should be taken to Level 1 and Level 2 family fee claims and the auditors are all aware of the latest guidance. The audit reports reviewed by the Audit Managers do not suggest that any of the auditors are taking an inconsistent or out-of-date approach but of course a provider can ask the LSC to review a decision made by an auditor if there are grounds to suggest the decision is wrong or an error has been made Closed 2. Closed
AP6	Send comments to J Sirodcar about the paper on Immigration common issues	Rep bodies	Closed
AP7	Circulate stats on civil tender results with CCCG	K Wood	Closed
AP8	Update the group on the cost of the telephone service	J Sirodcar	Closed
AP9	Set up a sub-group meeting in late September to discuss the reasons for bills being rejected by the LSC	J Sirodcar	Closed

1. Minutes and actions from May's meeting

The minutes were approved and could be published on the LSC website¹.

2. Legal Aid Reform implementation

2.1 *Civil Legal Aid Tenders*

The LSC had published a further opportunity to respond to the Pre Qualification Questionnaire (PQQ) for face to face contracts from April 2013. This was to allow a small number of organisations that had not previously submitted a PQQ response, or had made a mistake the first time round, to do so.

- The second PQQ was open to all organisations but those who had passed the May PQQ for face to face services did not need to respond again;
- The PQQ (round 2) would be open for 2 weeks;
- Invitations to Tender (ITT) for mainstream services and Housing Possession Court Duty Schemes had opened on 14 September with invites going to organisations that had passed the May PQQ;
- The ITTs would be open until 22 October so that those who responded to the second PQQ would also have the opportunity to respond to ITTs;
- The LSC confirmed that all organisations submitting a PQQ (round 2) would be invited to respond to ITTs.

2.2 *Regulations*

K Westall explained that MoJ would be likely to be bringing forward the regulations subject to the affirmative resolution procedure first and that he expected that the first batch of regulations would be likely to be introduced to Parliament towards the end of October.

K Westall confirmed that the remuneration regulations were subject to the negative resolution procedure and it was unlikely that they would be introduced before February due to the need to identify and transfer all relevant fee provisions over to the new format - including those currently only set out in contracts. He confirmed that, as set out in the policy statement accompanying the ITT, MoJ intended to maintain the current fee schemes in relation to solicitors.

Representative bodies asked to have confirmation of what payment providers would receive for making an application for exceptional funding. **AP1**

R Wayte confirmed that while it might be necessary to make some tweaks to the wording of the new regulations, these would be minor and would only be where they added clarity or were required to fit in with the provisions of the Act in relation to scope. There might also be a need to tweak them to fit in with the introduction of Universal Credit

3. Operational update

3.1 *Provisional Assessment (PA) rates*

PA rates had reduced steadily since November 2011. This was largely due to the increased volume of fixed fee bills coming through for assessment; Codified rates for experts were starting to have an impact.

3.2 *Reject level of CLAIM 1s*

The reject level was still high at 30%+. The LSC were currently reviewing their internal reject codes and reject letter wordings to ensure that the reasons given were as clear as possible in future. This would enable the LSC to

¹ www.legalservices.gov.uk > CLS > Civil contracts > Agreement with The Law Society > Civil Contract Consultative Group

provide the representative bodies with a much clearer picture of the most common causes of rejects. The LSC would also be able to separate out Priority Returns from hard rejects which again would provide much improved data in respect of reject performance.

A Harvey said that feedback from ILPA members indicated that more often than not, when a bill for an exceptional case had been rejected by the LSC, the decision would be overturned on appeal. She asked whether the caseworkers' poor skills were to blame for a large part of the rejects. S Starkey said that, following a recent internal review of all CLAIM 1 rejects, in approx 2% of cases it was found that the bill should not have been rejected and in a further 5% - 6% the reasons given were misleading to providers, which potentially could result in a further reject.

The LSC were looking to make further improvements to ensure the accuracy of their rejects in future. It was important that the LSC and representative bodies worked together on this. The LSC recognised that it had work to do to improve the accuracy of their rejects and everyone needed to work together to improve the accuracy of supplier submissions. It was agreed that everyone would benefit from reduced reject levels.

Management information suggested that many providers made lots of little mistakes when submitting a claim, such as omitting to sign or date it. A smaller number of providers regularly made lots of mistakes. The LSC felt that it was important to continue to reinforce the basic message of checking claims for simple omissions in order to eliminate the vast majority of rejects. These checks could often be performed successfully by an administrative member of staff prior to submission.

Some members suggested that providers tended not to read the LSC guidance; others said that it could be difficult to keep up with changes to sometimes complex guidance/changes of interpretation of the guidance and some said that the system was too complicated and that forms should be more user friendly, e.g. by adding a reminder on the front page to include disbursement vouchers, or by positioning the declaration and date on the front page.

Twenty contract notices had been issued to providers that caused a high volume of rejects, although the LSC were reluctant to do this.

A general point was raised about the relatively high number of CLAIM 1s that were rejected because the amount quoted as being paid to counsel on the Claim 1 didn't reconcile with the payments that had actually been paid to counsel. Unless these figures matched, the claim would be rejected. The LSC said that solicitor and counsel ought to communicate with each other to make sure that the claims being submitted were accurately completed. The main issues were either:

- a) not all counsels claims were included or
- b) the fees quoted were incorrect (often this was because counsel's original claims had been reduced and the conducting solicitor had not been notified).

J Luba said that the Bar agreed with R Miller's point that barristers' payments should not have priority over solicitors' and for this reason he believed that the Bar should be able to contract directly with the LSC, separately from their contract with the solicitor.

3.3 Reject levels for counsel billing

Currently it was only possible to have data on Family Graduated Fees bills where the level of reject was around 16%. LSC's analysts were working to produce the same data for the Family Advocacy Scheme (FAS) bills, which were 50%-60% of total intake.

The LSC were also reviewing their internal rejects in respect of FGF/FAS. Approximately 2%-3% of the overall volume of FGF had been rejected in error and about 9% gave misleading reasons to counsel.

3.4 Assessment rate

The assessment rate, (the % level by which bills were reduced) for FGF claims had increased in the previous quarter and gone up to 4.3%. The assessment rate for FAS was 2.3%.

3.5 Hourly estimation of claims

This had increased and the oldest claim was 16 days old instead of 10, creating a backlog. The LSC were focussing their resource on reducing the (counsel fees) backlog so that solicitors' fees could be paid quicker.

J Luba asked S Starkey to find out whether it was possible to produce a table for counsels' payments (POA1s)

AP2.1 Closed

3.6 Processing times S Starkey said that 98% of bills were processed within 30 working days. There was discussion about the cases that took longer and why. D Keegan said that it took longer in some areas such as VHCC claims in lieu and small volume areas of work. S Starkey added that sometimes there were protracted negotiations which delayed the final payment. Given that the LSC processed approximately 98% of claims within 30 days, S Starkey was asked to find out how long it actually took to complete the remaining 2% of cases that were not processed within 30 days so that the information could be passed onto members. **AP3.2 Closed**

3.7 VHCC Operational Update.

The Special Cases Unit were turning around 70% of applications and 85% of amendments/case plans were processed within the 4 weeks target. Priority was being placed on public law applications with same day/next day turnaround.

The VHCC Family Team in South Tyneside carried out the majority of Children/Family Cases. Their turnaround of new case plans was 6 weeks. Priority was being given to speeding up the CLAIM1s in lieu processing times. These were used on cases where the main hearing was due to start within 4 weeks and there was no time for counsel to prepare and submit a case plan, therefore the LSC agreed that a bill should be submitted. These bills took lower priority than case plans because the case had already concluded in court; it was just a matter for retrospectively agreeing the profit costs and counsel fees.

The VHCC Family Team in South Tyneside were recruiting additional caseworkers to expand the use of Events Models. This scheme was intended to eliminate the lengthy negotiations of case plans, thus saving all parties time and effort, and speeding up payments.

3.8 VHCC Development Update

Information packs for the family high cost cases had been updated and republished^[1]. The information pack made clear that Claim1s in lieu were only to be used in very limited circumstances. The packs for the Events models were included.

The LSC was in discussion with family lawyers on an events model for in-house solicitor advocates. There would be a meeting on 27/9/12 to discuss the proposal and the potential to pilot it.

The LSC had also been in discussion with the FLBA and the Bar Council on developing direct contracting with barristers in events model family cases. A meeting was being arranged for October to consider a pilot.

^[1] www.legalservices.gov.uk / community legal service / high cost civil cases

The LSC had also been in discussion with representatives on the form and terms of the Civil (non-family) scheme. This would be linked to reformatting the contract to fit the 2013 format for use from April 2013. There was a meeting on 18th October to look at a first draft.

4. Commissioning update

- The telephone service tender had just closed and notifications to applicant organisations would be sent early in November.
- Notifications to applicant organisations re the outcome of the face to face contract tender would be sent in January 2013. Bidders would be informed about the outcome and, if successful, the volume of NMS allocated.

In response to a query K Wood said that the reason the LSC had allowed a second PQQ to go ahead was that: it could be accommodated without affecting the overall timetable; the numbers expected were manageable; contingency plans were in place; the Central Commissioning team were very experienced in managing tenders so a slippage of deadlines was not expected.

5. Contract management

There was discussion about the letter that the LSC was intending to send to providers that had not submitted a PQQ.

A Lewis felt that the LSC should clarify in the letter what their policy is with regards the running down of cases. The LSC hoped that all providers exiting legal aid would bring their open cases to conclusion even if it meant going beyond 1 April 2013 but the possibility that some providers would want to stop on 31 March had to be considered. For this reason the LSC needed to know what these providers intended to do. A Lewis suggested that the LSC make it clear in the letter what the process is for a provider to name an external supervisor. D Challis agreed to review the letter and share the new draft with the CCCG. **AP3 Closed**

A Griffith raised the issue of how a payment for legal help could be apportioned when a provider decided to stop working on a case and passed it to another provider. R Wayte said that payment could be made for legal help only if the matter had been closed; providers needed to read the contract specification to find out their exact position. R Wayte suggested that a brief policy statement should be added to the letter in this respect. Cases of firms that shut down post 1 April 2013 would have to be individually considered.

J Luba suggested that

- the letter be sent out after the second PQQ deadline
- the letter specify what contract the provider held, i.e. housing with family
- the last sentence of point 5 in the letter meant that the LSC intended to make the last payment to providers exiting the contract on 1 April 2013.

6. Finance

Financial statements A Melegaro said that as part of the LSC's changes to their IT systems there would be changes to the financial operations as well. A document explaining these changes had been circulated. From November 2012 providers would receive a new monthly statement.

The new IT system made it easier to obtain a broad range of data; this would enable the Finance team to customise the statements and include more information. The LSC would send a letter to providers with the first new statement introducing the new format. The LSC would forward the information to representative bodies so that they could inform their members. **AP4-Closed**

Post meeting note. An [LSC update](#)² went out a few days before providers received their first IDP payment, which set out:

- What the new Remittance Advice does
- Some info on netting
- Trailed the Financial Statement (NB. now called a Provider Statement of Account)

Owen Mapley, the LSC's Finance & Corporate Services Director, sent the update directly to a specific group, which included CCCG.

7. Issues raised by the representative bodies

7.1 Volume and value figures report There was discussion about the report. J Luba queried whether the three months worth of data in the report was representative of the annual mix, i.e. that 80%-90% of payments in relation to civil cases were for family work. There was a request for a brief narrative to accompany the table, to highlight anything of note **AP5.1** and for cumulative figures to be included in future reports **AP5.2**.

The LSC explained that the Legal help figures originally circulated to the CCCG showed the following NMS started in May 2012:

- Immigration Asylum 7,511
- Immigration Other 5,643

These figures showed a marked increase from both the preceding and following months and resulted from a single instance of misreporting by a firm of their NMS in the region of 8,000 NMS.

Adjusted Figures:

- Immigration Asylum 2,593
- Immigration Other 2,309

It was agreed that a revised table would be circulated as soon as possible. **AP5.3 Closed**

A query was raised about the Procurement Plans for South and West Yorkshire which showed a drop in the numbers of new Immigration and Asylum matter starts (NMS) available from April 2013 compared to the number of Asylum NMS currently available. K Wood explained that a) less NMS were available in the new tender and b) usage during the life of the 2010 contract had been lower than allocation. Lack of providers in certain areas could be a reason why usage was down but the LSC could deal with this issue if necessary, for example through the supplementary matter start rules in the contract.

7.2 Exceptional claims

There was discussion about the high number of rejected (or assessed down) claims for immigration exceptional cases that were eventually paid following a successful appeal, causing significant delays in payments to providers. A Harvey suggested that:

- providers feared reprisals from the LSC if they complained about exceptional cases rejects
- the quality of the assessments was poor

The LSC had received a letter from ILPA describing the issue and the Head of Civil Case Management had been informed of this. A response to ILPA would be taken as an action. **AP6 Closed**

² www.legalservices.gov.uk /About us/Our publications/LSC update email

7.3 Experts claims

MoJ had responded to HLPAs with regards increasing the codified rate for surveyors in housing disrepair cases, however S Stephens suggested that the new rate for out-of-London was still too low and asked whether some flexibility could be expected or whether a tolerance allowance in the number of hours could be provided.

K Westall explained that the new rates were based on data supplied by HLPAs but if a particular case satisfied the exceptionality criteria set out in Schedule 6 of the Funding Order then the LSC could consider different rates.

Post meeting note: [guidance](#) on applicable rates payable to surveyors in housing disrepair cases has been published.³ Further information on [using experts in legally aided cases](#) has also been published.⁴

He informed the group that MoJ's priorities going forward would be Family experts which accounted for 70%-80% of the total experts spend in civil cases and they would be specifically looking at:

- guidance for risk assessors;
- analysing prior authority data post October 2011 to identify trends, types of cases and number of hours claimed;
- codifying new areas such as DNA testing and blood sampling;
- file review to extract data on experts types, firstly in family public law and then other civil categories.

There was discussion about the issue of the hours claimed for experts' work on a case. Representative bodies complained that caseworkers all too often assessed the hours down when the final bill was submitted. K Westall said that MoJ's and the LSC's position was that it was not possible to know with any certainty at the start of a case how many hours an expert would need. It was agreed that this issue would be discussed at a separate meeting. **AP7 Closed**

The group agreed that MoJ was to be congratulated for clarifying the surveyors' codified rate in housing disrepair cases and HLPAs for putting forward the evidence to validate the change.

8. Community Legal Service

J Risk, the LSC Executive Agency Transition Programme Manager talked about the proposed abolition of the *Community Legal Service* and the logo representing it, and its replacement with *Civil Legal Aid*. He asked whether rep bodies felt that there was any value in having a logo. There was a view that a logo was useful to flag up legal aid providers to clients.

9. AOB

LSC website It was agreed that the LSC should transfer the LSC website to MoJ's Justice site sooner rather than later. Although the key links would be in place when the transfer was made, some redirects would not be implemented immediately because of the sheer number of links. The LSC Website Team would appreciate feedback (email: websites@legalservices.gsi.gov.uk) on where links were missing or information was inaccurate so that any teething issues with the new site could be corrected quickly and before phase 2 of the LASPO Act was implemented in April 2013. J Luba asked whether there would be a visual tab on the Justice site that took the user to the LSC site. K Hartup would check. **AP8**

A Harvey asked that future CCCGs be scheduled to last as long as the agenda required.

³ www.legalservices.gov.uk / Community legal service / CLS news

⁴ www.legalservices.gsi.gov.uk / Community legal service / Guidance on fees and funding / Using experts in legally aided cases

	Actions from this meeting	Lead	By When
AP1	Confirm what payment providers would receive for making an application for exceptional funding.	D Keegan	12 Nov
AP2.1	<ul style="list-style-type: none"> Billing information: Find out whether it was possible to produce a table for counsels' payments on POA1s	S Starkey	Closed
AP2.2	<ul style="list-style-type: none"> Billing information: Find out how long it actually took to complete the 2% of cases that were not processed within 30 days		
AP3	Review the letter to providers that didn't submit a PQQ and share the new draft before sending it out.	D Challis	Closed
AP4	Send information re new financial statements to representative bodies	K Ellis	Closed
AP5	Volume and Value <ol style="list-style-type: none"> Provide a brief narrative to highlight anything of note Provide continuing and cumulative figures for next time to enable a trends to be identified Provide a corrected version of the report with the immigrations figures adjusted 	S Hugo-Lake	Closed Closed Closed
AP6	Respond to ILPA 's letter re exceptional cases and circulate to CCCG	S Starkey/Jo Bainbridge	Closed
AP7	Arrange a meeting to discuss experts (8 October)	GT	Closed
AP8	Check how the LSC site would be accessible from the Justice homepage	K Hartup	12 Nov