



The Law Society



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

12 November 2012

Unrestricted

Date:	Monday 12 November 3pm		
Where	MoJ, 102 Petty France, London SW1H 9AJ		
Chair:	Ruth Wayte – LSC		
Attendees:	Adam Griffith – ASA Alan Bean - ALC Alison Harvey-ILPA Ann Lewis – ASA Avrom Sherr – IALS Carol Storer– LAPG David Emmerson-Resolution	David Keegan – LSC Grazia Trivedi-minutes Jenny Handley-LSC John Sirodcar – LSC Kerry Wood – LSC Kevin Westall – MoJ	Nadia Salam-Resolution Richard Miller – TLS Russell Conway-TLS Sarah Stephens – HLP Sarah-Jane Bennett-BC Zoe Farrant - LSC Steve Starkey – LSC
Apologies:	Jan Luba – Bar Council	Elizabeth Gibby – MoJ	Joy Merriam - TLS Neil Lewis – LSC

	Actions from September	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 second 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	Closed

1. Minutes and actions from September

The minutes were approved and could be published on the LSC [website](#)¹.

R Miller raised the issue of the family Level 1/Level 2 fees that had been discussed at the [July](#)² and [September](#)³ CCCGs because he had recently received several complaints from practitioners about the LSC applying rules to family level 1/level 2 fees that they had never heard of before. The LSC confirmed that their staff were working to the latest guidance on Level1/Level 2 fees. J Sirodcar said that, whilst he couldn't say that in a process with human involvement errors were not made, there was robust quality control around these decisions. He asked the group to revisit Jon Cable's *Note*⁴ which explained what had to be achieved for a Level 2 fee to be claimed. It was agreed that S Sirodcar, D Emmerson and R Miller would discuss their specific issues away from the meeting.

A Sherr commented on the issue raised at the [September](#)⁵ CCG about a replacement for the CDS and CLS logos when the LSC became the Legal Aid Agency. He said that if this was going to be the case a reference to providers 'peer review ratings might be included.

AP1. Application for exceptional funding D Keegan confirmed that payment would be under the specific scheme and rules, so either Full Representation or Legal Help. There would be a separate payment. If funding was approved it would be backdated to the point of the application. R Miller wished to confirm the scope of backdating. In particular whether funding would be backdated to cover work done prior to the application to the LSC under what would be Legal Help. DK would confirm a statement with MoJ and come back to the CCG. **AP1 [Nov]**

AP2. Counsel payments on POA1s The information requested by J Luba regarding speed of payment to Counsel was provided to the group. S Starkey explained that the speed of payment report showed that the majority of POA1s were authorised within 23 working days of receipt. The small percentage of cases not completed within 30 days was likely to have had outstanding queries pending on them.

AP3. Letter to providers that didn't submit a PQQ A second draft of the letter had been circulated. ASA had further commented on this draft and the LSC was considering these comments. J Sirodcar said that a final draft would be circulated for comments before sending out to providers. Details of how run off work was going to be handled would soon be known and would be included in the letter.

AP4. Information on new financial statements This had been published in the email alert dated 23 October. G Trivedi was asked to ensure R Miller and A Harvey were signed up for the service. **AP2 [Nov] closed**

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

² www.legalservices.gov.uk > CLS > Civil contract > Agreement with The Law Society > Civil Contract Consultative Group > Documents > CCCG Minutes July 12 – p. 4, Item 3

³ www.legalservices.gov.uk > CLS > Civil contract > Agreement with The Law Society > Civil Contract Consultative Group > Documents > CCCG Minutes Sep 12 – p. 2, AP5

⁴ Circulated on 10/09/12 at 09:38 by GT

⁵ www.legalservices.gov.uk > CLS > Civil contract > Agreement with The Law Society > Civil Contract Consultative Group > Documents > CCCG Minutes Sep 12 – p. 8, Item 8

AP7. Experts meeting (8 Oct) The group asked D Keegan for a note of what was discussed and agreed. **AP3 [Nov] Closed**

D Keegan said that the LSC and MoJ were working on a benchmark number of hours for family experts below which prior authority would not be required. This was for psychologists, psychiatrists (adult or child) and Independent Social Workers in Family cases.

R Miller said that he had been informed that family rates were used for independent social workers in mental health cases and asked for clarification. K Westall said that no specific codified rate existed for independent social workers in non-family cases and so they would be remunerated in accordance with the requirements of the Funding Order as stated in the published [guidance](#)⁶ It was agreed that experts would be on the next CCG agenda.

2. Integrated Delivery Programme

J Handley confirmed that the implementation of IDP had commenced as planned in October with the introduction of the internal accounting system. The next phase of implementation was the pilot in the North East. The functionality for this phase was still being tested and would go live once all testing was complete. This approach was in line with the commitment previously given to providers. The Programme team were working closely with the 47 pilot providers and had agreed that they would receive seven days notice of the pilot commencing. National rollout remained on track for 2013.

R Miller said that he endorsed the approach being taken with regards to completion of testing.

3. Legal Aid Reform Implementation.

Welfare Benefits Z Farrant confirmed that the [Ministerial Statement](#)⁷ had been published (scroll down to column 42WS)

LAR Training Z Farrant confirmed that provider training was being organised for the following year. Although it would not be possible to pay providers for attending the training, the LSC was aiming to produce a suite of e-training sessions that all providers, solicitors and barristers, could join from their own PC, at a time suitable to them.

There would also be some face to face training and R Wayte asked rep bodies to e-mail their views to GT by the end of November, about what they thought would add value to this type of training
AP4 [Nov] The LSC aimed to confer CPD points to the training. The LSC might consider further training for the Bar in their equivalent PRG events.

Regulations K Westall confirmed that the first batch of regulations had been finished but they did not include the procedural ones. The new remuneration rates were expected to be published in February 2013 but while the precise format of the new regulations was still under consideration members should not anticipate any surprises.

⁶ www.legalservices.gov.uk /community legal service / Guidance on fees and funding / Using experts in legally aided cases > Documents

⁷ www.parliament.uk / Parliamentary business / Publications & Records / Commons Hansard > Commons debates by date > 18 Sep > Written Statements > Written ministerial statements > Justice –Legal Aid Reform

Domestic violence R Miller enquired whether any progress had been made following a meeting between representative bodies and MoJ in August re Domestic Violence arrangements, i.e. evidencing domestic violence in a non-domestic violence case and securing legal help for children involved in the case. K Westall asked R Miller to send him details of this meeting so that he could find out. **AP5 [Nov]**

Means testing R Miller asked for clarification about the inclusion of capital and equity to means testing. He said that the vast majority of pensioners would in practice become ineligible for legal aid and The Law Society was fundamentally opposed to this change. K Westall would look into this **AP6 [Nov]**

Post meeting note: There has never been a proposal that an elderly person on pension credits who owns their own home should automatically be financially ineligible for legal aid. The proposal - with which we intend to proceed - is simply that people in receipt of certain benefits (including Guaranteed State Pension Credit) will in future be subject to the same rules about capital when calculating their financial eligibility for civil legal aid as everyone else. As set out in Appendix A-below, under this policy an elderly person on a low income could own a home worth up to £300k and still be eligible.

Telephone advice R Miller asked about the forthcoming guidance for telephone providers in relation to cases for which face to face advice was considered appropriate. J Sirodcar said that there were clear exceptions when people did not have to use the Gateway. If the professional opinion of the specialist telephone adviser – who worked under a solicitor’s contract, was that telephone advice was inappropriate, then telephone advice would not be mandatory for that client. It was agreed that formal joint MoJ/LSC response was needed to Richard’s letter **AP7 [Nov]**

The Law Society had drawn a list of circumstances that it considered that advisers should take into account when deciding whether telephone advice was inappropriate. It was confirmed that the LSC would consider this list when writing the guidance and would circulate a copy of the draft guidance to rep bodies for information before publication. In the meantime R Miller would send the list to J Sirodcar Action (closed)

Judicial review provisions. C Storer raised the issue of the test for Judicial Review in Schedule 1 of the Funding Order and whether LAPG felt that it was *reasonable* or *appropriate*. LAPG members felt that having to use *every method available* to try to resolve a case before launching a judicial review, would cause problems. The LSC and MoJ were aware of these concerns and were considering whether guidance could be written to supplement the regulations. R Wayte said that the intention had not been to overly tighten the test, and the regulations’ early draft could be tweaked. C Storer said that practitioners did not want words that could be interpreted harshly. It was noted that K Westall’s team was aware of this matter

4. Operational update

Civil Billing Information S Starkey talked the group through the report. Processing performance was broadly unchanged but reject levels were still too high. It was noted that counsel providers reject levels were not as high as that of solicitor providers.

Reject Checklists for Civil Billing Following C Storer's suggestion at the previous CCG that the LSC produce guidance in the form of a checklist to help providers to complete their claims, a set of *reject* checklists had indeed been developed and published⁸. The checklists would:

- be updated frequently to keep them up to date with operational changes
- ensure a consistent approach to bill processing

There were six checklists:

- [Court Assessed Bill Submission Checklist](#)
- [LSC Assessed Bill Submission Checklist](#)
- [Claim 2 Submission Checklist](#)
- [LSC POA1 \(paper version only\) Checklist](#)
- [Claim 5 Checklist](#)
- [Claim 5A Checklist](#)

Furthermore, if providers felt that their billing reject decision was incorrect, they could e-mail the new *reject fix* e-mail service: lscivilclaimfix@legalservices.gsi.gov.uk and the team would do their best to resolve the issue promptly (all enquiries would receive a substantive response within 24 hours).

A new approach to dealing with rejects had also been introduced to minimise the amount of time spent on poorly completed claim forms. In future:

- Once the first reject reason had been identified on a claim caseworkers would spend only 5 further minutes looking for additional reject reasons. They would then reject the claim for the reason(s) identified and ask that the remainder of the checks be completed by the provider prior to submission.
- If 3 reject reasons were found the reject check would stop at that point and the claim would be rejected. Again the reasons found would be indicated and the supplier would be asked to complete any remaining checks as well as resolving the reject reasons identified.

Records would be kept of all the challenges received and decisions made so that feedback could be given to a) the firm's contract manager and b) the office where the decision had been made, thus improving the LSC internal consistency.

Feedback received about the checklists would also be used to improve them, so representative bodies were encouraged to forward their members' feedback if they thought anything was either unclear or missing.

R Miller said that the checklists and caseworkers' processing timeframe offered a fair compromise to address the problem of rejects and the high volume of shoddily completed claims.

VHCC Family D Keegan covered three developments in VHCC family cases:

⁸ www.legalservices.org.uk / Community Legal Service / Civil forms

1. The LSC had been running pilot events for the past year for cases with external advocates. The procedure had been improved to encourage take up. Recently, when firms submitted their case plan, they received it back with the LSC's decision together with a direct offer of events, which gave them a better understanding of what it meant for them if they got involved. This had resulted in an increase of the number of firms joining the events model from 10 to 30 per week. The LSC was now looking to go further. At the notification stage before firms had started to prepare a case plan, the solicitor would be contacted for certain information so as to avoid the need for a case plan.
2. The LSC has begun a trial with firms on In-House Solicitor Advocate cases. Under this trial the solicitors would be paid £785 for each event for which they did not undertake the advocacy. If the solicitors used an in-house advocate they would be paid either (a) £1,285/event or (b) £785/event plus the FAS payment. This arrangement will be trialled until the end of the year.
3. The LSC were in discussion with the family Bar about whether a contract could be negotiated and agreed directly with barristers on public care cases.

A Harvey asked whether this approach applied only to family. D Keegan confirmed that other approaches had been taken to civil cases to fix prices without case planning. A checklist had been in place for several years for clinical negligence cases setting out typical limitations and enhancements. Work was being done for police damages cases and prison and judicial review cases. D Keegan confirmed the LSC would be prepared to discuss such an approach for immigration cases which were handled by NIAT.

VHCC Civil non-family meetings had taken place to develop a new contract for 2013. The LSC was working on reviewing specific terms of the current contract and make adjustments where needed, such as Clause 16 which offered opportunities for claiming costs from legal aid where there was a partial costs order. New contract wording was needed that gave providers more assurance of the circumstances in which these costs could be agreed up-front rather than at the end of a case.

5. Commissioning update

Schedules New Matter Start schedules for February and March would be issued and it was expected that these would be based on current usage.

Tender update K Wood gave an update on the recent tender for the specialist telephone service contract, due to commence at the end of November.

The Invitation to Tender for the face to face service contract had been oversubscribed nationally with the local situation varying from area to area. The distribution of service provision had not changed from what it was currently. There had been a return of a number of immigration providers after they had left the service in 2010.

A Harvey raised the issue of Plymouth and Devon (Procurement Area-PA) which was going to have their allocation of NMS reduced from 380 to 100 in the new contract. She said that there were currently 350 individuals seeking asylum in the area, mostly unaccompanied children and Bristol, a long distance away, was the nearest PA. A Harvey was concerned that the LSC's policy to base the

allocation of NMS on previous usage was flawed because where this was low due to lack of supply, usage did not reflect actual demand. K Wood explained that NMS had been allocated on the basis of usage adjusted to take account of the MOJ impact assessment. In the specific area mentioned, even when supply was re-instated, the usage figure was lower than predicted.

A Harvey asked how the LSC would deal with a situation where NMS ran out in a PA, i.e. would a new tender take place? K Wood said that that was always a possibility; the LSC kept areas under review.

S Stephens said that it was a common occurrence for housing providers to run out of NMS and how would they ensure they had enough in future. K Wood said that the reforms had had the greatest impact on allocation, which had gone down as a consequence by 40%. The LSC was asked how they worked out allocations based on usage; K Wood would circulate the [link](#)⁹ to the place on the Website where the information was published. **AP8 [Nov] Closed**

6. Contract management

J Sirodcar said that contract managers had seen a reduction in the number of errors made by providers which contributed to the LSC's accounts qualifications. This was pleasing but a small number of providers whose error rate was not acceptable did remain and robust action would now be started.

C Storer asked for data on the number of contract notices to be circulated. **AP9 [Nov]**

7. Issues raised by the representative bodies

Volume and value figures report A Griffiths had noticed that the volume for Community Care, an area of law that had not undergone any great changes, had dropped by just over 80%.

K Wood said that part of the reason for this was that in the 2010 tender the level of NMS for CC had been kept at a minimum to ensure that providers bid for the contract and in some areas the bid had not been taken in full. The trend in this area of law was downward.

Housing disrepair cases S Stephens said that the issue she raised at the previous CCG in relation to adding some wording to an application that would remove the need for a Prior Authority request had not been addressed.

K Westall said that there was no way around the provisions made in the Funding Order. He added that providers needed to ensure that an application for prior authority (CLSAPP8) included information on the activity the surveyor would be doing in a housing disrepair matter, which was not necessary in a routine property valuation, under the Proceeds of Crime Act. He gave the examples of a) a detailed examination of a building or b) a situation where there were health/safety issues arising out of the disrepair.

It was agreed that a form of words could be developed to be included in guidance to providers and LSC caseworkers on the type of work that would typically be necessary in a housing disrepair matter.

S Stephens agreed to draft a form of words that the LSC/MoJ could incorporate into the current guidance on surveyors in housing disrepair matters. **AP10-11 [Nov]**

⁹ www.legalservices.gov.uk >Community Legal Service > Tenders > Documents

8. AOB

Civil Rejects Webex J Sirodcar spoke about the success of a Webex (civil bill completion) training session held for a group of cost draftsmen, office managers, partners/heads, costs assistants and solicitors from around the country concerning how to avoid civil bill rejects. This programme of Webex would be rolled out more widely in the near future. J Sirodcar thanked the CCCG members that had contributed to the content of this training.

LSC Website There had been a delay in the transition of the LSC website to the Justice website due to software problems.

C Storer asked for an up to date high level organogram of the LSC. **AP12 [Nov]**

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	Actions from this meeting	Lead	By When
AP1 [Nov]	Inform CCCG about whether funding would be backdated to cover work done prior to the exceptional funding application	D Keegan	4 Jan
AP2 [Nov]	Subscribe R Miller and A Harvey to the LSC email alert	GT	Closed
AP3 [Nov]	Circulate a note on the Experts meeting of 8 October	D Keegan	Closed
AP4 [Nov]	Share views on how the face to face Legal Aid Reform training should be structured	Rep bodies	Closed
AP5 [Nov]	Send details of a meeting with Mike Tent (MoJ) re Domestic Violence to K Westall in order to get feedback on progress made	R Miller	Closed
	K Westall to feedback to R Miller	K Westall	Closed
AP6 [Nov]	Look into R Miller's query re means testing that included a person's home. <u>Post meeting note:</u> There has never been a proposal that an elderly person on pension credits who owns their own home should automatically be financially ineligible for legal aid. The proposal - with which we intend to proceed - is simply that people in receipt of certain benefits (including Guaranteed State Pension Credit) will in future be subject to the same rules about capital when calculating their financial eligibility for civil legal aid as everyone else. As set out in Appendix A-below, under this policy an elderly person on a low income could own a home worth up to £300k and still be eligible.	K Westall	Closed
AP7 [Nov]	Respond to R Miller's letter re telephone advice	J Sirodcar/ K Westall	4 Jan
AP8 [Nov]	Circulate the link to where the LSC had published the mechanism for calculating NMS	K Wood	Closed
AP9 [Nov]	Attach the data on the number of contract notices being sent out.	J Sirodcar	Closed
AP10 [Nov]	Send examples of words to add to the housing disrepair guidance to David Keegan	S Stephen	16 Nov
AP11 [Nov]	Review the wording in the housing disrepair guidance	D Keegan	4 January
AP12 [Nov]	Circulate a high level organogram of the LSC	G Trivedi	Closed

Appendix A

FINANCIAL ELIGIBILITY FOR CIVIL LEGAL AID

Present rule

To be financially eligible for civil legal aid the applicant must have no more than £8,000 disposable capital (after certain capital has been disregarded).

Subject to that, applicants can obtain 'free', or non-contributory, legal aid if they have a gross monthly income below £2,657 (higher for those with more than four dependent children) and a monthly disposable income below £315. If their monthly disposable income is between £316 and £733, they will be offered funding on the basis that they agree to pay contributions from income towards their legal costs.

Applicants in receipt of Income Support, income-related JobSeeker's Allowance, Guaranteed State Pension Credit or income-related Employment and Support Allowance are deemed automatically to meet both the capital and income financial eligibility criteria for civil legal aid ('passporting').

Proposed change

Currently someone receiving a passporting benefit could have up to £16,000 disposable capital but be automatically deemed eligible for legal aid. However, a person not receiving a passporting benefit, and who has more than £8,000 in disposable capital, is ineligible for legal aid.

It is inequitable that applicants with similar levels of capital may or may not be eligible for legal aid depending on the source of their income.

Under the proposed change all applicants will be subject to the same capital eligibility test - meaning that applicants with disposable capital above £8,000 will be ineligible for legal aid.

When assessing disposable capital that a legal aid applicant has, allowances (also known as 'disregards') are given as follows:

- 1) up to £100,000 of any outstanding mortgage on a person's interest in property or land is disregarded – the **mortgage disregard**
- 2) up to £100,000 of equity in the applicant's principal home is disregarded – the **equity disregard**
- 3) Low income pensioners can also benefit from up to another £100,000 of capital of any kind being disregarded (depending on the level of their monthly disposable income)– the **pensioner disregard**

Therefore, (depending on the level of equity and mortgage) applicants may in some cases be eligible for legal aid where they own a home worth up to £200,000. For low income pensioners, legal aid may in some cases still be available when they own a home worth up to £300,000.