



The Law Society



Legal Aid Agency

Civil Contracts Consultative Group (CCCG) Minutes

13 May 2013

Date:	Monday 13 May 3pm		
Where	The Law Society – Carey Street Reception Room		
Chair:	Richard Miller – TLS		
Attendees:	Alison Harvey-ILPA Simon Pugh – ASA Avrom Sherr – IALS Carol Storer – LAPG David Keegan – LAA Eleanor Druker-LAA Gillian Hothersall - LAA	Grazia Trivedi - LAA minutes Helen Curtis - BC Jan Luba – Bar Council John Sirodcar – LAA Joy Merriam – TLS Kathy Hartup - LAA Kerry Wood – LAA	Kevin Westall – MoJ Matthew Howgate-LAPG Richard Busby – Resolution Sara Stephens – HLP Steve Starkey – LAA
Apologies:	Elizabeth Gibby – MoJ Neil Lewis – LAA	Nicola Jones-King – ALC Sarah-Jane Bennett-BC	

Actions from March CCGG			
		Lead	By When
AP1 [Mar]	Check what progress had been made re transitional and eligibility regulations Post meeting note: The last batch of main implementing statutory instruments were laid in Parliament on the day of the CCGG meeting (11/3/2013). They concerned financial eligibility for legal persons; recovery of defence costs and the transitional arrangements.	K Finlay	closed
AP2 [Mar]	Issue an e-alert for rejects only	S Starkey	15 April
AP3 [Mar]	Clarify the information given to providers about where bills should be sent from 1 April	S Starkey	31 Mar
AP4 [Mar]	1. Find out if monthly volume data on immigration and asylum, by procurement area can be given to A Harvey 2. add to the report the comparative figures for legal help matters for the previous two years	N Lewis	1 April
AP5 [Mar]	Send examples of clients that could not find a provider to take on their case to D Challis	J Luba	Taken forward as Action 1 [Mar]
AP6 [Mar]	Send feedback on the Guidance on the Remuneration of Expert Witnesses to G Trivedi	Rep bodies	Closed
AP7 [Mar]	Send details of a case requiring many hours of experts hours to D Keegan Post meeting note: J Merriam has provided the example and LAA staff have been re-briefed. D Keegan has agreed a statement J Merriam can use: "In terms of the wider guidance issue the LAA recognise that providers will want further reassurance on cases that fall outside the scope of the guidance, for example where there are more family members being assessed than are quoted. In such circumstances the LAA should provide a prior authority. Case workers are being briefed along these lines for future cases."	J Merriam	Closed
AP8 [Mar]	Send details of the immigration case for which prior authority was approved but then payment was refused to D Keegan	A Harvey	15 Mar
AP9 [Mar]	Service Development to look up the section in the Costs Assessment Manual that covered immigration experts reports	S Hugo-Lake/ N Lewis	15 Apr

1. Minutes and actions from March

The minutes were approved

AP2 [Mar]

S Starkey said that the e-alerts dated:

- 11th April had included the updated checklists
- 12th April had covered the main reasons for rejects

J Sirodcar again requested that the representative bodies disseminate the information already published to their members.

It was unlikely that a Legal Aid Bulletin could be devoted entirely to rejects. The action could not therefore be completed in its entirety.

AP3 [Mar]

The information about where providers should be sending their bills from 1 April had been published in the e-alert dated 27 March

AP4 [Mar]

The volume of immigration matter starts split by procurement area, plus the comparative figures for legal help matters for the previous two years, would be included in the bi-monthly report from July,

AP5 [Mar]

Taken forward as
Action 1 [Mar]

J Luba anticipated that by the following CCCG in July he would have access to the information he needed in order to provide D Challis with examples of clients that had been unable to find a provider to take on their case.

AP8 [Mar]

A Harvey to speak to D Keegan about the case in question after the meeting

AP9 [Mar]

The Costs Assessment Manual did not include guidance on immigration experts' reports

2. Providers' training

J Sirodcar asked the representative bodies for their views on what ought to be included in providers' legal aid training to help them deal with a) the forthcoming changes – to be delivered by the Legal Aid Transformation Programme and b) the implementation of the Client and Cost Management System (CCMS).

It was agreed that representative bodies would send him the top 3-4 most pressing topics, e.g. how to avoid claims being rejected or how to avoid incurring problems when applying for prior authority, and J Sirodcar would collate and circulate the list to CCCG by 1 July. **Action(s) 2 [May]**

J Luba thanked J Sirodcar for getting this initiative underway and said that Ellis Pinnell (LAA Contract Manager for the Bar) had done the same in relation to direct legal aid training geared towards the Bar. J Sirodcar said that he was aware of this and would include the list of topics submitted by the Bar Council into the list for CCCG.

3. Commissioning update

K Wood said that the list of providers with a 2013 contract had been published. The list would be updated at the end of May after any outstanding issues were settled; for instance the LAA were still waiting for 35 providers to return their signed contract, and appeals were still being dealt with.

In response to a query K Wood said that since the tender had closed, approximately 150 providers had withdrawn their bid and others had not yet returned their AC1 forms. She confirmed that any un-allocated NMS would be redistributed where appropriate; the LAA would not know how many until at least a month after the *out-turn exercise*. K Wood agreed to give a verbal update on contracts at the July CCCG.

K Wood confirmed that the firms on the published list were *live* contracts; however she explained that if a Contract Manager identified issues with a provider during a routine office visit, the contract could still be withdrawn. It was not unknown for firms to default on what they said they would deliver.

J Luba asked whether it was possible to obtain a compilation of providers that had held the 2010 contract alongside those that had the 2013 contract. J Sirodcar said that any list of contract holders at any given time became outdated very quickly, however K Wood agreed to find out whether a consolidated list could be found for circulation to CCCG only. **Action 3 [May]**

A tender round for Housing Possession Schemes had concluded and services would commence on 1st June. Funding issues relating to the Department for Communities and Local Government had been raised by some providers and was being looked into by the LAA.

A tender round for Welfare Benefits contracts was underway; 22 responses to the PQQ had been received and the LAA had sent out notifications to those responses. Evidence checks were currently being undertaken for the organisations on the provisional shortlist and ITTs would open at the end of May.

In response to a query about **contracts for work in immigration removal centres, currently extended until March 2014**, K Wood said that the LAA would be looking at IRCs once there was some clarity from the **Home Office (formerly UK Border Agency)**.

A Harvey said that ILPA had views on **exclusive contracts** and what services needed to be tendered and where. K Wood agreed to talk to ILPA in advance of any tender activity for Immigration contracts

In response to a request from J Luba, K Wood agreed to circulate a full list of Housing Possession Schemes. **Action 4 [May] Closed**

4. Operational update

4.1 Civil billing S Starkey talked about the salient points in the civil billing report and said that:

- Rejects levels had remained relatively constant between 28% and 30%
- The volume of monthly rejects equated to a week's intake of bills
- From April 2013 the new KPI required that 90% of civil bills be processed within 25 days instead of 30 days
- In March 6,046 CLAIM 1s had been rejected; of these 757 had been priority returned, paid forthwith and had not been included in the rejects data. Determination for the remaining 5,289 rejects had gone against the provider and could not be paid.
- The top five reasons for rejects, responsible for 30% of all rejects were:
 1. Forms not fully completed
 2. Missing or insufficient disbursement vouchers
 3. Family Graduated Fee or Family Advocate Scheme claims did not reconcile with payments made by the LAA

4. The incorrect fee scheme had been used
5. Forms had not been signed

The LAA had devised a *rate calculator* and released it to Resolution for them to gauge and determine whether it could be of help to providers. The calculator asked a number of questions and then gave the correct fee rate for that scheme.

There followed a debate about rejects and how their numbers could be reduced. J Luba said that the LAA and representative bodies had done all that was possible to raise awareness with providers to no avail. Everyone agreed that if the situation did not improve the LAA ought to consider mandating the use of checklists.

A Harvey asked whether, if shortcomings were concentrated in particular firms, those firms could be put in a separate queue so that they did not hold up those who were not making mistakes. It was indicated that consideration would be given to this.

S Starkey agreed to include stats for POA1s and counsel rejects in future reports.

S Starkey said that in preparation for the going live of the Client and Cost Management System (CCMS) the LAA had put in place a mechanism to enable some providers to seamlessly move onto CCMS and for the others to continue to submit their work as before. Thus a postal hub in South Tyneside had been set up to receive all paper-based work.

Finally, S Starkey said that from June providers would be able to send their complaints about a service given by the LAA via a new electronic tool to be set up for them by the agency. The new system would mean that responses would be quicker, the information received would be properly analysed and paper correspondence would be reduced. The implementation of this tool would be expanded to include not just case management but all other services.

S Stephens said that most of HLPAs' members' complaints were about CLAIM1s being refused and providers having to resend the whole application for redetermination even when the LAA had rejected the claim in error. She asked whether the letters HLPAs sent to complain on behalf of their members or letters sent to appeal against a decision were to be considered as a complaint to be processed via the new tool. S Starkey would find out and let CCCG know. **Action 5 [May]**

S Starkey specified that the case management team currently received 60-70 complaints a month relating to dissatisfaction about the service rather than decision making. J Luba suggested that the LAA feed through the statistics showing what a new initiative had achieved for providers, such as the 24hr response to emails sent to the dedicated *civil-claims-fix* box. Representative bodies could use this information to entice providers to adopt new processes.

4.2 VHCC

4.2.1 Family two counsel. Work was back on track following the transition of team members from the Special Cases Unit (SCU) Family Team to the Exceptional Funding Team.

Helen Keith who had been leading was being replaced by Anthony Leal, who had led the team at the London regional office including family work till now and who had joined the High Cost Cases team.

J Merriam asked whether there was going to be a model for solicitor advocates in the High Court. D Keegan said that an event model was being piloted by ten to fifteen firms in the county courts and family proceedings courts; the LAA did not want to make the model more widely available until they were certain that it worked. A model for high court cases had not yet been developed because an insufficient number of sample cases on which to benchmark costs had been received. D Keegan would look at the case J Merriam was referring to. **Action 6 (May)**

4.2.2 VHCC contract. A new version of the contract, effectively the 2013 VHCC contract, had been issued for use from that week. Amongst other improvements, it better dealt with the issue of partial cost orders.

4.2.3 Barristers in VHCC Cases. The LAA had been talking to the family Bar about the basis of payment:

- The majority of cases were paid under FAS and FGF for VHCC cases with one counsel and this would be the payment scheme in future unless the case was exceptional. This could be paid simply and quickly. The exceptional 10-25% would go through case planning.
- Events for two counsel cases, or one counsel cases over 10 days.

Solicitor advocates and barristers on an events model or hourly rate would be on an individual VHCC Family Counsel contract.

J Merriam said that firms increasingly instructed counsel in-house and she felt that the LAA was preserving the old fashion system by introducing individual contracts for self-employed counsel. She also said that instructing counsel in-house greatly reduced the number of rejects because firms did not have to deal with barristers fees. In her view the LAA ought not to differentiate/discriminate between solicitor advocates and barristers; even in crime there was a difference between advocates and litigators graduated fees when there ought not to be.

Post meeting note: Neil Lewis explained that criminal grad fees do not pay a differential rate based on the status of the person undertaking the work. The LGFS pays for litigation and the AGFS pays for advocacy. If a solicitor with higher rights undertakes the advocacy in a case then, under the AGFS, they will be paid the same as any other advocate (including employed barristers and self-employed barristers) for that work. They may also claim the LGFS fee if they undertook the litigation work too.

D Keegan said there was evidence showing that work done by litigators and advocates varied depending on what scheme they were in. Historically that meant that the two disconnected at around 10 days when counsel moved in and out of FGF. J Merriam agreed to attend the forthcoming VHCC family meeting on 25th July.

J Luba disagreed with the discrimination point and said that an in-house advocate was contracted to the LAA because the firm employing him/her was. In cases where the firm instructed a self-employed counsel, barrister or advocate, the LAA contracted directly with counsel.

4.2.4 Reorganisation of Case Management work. The Case Management teams had moved from Exchange Tower to Head Office at Petty France. The National Immigration and Asylum team had joined D Keegan's High Cost Cases group. The consolidated team would be renamed High Cost Civil with sub-teams specialising in immigration, family, clinical negligence, public law and action against the police.

5. Issues raised by the representative bodies

5.1 Volume and Value figures report. It was confirmed that starting from the following CCG in July the report would have comparative figures for legal help matters for the previous two years.

There was a lengthy debate about the figures in the report which showed a significant drop in NMS usage. J Sirodcar confirmed that, while in the past usage had run at 96%, the previous year it had dropped to around 85% and much lower in particular areas of law. Representative bodies expressed their concern about some providers running out of NMS and others not using their full allocation.

A Harvey reiterated that the LAA ought to claw back unused NMS and reallocate them to providers that had run out. She pointed out that by 31 March 2013 over 22,000 NMS in immigration and asylum had remained unused. She said that during the course of the previous year, some immigration providers had used up not only their NMS allocation but also the extra 50% they had requested and obtained from the LAA, but had been refused a request for more. J Sirodcar confirmed that this was the correct procedure as the contract only permitted an uplift of up to 50% and that, owing to the time and resource involved, clawing back matter starts to reallocate them was not an effective process.

K Wood said that although initial allocation was based on the tender, each subsequent schedule was adjusted to take account of a firm's usage during the previous year/schedule, thus providers that had not used their allocation would receive less matters. Potentially a provider could obtain up to 50% extra NMS each time a new schedule was rolled over. Therefore, if a provider had 100 matter starts allocated at the start of year 1 and drew down the extra 50% (50 matter starts) in year 2, that provider could be allocated up to a further 75 new matter starts.

K. Wood and J. Sirodcar clarified that Contract Managers were responsible for decisions relating to individual providers but, where a whole procurement area was found to be running out of NMS, to maintain equal treatment of all providers, the Central Commissioning team would consider how to address the issue and this might include tender activity.

A Sherr asked why the trend in Mental Health usage showed an increase rather than a decrease as in the other areas of law. E Druker said the reason for this was partly due to a change in legislation that had resulted in an increase of clients in this category of law; she would find out more information about this and report back.

Post meeting note: The rise in MH cases is likely to be caused by an increased use of Community Treatment Orders by the NHS since their introduction a few years ago. The use of CTOs is three times greater than what was predicted by the Department of Health when developing the powers and it seems that Trusts are using CTOs in addition to conventional sections in the Mental Health Act rather than as an alternative. Both have a right of appeal to the Mental Health Tribunal. Also, levels of use of conventional sections are rising because hospitals have fewer beds for voluntary patients and don't hospitalise them until they reach crisis and have to be sectioned.

The representative bodies asked the LAA to find out why, with the exception of MH, usage of NMS was on a downward trend, especially in light of the fact that providers in some categories of law, notably in housing and immigration, could not obtain enough matters to satisfy client demand. J Sirodcar said that unfortunately funds for independent research had been withdrawn and there was no possibility of this type of fact-finding work to be taken forward.

The representative bodies asked for more data to be included in the report:

- Data on telephone and digital services, not just face to face.

- How a case was managed following the first contact through the Gateway, e.g. how many were referred to face to face services
- Data on exceptional cases applications; how many were lodged, accepted and rejected. (D Keegan said that approximately 15 applications were received each week and that none had been granted so far. At the time of the meeting, he said, there were no judicial reviews of refusal to grant an exceptional application although there was correspondence).
- Data on the number of mediations cases, which had increased dramatically since 1 April.

R Miller said that the fact that clients were getting their case resolved through mediation might explain the drop in NMS usage. E Druker would get the data for the previous year and update the CCCG Action 7 [May]

J Sirodcar would find out whether the extra information could be included in the report. Action 8 [May]

R Miller suggested that representative bodies meet with colleagues from the LAA well in advance of the following civil contract tender to discuss what the process might look like and what changes might improve it. The LAA agreed with this.

5.2 www.gov.uk There was discussion about the functionality and user-friendliness of the online service to help clients to find out whether they were entitled to legal aid. The representative bodies felt that clients could easily be put off progressing through the web pages because the site offered little encouragement to do so. For instance employment was out of scope but discrimination wasn't; an individual could give up their search before finding out that if their employment issue related to discrimination they might be entitled to free legal assistance.

K Westall said that the *diagnostic tool* was in place to help individuals navigate the site; by selecting the discrimination box the user would be put straight through to a helpline. It was agreed that representative bodies would send their views about what could be done to improve the site to C Storer within three weeks so that they could be discussed at a meeting planned for 3rd June between MoJ and LAPG. Action 9 [May]

K Hartup asked that any suggestions for improvements to the www.gov.uk site be emailed to her as well. Action 10 [May]

6 AOB

6.1 **Integrated Delivery Programme Pilot Update** J Sirodcar said that the IDP pilot was progressing; when the success criteria for the pilot and the programme's plans for a national roll out were confirmed, he would inform the CCCG.

Representatives of both barristers and solicitors said that providers in the pilot were still experiencing difficulties using the system and they expected that the national roll out would not commence until the issues had been resolved. J Sirodcar said that it was so.

R Miller said that it had been agreed that the minutes from IDP meetings would be circulated to the CCCG but this had not happened. J Sirodcar would find out when the next IDP meeting was and would ensure the minutes were made available to the CCCG. Action 11 [May]

6.2 Consultation events K Westall said that MoJ policy team were travelling around the country to deliver consultation events to providers and reminded representative bodies to promote these events to their members.

K Westall confirmed that an impact assessment was being worked on and the profession ought to send their contributions so that they could be fed into it. A Harvey said that it would be useful to see the *initial* assessment because on previous occasions the *final*, published IA was found to have wrong information. **Post meeting note:** The LAT Consultation Paper published on 9 April was accompanied by a series of initial assessments based on the MoJ's analysis of the data currently available. As is normal practice, these initial assessments, which are already available on the Justice consultation website, will be updated as necessary based on the MoJ's consideration of any relevant additional information/data supplied as part of the consultation exercise to produce the final assessments that will accompany the consultation response. This is currently expected in the autumn. In accordance with standard practice, no further iterations of the IAs on these proposals are likely to be published in advance of the consultation response

S Stevens raised an issue relating to a section of the consultation paper about the client's E&D information on the provider's billing form. She said that, although providers took this information from the client's own application, it would no longer be accepted because it was given by the provider and not the client. K Westall would look into this. **Action 12 [May]**

Actions from this meeting		Owner	By when
AP1 [Mar]	Send examples of clients that could not find a provider to take on their case to D Challis	J Luba	15 July
AP2 [May]	Think about what topics should take priority in providers' training and feedback to J Sirodcar Collate all feedback and circulate to CCCG	Rep bodies J Sirodcar	14 June 1 July
AP3 [Mar]	Find out whether a list of 2010 contract providers existed and circulate it to CCCG	K Wood	30 May
AP4 [May]	Circulate a list of Housing Possession Schemes	K Wood	Closed
AP5 [May]	Find out whether a letter of complaint about a CLAIM1 that had been rejected by the LAA in error was classified as a complaint or as an appeal against a decision	S Starkey	15 July
AP6 [May]	Look at the case mentioned by J Merriam and feedback	D Keegan	15 July
AP7 [May]	Find out data for the previous year on Mediation cases volumes	L Druker	15 July
AP8 [May]	Find out whether the extra information requested by the representative bodies to be included in the volume and value report could be attained for future reports	J Sirodcar	15 July
AP9 [May]	Send any issues and suggestions relating to the online eligibility test to C Storer	Rep bodies	31 May
AP10 [May]	Let K Hartup know about any improvements that could improve the www.gov.uk	Rep bodies	31 May
AP11 [May]	Arrange for circulation of future IDP meetings minutes	J Sirodcar	15 July
AP12 [May]	Look into the issue of clients' E&D information on the billing form not being accepted because given by the provider	K Westall	15 July
AP13 [May]	E Druker to find out more about the change in legislation that had resulted in an increase of clients in Mental Health, and report back. (This action appeared in section 5.1 of the May notes, but was not listed as an action until the 15 July meeting.)	E Druker	9 Sep