



## **Minutes of the Contract Compliance Audit Working Group held on 12<sup>th</sup> May 2008**

**Present:**

Linda Lee (The Law Society)

Richard Collins (LSC)

Lucy Scott-Moncrieff (The Law Society)

Mike Crowley (LSC)

Adam Griffiths (Advice Services Alliance)

Gary Winter (LSC)

Alice Mutasa (The Law Society)

Kerry Wood (LSC)

Matthew Howgate (LSC).

## **Action**

### **1. Matters arising**

Richard Collins initially led the group through a discussion of the terms of reference as set out in the agreement between The Law Society and the LSC reached in settlement of the Unified Contract litigation. In particular he discussed the Commission's views as set out in the agreement, the concerns raised by the Law Society and the reporting outcomes envisaged.

Lucy Scott-Moncrieff for The Law Society, began to express the Society's concerns over the current CCA process and, in particular, made clear the discomfort at being "second guessed" by the LSC regarding attendances on clients and whether work was necessary. Then she raised concerns that the Commission was rigidly seeking to apply guidance (for instance normally allowing a two minute claim for reading each sheet of paper in a bundle of documents) rather than concentrating on the fundamental rules, namely only allowing what costs were properly, reasonably and proportionately incurred under the terms of the contract. Lucy made clear that her view, having sat both on the Contract Review Body and the Cost Appeals Committee, was that the Commission far too often sought to apply standard rules of assessment to all providers when there were clear reasons on the files in question why those rules should not have been applied.

At this point a general discussion opened up about whether the new contracts post-October 2007, continue to contain such rules and this led to a discussion about whether, in

fact, the Commission will be trying harder to explain to its providers what its minimum requirements are. The Panel agreed that the Commission should, seeks to identify five or six key contract compliance issues/failures and seek a process to identify and tackle those failures rather than seeking to second guess whether an attendance on the file should have been 30 minutes or 20 minutes!

Linda Lee made clear her view at this stage that the Commission was unsure as to what it was measuring and therefore providers were therefore unsure as to what they should be demonstrating on files. The general Law Society consensus was that there had to be more clarity about what the LSC were looking for so as to allow providers more clarity on what they should be recording and what they would be measured against.

As an example, Lucy Scott-Moncrieff set out her concerns over the end point outcome codes reported in relation to controlled work which she said, in her view, were effectively meaningless in that whilst reflecting potential outcomes for proceedings, they provided nothing which the Commission could meaningfully use to measure whether a case should or should not have been funded and/or the benefit to the client of the outcome in that case. The discussion was then broadened to other information required by the Commission, seemingly without a clear concept of what the Commission wanted the information for. In particular, Linda Lee raised concerns over the information required in the context of a high cost case plan, which she said, was subsequently not used by the Commission other than to determine whether the next stage of costs should be allowed. Her concern, more broadly, was whether the LSC needed all of the information it gathered, or whether it could seek to focus its

efforts on key elements which would reduce the burden on providers and allow them to better understand where the goal posts were.

In this context the group also discussed what the Law Society representatives perceived as frailties in the Commission's assessment process. In particular concerns were raised regarding the way it samples files in a way non-specific to fee-earners. As a consequence it could not be used to identify obvious supervision frailties. We discussed that these issues would be picked up in a control audit when the Specialist Quality Mark elements were reviewed. However, it was thought that the group, in conjunction with the Quality Working Group, could consider whether checking a claim for payment might properly be included within the expected functions of a supervisor, and whether this checking function could lead to a self-declaration process (either in relation to specific cases or more generally) by the supervisor. This self-declaration process could perhaps be expanded to cover other facets of the supervision role with supervisors being measured against the norm and some form of exception reporting establishing which supervisors were reporting information inconsistent with the majority of others.

There was a general view amongst the Group that applying some form of certification would focus minds on ensuring compliance with key elements of the Contract.

In this regard it was decided that amongst the next steps, the LSC representatives would set out (if possible on a single sheet of A4) what the top five or six key issues of identification in the CCA process were. This, it was hoped,

could form the basis of a very short key card/guidance document for the Profession so that they understood what criteria their files are being reviewed against (and, in Lucy Scott-Moncrieff's view, why those criteria were important). Lucy made clear that it was essential that, in any guidance document, the Group explained why those elements were being checked and the implications for the Commission if those elements were not checked).

At this point Adam Griffiths asked whether the Commission could produce some statistical data held in relation to the number of audit concerns raised regarding each of those key issues as, in his view, it would seem nonsensical to continue looking for issues which, on the available data, were so infrequent so as to make them statistically irrelevant.

There were general discussions during the meeting about re-focussing energy away from ex post contract compliance audits and towards assisting providers in improving their quality, developing their systems and avoiding contract compliance problems in the first case (whether this be by development of better guidance documentation, online training serials or better explanation of the systems we already have in place and the delivery of provider training).

In conclusion, the Working Party agreed that the next meeting should take place before the end of May 2008 and, before that meeting takes place, the Legal Services Commission should produce and circulate the following documents:-

1. A short paper setting out the current CCA

process;

2. A single side of A4 setting out the six key issues looked for during a CCA audit; and
3. A short paper setting out the position of the National Audit Office and its requirements on the Commission.

**6. Date of next meeting**

29<sup>th</sup> May 2008