



The Law Society

**Summary minutes of the meeting of the VHCC
Steering Group held on Tuesday 13 May 2008**

4 June 2008

supporting
solicitors

Present:

Bar Council

Michael Bowes QC (MB)
Desmond Browne QC (Chairman) (DB)
Professor Martin Chalkley (MC)
Barbara-Ann Tweedie (B-AT)
Mark Lucraft QC (ML)
Simon Garrod (SG)

Law Society

Alice Mutasa (AM)
Rodney Warren (RW)
John Harding (JH)

MoJ

Sarah Albon (SA)
Nick Turner (NT)

CPS

Keith Milburn (KM)

CBA

Sally O'Neill QC (SON)

IBC

Gary Brown

LSC

Derek Hill (DH)
David Keegan (DK)
Cris Scotter (CS)

Action

1. Apologies

Apologies were received from Richard Collins.

2. Matters arising

2.1 Intended LSC Savings

- LSC's intended savings against budget to be delivered by the new scheme amounted to 12.2% (£14.5million) of £118million expenditure on last year.
- Further breakdown of those figures to follow during the course of this week. LSC
- Bar Council to reserve its position in relation to that saving pending analysis of that breakdown.

2.2 LSC staff costs

- Complex Cases Unit (CCU) currently has 40 staff costing £1.4million per annum.
- Further breakdown into non-labour and labour cost of that figure to be supplied by the LSC during the week. LSC

3. Emerging thoughts from Simon Hayllar and Professor Martin Chalkley

3.1 General

Work on an alternative VHCC scheme had gone as far as it could without input from specialist/expert practitioners.

The Group of specialist advisers to MC and SH should comprise representatives of:

- Bar Council,
- Law Society
- LSC/CCU.

3.2 Timeframe

Tuesday 8 July was agreed as the target date for the development of a proposed scheme of sufficient detail for all parties to reach a view that it could work prior to consultation.

3.3 Comments

Law Society would only be able to make a judgement as to the viability of the new scheme once the details of that new scheme could be seen.

It was agreed that the first meeting of the specialist/experts group should happen during the course of next week to enable development of sufficient detail to be properly consulted upon and so any practitioner could assess the potential impact of it against current arrangements.

3.4 Other LSC issues

In addition to the overall objectives of an alternative scheme as set out on page 1 of Annex 4 (a revised scheme for contracting VHCCs), LSC added five further additional areas to which any alternative scheme had to be sensitive:

- 1.) Used and unused material
- 2.) Abuse arguments and abuse hearings
- 3.) Lower indictment defendants
- 4.) Cracked trials and guilty pleas
- 5.) Work shifting between advocates and litigators (in terms of the division of work between them and how that was reflected in the pricing of the scheme).

Two further issues for inclusion in that list from the CPS's

perspective:

- 1.) Retrials
- 2.) Appeals

Returns were also to be included.

4. Terms of reference and success criteria

4.1 Terms of reference

The suggested overall proposed Terms of Reference were:

'To agree, if possible, proposals by Tuesday 8th July for an alternative VHCC scheme in sufficient detail to be put out to consultation'.

It was acknowledged that the timeframe was ambitious, given the development, consultation and drafting (of regulations) required as well as the need to serve notice on the present VHCC Panel contracts. However, the target date remained to develop a product to put to the Steering Group who would then decide on how to take that forward.

MoJ

MoJ agreed to circulate to the group a timetable of tasks that needed to be completed before the introduction of a new scheme.

4.3 Members of the overarching group appointed by the Lord Chancellor

Peter Handcock had been appointed Chairman of the Group by the Lord Chancellor and that the Group would also include Carolyn Regan (Chief Executive of the Legal Services Commission), Timothy Dutton QC (Chairman of the Bar) and Andrew Holroyd (President of the Law Society).

5.4 Success criteria

Each of the numbered success criteria in the Bar Council/Law Society draft 1 (12/05/08) was considered in turn:

Points 1 and 2 were agreed.

Point 3 – It was difficult to define ‘fair remuneration’ except by assessing if sufficient numbers of practitioners were attracted to all types of cases for all types of offences and defendants.

[Note by the Secretariat: The reference to ‘fairness’ in the Foreword to ‘Legal Aid Reform: the Way Ahead’ was: ‘fairness to the client, fairness to practitioners and fairness to the taxpayer].

The Access to Justice Act 1999 was referred to although there was consensus that ‘fairness’ would be judged to mean producing a scheme which was workable.

It was agreed that criteria 2 and 3 should be combined and that the MoJ and LSC would reserve their position and consider that amendment further.

[Note by the Secretariat: Revised Terms of Reference and success criteria are attached to these minutes].

MoJ/LSC

Point 4 - The word ‘greatly’ was deleted. The words ‘Contract Managers’ were made to read ‘Contract Management’.

Point 5 – was agreed.

Point 6 – was agreed. Philip Mott QC to be invited to contribute in relation to this success criteria, given his work on the Advocacy Quality Group. Law Society paper in relation to quality to follow and be added to the agenda of the next meeting of the Group.

Law Society
Secretariat

Point 7 – It was agreed that points 7 and 8 should be blended together and reference to ‘limited escapes’ should be dealt with under success criteria point 11.

Point 9 – It was understood that there would not be any element of ‘double cutting’ whereby the new scheme would shave off the savings required by the LSC plus further savings to be engendered by a bidding process.

It was agreed that the LSC would consider the possible alternative drafting around the competitive tendering point. LSC

Point 10 – There was a tension highlighted between the LSC’s need to retain reference to a single fee scheme, on which it would issue a consultation paper in September, and the practitioners view that such inclusion as a success criterion for a new VHCC scheme appeared to pre-judge the outcome of any such consultation.

It was agreed that the LSC and the MoJ would consider the drafting and inclusion of success criteria point 10. LSC/MOJ

Point 11 – LSC preferred it should be amended to read ‘variable by defendant’ as the variation by defendant meant more than their position on the indictment. For the Law Society to see the retention of some form of hourly rate payment within a new alternative scheme was a point of principle and a line in the sand which had to be included at this stage.

Point 12 – deleted.

Point 13 – it was agreed that this should be amended in line with the CPS’s suggestion: ‘auditable and open to objective scrutiny by the LSC’.

Point 14 – agreed. The CPS’s recommendation that this point should be moved higher up the list of success criteria to point 2 because of its importance was also agreed, including the suggestion to include the word ‘defence’ in the Terms of Reference and ‘proportionately’ in success criteria point 10.

6. Any other business

It was agreed that, in the interests of transparency of the process to develop an alternative VHCC scheme, minutes of the VHCC groups should be placed on the web once agreed. It was also the group should be amenable to accepting e-mail and other comments and queries from practitioners in order to deal with them as the development work progressed rather than saving them up to the very end.

7. Date of next meeting

It was agreed that the location of the meetings should be rotated.

Next meeting:

09:00 on Wednesday 4 June 2008 (LSC, 85 Gray's Inn Road).

Simon Garrod

28th May 2008

VHCC Working Group

Terms of reference

To agree, if possible, proposals by Tuesday 8th July for a future payment structure for defence VHCCs, in sufficient detail to be put out for consultation.

Success criteria

1. Adequately defines a Very High Cost Case by type and category by reference to agreed appropriate significant features.
2. Promotes effective team working and collaboration between litigators and advocates to focus efforts and avoid duplication of tasks between the two disciplines.
3. Attractive to sufficient numbers of litigators and advocates of sufficient, definable quality; that will provide fair remuneration to both litigators and advocates at each stage of the case.
4. Administratively simple to operate for both LSC and service providers, thereby reducing the total cost of contract management.
5. Promotes efficiency in the criminal justice system.
6. Based on a panel system with well defined quality criteria.
7. Delivers certainty about costs both globally, for the scheme as a whole, and in relation to individual cases, based on agreed objective variables, to deliver savings of the same magnitude as panel 1 delivered.
8. The payment structure will fit proportionately with existing fee schemes.
9. Fees to be based on objective proxies and clearly defined variations to deal with individual defendants.
10. Auditable and open to objective scrutiny by the LSC.
11. Meets with the approval of interested parties; namely the Bar, the Law Society, the MoJ and the LSC.

15 May 2008

(confirmed 4 June 2008)