

Market Stability Measures

Response to the additional Public Consultation

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1. Introduction and Background

- 1.1 This is the Legal Services Commission's final response to the further consultation on the proposals to amend the current duty solicitor slot allocation methods.
- 1.2 In summary, the Commission has decided to continue to allocate duty solicitor slots in accordance with current methods. However we will collect information from firms who have reduced their duty solicitor capacity in response to our announcement of 12th February 2007. We will use this information to inform our decision making on slot allocation from October 2007. Details on how to submit this information will be published on the market stability page of our website as soon as possible.
- 1.3 The background to this further consultation was the earlier consultation paper on 'Market Stability Measures' (which commenced on 28th November 2006 and closed on 24th January 2007).
- 1.4 One of the key changes which was proposed was the introduction of a new method for allocating duty solicitor slots¹ for police station and court duty work.
- 1.5 The market stability measures were devised to prevent what Lord Carter referred to as "market fragmentation" in his final report, *Legal Aid: A market-based approach to reform*, in which he identified a series of measures that the Commission should consider putting in place in advance of implementing the broader recommendations in his report. The consultation paper *Market Stability Measures* addressed this and outlined our proposals which included a new method of allocating duty solicitor slots.
- 1.6 We published our response to the consultation on 12th February 2007. In brief, we intended in that paper to allocate on duty solicitor slots to firms in proportion to the volume of work billed between 1st December 2005 and 30th November 2006.

¹ Slots are the period a duty solicitor is on call.

- 1.7 For the reasons outlined in our letter to providers dated 5 April 2007, and in the further consultation paper to which this is a response, we were unable to implement the policy of allocating duty solicitor slots in accordance with the volume of work billed. We therefore commenced this further consultation on the way forward.
- 1.8 This further consultation was published on 27th April and closed on Friday 18th May 2007.

2. The Consultation Options

- 2.1 There were two options outlined in this additional consultation on duty solicitor slot allocation.
- 2.2 **Option A – Issue a three-month rota from 1st July to 30 September 2007, drafted on the current method of slot allocation**
- 2.3 Under this option the LSC would construct a new duty rota for the period leading to fixed fees from 1 July until the end of September on the existing rules. This approach would also provide firms with certainty as to the number of slots they will receive in the period leading up to the introduction of fixed fees and ensure that, were any duty solicitors to leave a firm in this period, the firm would not lose this volume of work
- 2.4 **Option B – ‘Snapshot’**
- 2.5 This option was to allocate duty solicitor slots on the basis of a ‘snapshot’ of the LSC’s database on 28 November 2006, with firms receiving a proportion of slots in accordance with the number duty solicitors they had on each scheme on that day. We would introduce this method of allocation from the 1 July 2007 and it would run until the 30 September 2007.

3. Overall Conclusions

- 3.1 The Commission has decided to continue to allocate duty solicitor slots in accordance with Option A. However information will be collected on firms who had reduced their duty solicitor numbers in response to our announcement of 12th February 2007.
- 3.2 Details on how this information will be collected will appear on the market stability section of the LSC website from Friday 8th June.
- 3.3 A three month rota will be issued immediately for July to September.
- 3.4 There will therefore be no change to the method of duty solicitor slot allocation from July to October 2007. Thereafter, the planned future allocation of duty solicitor slots has been considered under a separate consultation – *Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements*, which closed on 10 April.

4. The Responses to individual questions

The Responses

- 4.1 We have received 151 responses to the consultation. 6 responses came from representative organisations. They were

- The Law Society
- The Legal Aid Practitioners Group (LAPG)
- London Criminal Courts Solicitors Association (LCSSA)
- The Association of Major Criminal Firms (AMCLF)
- Society of Asian Lawyers
- Criminal Law Solicitors Association (CLSA)

- 4.2 There were three questions asked in the consultation. The options referred to are outlined in section 2 of this paper.

Q1. Do you have a preference for any of the options on slot allocation outlined above? What improvements, if any, would you suggest to the options outlined?

Q2. What impact, if any, would each of the options above have on your firm if implemented? Please provide any evidence possible to support your response.

Q3. Are there any other options for slot allocation available that have not been considered above and that you feel would provide the greatest benefit to firms?

Question 1: Slot Allocation Preference

Q1. Do you have a preference for any of the options on slot allocation outlined above? What improvements, if any, would you suggest to the options outlined?

Number of Respondents to this question: 128

Number of the supported option A: 75

Number that supported option B: 46

Number that supported neither option: 6

Number that supported both options: 1

- 4.3 A majority of respondents favoured the retention of the current system. Responses were varied on the best way forward. This is reflected in the responses from the professional bodies.
- 4.4 The Society of Asian Lawyers argued that Option A would '*best preserve the small BME firms whose very existence is threatened by these reforms*'. The CLSA stated that '*the only sensible option for the LSC...is to leave the status quo in place instead of rushing forward with its timetable in the face of opposition from the profession and its representative bodies.*' The Law Society stated that it '*cannot favour one option over the other*'. The LCCSA response also favoured a status quo position.
- 4.5 Apart from the representative bodies there were over 70 individual legal aid providers who argued that Option A was the best way forward. Some respondents argued that a further change at this point '*Option A should be continued until all consultations are complete*'. There was a concern that further changes to slot allocation could be implemented from October and therefore '*Changing the rota now only to change it again would cause unnecessary disruption*'.
- 4.6 The AMCLF responded stating that the response of their membership '*to the Commission's initial decision was that the number of duty solicitors employed by them was too high...it made economic sense to reduce the number of duty solicitors employed by them.*' As a consequence they now have fewer duty solicitors than previously employed and therefore receive fewer slots than before. In addition to supporting Option B the AMCLF response argued for the implementation of the original decision to allocate duty solicitor slots in proportion to firms historical case volumes. One respondent wrote that '*An entirely proper approach would be to set out the market stability*

measures on historical allocation on slots between November 2005 and December 2006 in total in June.'

LSC response

- 4.7 The LSC has considered all of the responses and has decided that in light of fact that we are only considering interim measures, for the period between 1st July and 30th September it would be preferable to continue the current system until the introduction of wider police station changes in October.
- 4.8 Most suppliers would be unaffected or only marginally affected by either option. Some 86% would either be unaffected or lose or gain a maximum of four slots over a three month period. However 14% firms could be more greatly affected, by adopting either option. We have decided to continue as we currently allocate. As outlined above, information will be collected on those firms who have reduced their capacity in response to our 12th February announcement.

Question 2: Impact upon firms

Number of Respondents to this question: 75

Option A:

Positive Impact: 5
Negative Impact: 12

Option B:

Positive Impact: 5
Negative Impact: 30

Both Options would be good: 2
Both Options would be bad: 4
There would be no impact: 17

- 4.9 The respondents that identified the implementation of option B as having a negative impact on their business were firms who have expanded since November 2006. One respondent stated that '*option B will severely disadvantage our firm. The system as it stands discriminates against young, small firms which are in practice ethnic minority owned.*' Others complained that they had been training duty solicitors in house who did not become qualified until after November 2006. This would not '*take advantage of the time, money and effort achieving what the LSC had encouraged.*'
- 4.10 There were another group of respondents who have argued that the decision to implement option A would have a detrimental effect on their

business. Many of their comments were similar and could be summarised by what one respondent stated was '*affecting the future viability of this firm which has adopted a pyramidal structure suggested by the Carter report*'. Some of these respondents indicated that they had already reduced the number of duty solicitors that they employed. There were also respondents who had expanded their duty solicitor numbers to handle anticipated additional volumes that would result from a historical based allocation system.

LSC Response

- 4.11 Many respondents identified either option as having an adverse impact on their business. As the commission will not be implementing option B the remaining concerns were from those firms that stated they had reduced their duty solicitors in response to our announcements.

Question 3: Other Options

Number of Respondents to this question: 56

- 4.12 Many of respondents to this question favoured the original historical based allocation as the preferable 'other' option. The AMCLF response argues that the historical allocation method should be adopted. Apart from the AMCLF response there were several other firms who called for the Commission to implement the historical position as soon as practical.
- 4.13 Other suggestions included '*an allocation of slots on a percentage basis based upon the number of legal aid orders granted by a particular magistrates court into which police station work is fed*'. Two respondents suggested that a hybrid system be introduced with '*50% of slots allocated by number of duty sols, while 50% allocated by market share*'.
- 4.14 Many respondents conveyed the importance of an early publication of the outcome of the February police station consultation that sets the direction from October 2007. In particular there were requests for the position on slot allocation to be clarified to enable firms to make informed business decisions.

LSC response

- 4.15 The Commission is satisfied that there are no other alternative methods, other than the two options in the consultation paper, that would enable the allocation of duty solicitor slots for the interim period to October 2007. Accordingly, and having considered all of the responses to this consultation, the Commission will continue to allocate duty solicitor slots in accordance with existing methods but will make the adjustments set out above.