

## **Litigator Graduated Fee Scheme (LGFS) Q&As October 2007**

### **How are solicitors currently paid?**

Currently solicitors' bills in the Crown Court are sent to the National Taxing Team (an arm of HMCS) where the bills are determined '*ex post facto*' (after the event). This involves an examination of the solicitor's bill, together with attendance notes, invoices for disbursements and any other supporting documents, and culminates in the determination of a reasonable payment for the case. This is a very detailed payment system but it can be a rather subjective process, is resource intensive and appears to have resulted in an increase in case costs over a number of years (in that bills are becoming more expensive for the same type of case). Also, there is no financial incentive to introduce more efficient practices as payments are based on hourly rates.

### **What is the Litigator Graduated Fee Scheme?**

The LGFS is a formula that restricts any subjective elements, and replaces the existing '*ex post facto*' determination of solicitors' bills. It is a graduated fee based on certain 'proxies' or indicators of complexity including case type, offence type, trial length and amount of documentary evidence served by the Prosecution – pages of prosecution evidence (PPE). There is also an uplift payment for multiple defendants. The LGFS has fixed fees for certain hearings arising out of non-Crown Court cases, such as Committals for sentence and appeals from the Magistrates' Court. For more details, please refer to the response to consultation.

### **What will the LSC be doing to ensure it sets the right rates for solicitors?**

The graduated fee scheme for litigators (LGFS) has been developed in light of the significant amount of case research available to the LSC. This has included the development of a calculator to enable providers to consider the impact of the LGFS on their respective caseloads. The LSC also intends to monitor the effects of the scheme on an ongoing basis following implementation.

### **What are the LGFS rates?**

The payment rates under the LGFS can be found in annex A of the Response to Consultation document, on the LSC website. The rates will also be published in the regulations to be published shortly.

## **Why a graduated fee?**

First, it allows increases in payments to reflect increases in trial length or the complexity of the prosecution case, but controls other cost drivers.

Second, it will pave the way for best value tendering (BVT) which holds the best prospect of establishing the true price for Crown Court work. By establishing fixed prices for litigators' work along with fixed prices for advocates' work, the LSC will be able to establish a Single Fee for the remuneration of both the advocacy and litigation work on a case, paving the way for Crown Court BVT.

Third, the introduction of a graduated fee scheme will unlock economies in the Crown Court process by encouraging different working arrangements between advocates and litigators.

## **What were providers' main concerns about the litigator fee model proposed during consultation?**

Please refer to the LSC response to consultation document for details.

## **What has the LSC done to take provider concerns into account?**

We have made our decisions taking into account the feedback that we have received from stakeholders in response to our consultation paper against a background of the general overarching objectives of the scheme and the need to effectively control legal aid expenditure.

We have also undertaken a new data analysis exercise based on Crown Court cases that finished between March and May 2007. 17,752 claims were collated, of which 15,445 claims were able to be used in the data analysis exercise. We have used this data to check the accuracy of the LGFS and to set the rates at appropriate levels in order to enable these services to be delivered within the budget available.

In the light of this more recent dataset, we have remodeled the fee to more accurately reflect historic payment trends, paying slightly less for the base fee for simpler cases (offence types E, F, H and I) and giving a small increase in PPE uplifts to the more serious offence classes (A, B, D, G, J and K). The data has also shown that in 2010/11, only £11m needs to be removed from the scheme, as opposed to the original expected reduction of £28m.

## **What is the final scheme?**

*The Proxies*

We will adopt the proxies outlined in the consultation paper - case type, offence type, length of trial and pages of prosecution evidence (PPE).

### *Revised Option 2*

We will adopt a revised option 2. Option 2 was the LGFS as proposed in the *Way Ahead* with increased basic fees of 12.5%. This option obtained the majority of support from respondents. Having re-examined the LGFS against the recently analysed data sample, we have revised this option to reduce some of the base fees and increase PPE uplifts for the more serious offence types. We have done this to more accurately reflect the historic payments for these types of cases, which we are now able to do due to the greater accuracy in data obtained from the recent data exercise. This has meant that the basic fee has not been increased by 12.5% but that overall the amount of savings made from the scheme is now £11m rather than £28m.

### *Unused Material*

As proposed in the consultation, we have introduced an escape to the VHCC scheme for cases lasting 25 – 40 days where the case contains exceptional levels of unused material and meets a further criterion as per the VHCC proposals. These cases will be subject to the VHCC contracting system and therefore will be managed by VHCC Panel firms. The VHCC Best Value Tendering team has estimated that only a small number of cases will be affected by this escape.

### *Confiscation Hearings*

There are a number of ways that we could approach confiscation hearings. Examples of possible approaches have been given to us by providers, including paying for pages of prosecution evidence or third party material. It is not clear from the information that we currently hold what the best approach to confiscation hearings should be. Similar concerns have been expressed by advocates and the MOJ stakeholder group has just started an exercise with the Bar to look at advocates' confiscation fees. Given that solicitors may be more affected by insufficient payments, we intend to include solicitors in this exercise. This means that it is unlikely that an approach to the payment of confiscation hearings in the LGFS will be finalised prior to the introduction of the scheme.

Because of this, we have a need to introduce an interim approach to confiscation hearings. We have listened to providers concerns and now propose that confiscation hearings continue to be remunerated by ex post facto determination. We will not pay an additional trial day for confiscation hearings under the LGFS as proposed by us during consultation. However, at a future point we would expect to extend the LGFS to cover this work.

### *Transfers and Re-Trials*

A table containing payments for transfers and retrials can be found in Annex A of the Response to Consultation.

### *Travel*

We believe that all travel, bar *exceptional* travel disbursements, should remain wrapped up in the LGFS to encourage efficiency. This fits with the general LSC move towards including travel in fees.

The LSC will pay providers for exceptional expenditure on travel disbursements. Exceptional travel is where travel disbursement costs exceed £500 per disbursement.

### *Committal and Sent Cases*

We intend to keep committal for trial payments separate to the LGFS.

### *Litigator Fixed Fees*

We propose to introduce the fixed fees at the rates set out in the consultation document.

We have included a separate fixed fee for breaches of Crown Court orders. This fee is set at £100.

### **Why has the Litigator Graduated Fee Scheme been modelled using case type, trial length (with built-in PPE levels) and offence type as proxies for the complexity of a case?**

The LGFS is a graduated fee model that pays for cases based on the type of case rather than the time taken to prepare the case. Trial length, offence type and amount of prosecution evidence in a case are all factual pieces of information that are suitable for use in a graduated fee model.

After examining historic data on the cost of cases, the LSC found a relationship between the cost of a case and the size of the case in terms of length of trial and volume of PPE. There is a definite trend that cases with a longer trial length and more pages of PPE tend to cost more.

### **What is the impact of the final scheme on Providers and Clients?**

The LSC have produced a final Impact Assessment, which details the impact of the LGFS on providers and clients and this can be found on the LSC website.

### **When will the Litigator Graduated Fee Scheme be implemented?**

The LSC plans to implement the LGFS on 14 January 2007.

### **Why was the date for implementation changed from December 2007 to the end of the year?**

Additional time has been required to rebalance the fees and to enable the LSC to adequately consider practitioner input.

### **If a firm does not get a contract for police station / Magistrates' Court work, will this affect their ability to undertake publicly funded Crown Court work?**

Carter calls for a comprehensive level of service from providers. This means coverage from arrest and interview at the police station through to ultimate disposal in the Magistrates' or Crown Court, and subject to a single contract. This issue is covered in the police station consultation "Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements", which can be found on the LSC website.

### **How will the Litigator Graduated Fee Scheme deal with the more complex cases?**

The recent VHCC Consultation "Best Value Panel for VHCCs" proposed that there would be a provision for some 25 – 40 day cases to be run under VHCC contract. Criteria have been developed and published in the VHCC Panel Members' Contract, which can be found on the LSC website.

### **Is the LSC cutting litigators' fees?**

Between 1997/98 and 2004/05 there was an 86% increase in costs, in real terms, for Crown Court litigation services.

In the light of our more recent dataset, we have remodeled the fee to more accurately reflect historic payment trends, paying slightly less for the base fee for simpler cases and giving a small increase in PPE uplifts to the more serious offence classes. The data has also shown that in 2010/11, only £11m needs to be removed from the scheme, as opposed to the original expected reduction of £28m.

Moving to a graduated fee scheme will allow for greater certainty and control of this area of expenditure.

### **How can litigators take part in best value tendering?**

Firms wishing to take part in the best value tendering process from October 2008 will initially be required to demonstrate that they have been certified as a Peer Review Level of 3 "Competent", 2 "Competent Plus" or 1 "Excellent".

Providers who continue to operate in the legal aid market will be expected to demonstrate that they can meet a peer review level of 1 or 2 by the second round of bidding.

**What will the impact of the new litigator graduated fee scheme be on the Courts / National Taxing Team?**

The Courts / National Taxing Team will continue to be responsible for standard fee claims / *ex post facto* claims where the representation order pre-dates the effective date of the new regulations.

**When will the regulations outlining the new funding arrangements be published?**

The regulations are likely to be published in December 2007.

**Who will be processing Crown Court bills when the new Litigator Graduated Fee Scheme is introduced?**

Following implementation of the LGFS, solicitors' claims for work governed by the new regulations will be processed and paid by the National Courts Team within the LSC. The National Courts Team is based in Merseyside and Nottingham.

**What is the timetable for implementation?**

October 2007: Publication of response and final IA  
MoJ consultation on the regulations commences

December 2007: Amendments to the CDS Funding Order 2007 published.

January 2008: Implementation of the LGFS (Regulations)  
Provider training on LGFS

February 2008: Implementation of LGFS Information Technology.

**How long will the LSC be consulting on the regulations governing the LGFS?**

Six weeks