

# Slot Allocation Consultation Response

## Background

On 22 June the Legal Services Commission published a consultation paper that set out options for the method of duty solicitor slot allocation, for both police station and magistrates' court schemes, from October 2007. The consultation ran for 6 weeks and closed on 2 August 2007

## Decisions

### Method of Allocation

The consultation paper asked which method of slot allocation from October 2007 would be preferable, either:

Option A: The current system whereby providers are awarded slots in proportion to the number of qualified duty solicitors they employ; or

Option B: A "snapshot" of the duty solicitor scheme membership at at 1 July 2007. Providers would have their allocation of slots fixed at the number to which they were entitled at 1 July 2007. Employing additional duty solicitors would not entitle providers to additional slots but providers would also retain their allocation if they lost any of their qualified staff.

The Commission has decided that Option A, the current system, will continue from October 2007. This option allows the market to continue to develop and will give new firms the opportunity to enter the market. Rotas will be fixed until the termination date of the current contract.

New rotas will be issued when new contracts commence in January 2008. These rotas will be fixed for 6 months, subject to the LSC's statutory obligations to ensure provision of service. We intend that slots will be allocated in January on the basis of duty solicitors. We will publish full details of the system for the new contract shortly.

### Reallocation of Slots to Disadvantaged Providers

As well as asking which method of allocation would be preferable the consultation paper also asked whether the Commission should allocate additional slots to providers who claimed to have been allegedly disadvantaged by the aborted decision, announced on 12 February 2007, to allocate slots according to historical volume.

The Commission has decided that it cannot allocate additional slots to providers that acted in reliance of the announcement on 12 February 2007 and let go (or did not replace) one or more of their duty solicitors.

In light of the decision to continue allocating slots by the current method the result is that, from October 2007, providers will be allocated slots in proportion to their current number of duty solicitors.

## **Different Methods of Allocation in Different Areas**

The consultation paper asked whether different methods of slot allocation should be used in different areas.

The Commission believes that the current method of allocation is well adapted to work across all duty solicitor schemes and, as this method will continue to be used from October 2007, there is no need to vary the method in particular areas.

## **Allowing New Providers Access to Duty Slots**

The final questions in the consultation paper explored the issue of how new providers could be allocated slots if Option B (the “snapshot”) was chosen.

In light of the decision to continue with the current method of allocation there is no need to make special provision for new entrants. Providers that enter the market will be able to access duty solicitor work by employing the appropriately qualified staff.

## **Thematic Analysis of Responses**

The total number of responses submitted was 107 and most respondents focussed their answers on their preference for either Option A – to keep the existing system of allocation or Option B – a snapshot approach. Option A was the most favoured option particularly amongst duty solicitors who responded. That option would allow the duty solicitor status to be kept and therefore maintain a high quality service.

Conversely, proponents of Option B would like to see stability in the market and ensure their costs and volumes remain constant. Gaining ownership of slots would enable firms to control the movement of solicitors between firms and therefore more likely to make efficiencies.

Most respondents generally accepted that compensation to disadvantaged firms through re-allocation of slots would disadvantage the remaining firms.

A majority of respondents preferred that the same method of allocation should be applied across the board. If different methods are used it should be to accommodate local need.

Where respondents commented on proposals for new entrants, many thought it should be allowed on the condition that there was a lack of provision.

## **Responses from Representative Bodies**

### ***The Law Society (TLS)***

- Does not favour either the status quo or snapshot as each option would disadvantage some solicitors and not others.
- Option A would not make any impact in achieving market stability and therefore goes against the recommendations made by Lord Carter in mitigating market fragmentation.

- It is possible that Option B could help in creating market stability, but the drawback is that firms could only expand by doing more own client work and stagnation could result.
- The proposals do not seem to take into consideration the continual reduction in volume of work due to external factors or the fact that some firms have become smaller or have de-merged.
- Rotas should not be set any longer than three months in advance.
- Strongly objects to re-allocation of slots as it penalises other firms. However, if there are insufficient slots for firms then the LSC should provide financial compensation to those disadvantaged.
- The new method should be flexible and there should be no issue in having different schemes to address needs of particular areas.
- Without a MCT, it may be necessary to have a moratorium to ensure sustainability of existing supply. The contract moratorium is unclear.
- The draft RIA does not consider the influx of people coming to London for the Olympics, which should increase the need for legal advice.

***Criminal Law Solicitors' Association (CLSA)***

[See TLS response above – it mirrors that response]

***Legal Aid Practitioners' Group(LAPG)***

- Favours Option A over Option B, but does not approve of either approach.
- Firms are familiar with Option A. Those that have scaled back would have an opportunity to increase their proportion of slots by recruiting more staff. The dilution of slots under this option is more significant than suggested due to new entrants in under-supplied areas. More thinking on access to volumes needs to be done in light of the downward trend in legal aid cases.
- Option B will mean firms are unable to expand. The need for compensation is greater under this option as firm would not be able to gain slots to recover.
- The LSC's timetable for reforms too short and it is not known exactly when BVT will roll out. Therefore under Option B it could mean rotas frozen for longer than expected.
- Opposes re-allocation as it is unfair to other firms and would lead to compensation claims. Also, it would be difficult to determine which firms are disadvantaged. However, it would be more appropriate to compensate financially.
- Different methods should not be used in different areas.
- Any moratorium is anti-competitive, but worse if the new entrants allowed only at the LSC's discretion

***Association of Major Criminal Law Firms (AMCLF)***

- Opposes Option A. Agrees with a snapshot approach, except it should be based on 28 November instead. This method is fairest for disadvantaged firms. Strongly supports firms owning slots.
- Is in support of re-allocation and should be compensated for an appropriate period. Suggests allocating back the number of slots firms have lost.
- Is against different methods in different areas. Although this could be done once a level playing field has been achieved.
- Provision should be made for new entrants only where there is a need.
- A moratorium should be kept until BVT, although expansion of firms only possible if firms own slots.

***London Criminal Courts Solicitors' Association (LCCSA)***

- In favour of Option A. It is an efficient system and important that the slots remain linked to duty solicitors.
- Existing providers and contract-holders should be able to expand or set up in other areas.
- More notice should be given to firms of the introduction of a new system to enable them to prepare.
- Supports rotas being issued on a three-month basis due to the high error rate in production of these.
- It would further complicate the system if different methods are used in different areas
- Is opposed to most aspects of the reforms, particularly in London where there is a need for a large number of providers

**Responses to Consultation Questions**

**Individual Questions**

***Option A – Continue with the current system***

Q.1 Do you agree with this option? If so, please state why – what are your views on the benefits and drawbacks of this option?

Total responses – 104<sup>1</sup>

In support – 58

Opposed – 44

Most respondents in favour of Option A thought it was important to preserve the duty solicitor status and the link to slots. It would help in retaining experienced and qualified duty solicitors to maintain high standards. It would further allow new or young solicitors to progress their careers and enable mobility between firms.

<sup>1</sup> The total number of responses reflects how many respondents answered this question. It does not necessarily reflect answers that give a firm view (yes or no).

Respondents also thought the current system would provide an opportunity to increase volumes and to build their businesses before any potential future changes to the market. Many indicated that the system as it is now is fairer and is proven to work well.

Those respondents that objected to Option A felt it would cause market instability due to movement of solicitors between firms. In addition, it would cost firms more without the opportunity to make the efficiencies the reforms set out to achieve. Firms would continue to pay a premium for duty solicitors if slots were attached to them.

***Option B – Freeze rotas as of 1 July 2007 and make no change to these until the proposed introduction of best value tendering (BVT)***

Q.2 Do you agree with this option? If so, please state why – what are your views on the benefits of this option?

Total responses – 101  
In support – 38  
Opposed - 62

Those that prefer Option B commonly stated that it would provide market stability, create certainty of work-flow, and would enable firms to control slots rather than individuals. Moreover, the reduction in duty solicitor movement would enable volumes and costs to remain stable.

Respondents (who were often duty solicitors) opposed to Option B in the main did not approve of breaking the link to slots as it would de-value the role of the duty solicitor. It would lead to duty solicitor redundancies and reduce the level of quality. Respondents further envisaged it would limit career progression, reduce employability, and reduce the number of new criminal lawyers entering the system.

***Making adjustments to rotas where providers have relied on earlier policy announcements and restructured.***

Q. 3 Should the LSC re-allocate slots to providers who claim to have been disadvantaged by the aborted decision to allocate slots according to historical volume?

Total responses – 57  
In support – 16  
Opposed - 38

Most respondents indicated that if slots were re-allocated it would disadvantage other providers as slots would be re-distributed. Some opponents to re-allocation thought that firms that had restructured would reduce the quality of service provided. A few thought it would be difficult to identify which firms had been disadvantaged.

Those in support of re-allocation mainly indicated it was appropriate because they had experienced a loss of duty solicitors or slots as a result of the earlier policy announcements.

Q.4 If so, how should the slots be re-allocated? In particular, should the re-allocated slots be made available in a single rota, or spread across a number of rotas over time?

Total responses – 23

A mixture of views were given in answer to this question. A few thought that slots should be re-allocated across a number of rotas over time or that slots should simply be given to match the number of duty solicitors no longer employed. Others thought compensation should be something other than re-allocation.

Q.5 What criteria should the LSC use to decide whether to re-allocate slots to such providers?

Total responses – 17

Suggestions for criteria were also varied. Some respondents thought it should involve simply awarding the number of slots to the same number of duty solicitors lost. Other suggestions included the following:

- For one year firms should receive work based on the number of duty solicitors working for the firm in November 2006 (where greater than the number at July 2007)
- Firms actual financial loss assessed and compensated financially
- The difference in allocation under historic allocation and current slot percentages

***Taking a different approach in different areas?***

Q.6 Do you believe that different slot allocation methods should be used in different areas?

Total responses – 50

In support – 10

Opposed - 33

Respondents felt in the main a consistent approach should be used across the country. Otherwise it could cause confusion or unfairness depending which schemes providers work on. Some respondents suggested that different options should only be considered once a level playing field had been achieved.

Those that did not object to different methods thought that local needs could be assessed to determine which approach should be used. For example, one response pointed out that London schemes worked very differently from other urban areas and therefore should be treated differently if appropriate. On the other hand, one thought the supply base in rural areas should be considered when deciding on an approach.

Q.7 If so, how should this be reflected in conjunction with Option A and Option B?

Total responses – 6

We received a small number of suggestions, which were:

- Slot allocation should be near to the historic data as possible. Where historic data is inaccurate then Option A should apply.
- The system should be flexible to accommodate rural areas
- Either option provided that an adjustment is made for providers' level of work
- It would be difficult to come up with criteria for applications of Option A and B in different areas.

Q.8 What criteria should the LSC use to decide which slot allocation method should be implemented in a particular area (for example, current number of duty solicitors / providers; the ratio between duty slots and duty solicitors on a rota; whether the rota is urban or rural)?

Total responses – 13

Several respondents suggested that the criteria should be based on the ratio between the duty slots and duty solicitors. A few indicated it should be allocated based on the current criteria.

***Access for new entrants***

Q.9 Do you agree that there should be a provision to allow new providers to enter the market under certain circumstances under Option B?

Total responses – 48

In support – 23

Opposed - 17

Those in support of new entrants into the system predominantly felt that they should be allowed where there is under-supply. Several respondents contended it was vital to allow new entrants to maintain competition. Respondents against new entrants mainly held the view that the market needs to remain stable.

Q.10 If so, what circumstances should trigger a decision to allow new providers to access duty slots under Option B?

Total responses – 24

Most respondents suggested that new providers should only be allowed to enter the market where there is a shortage of supply. A small number thought there should not be any restrictions on providers.