

**Duty Solicitor Slot Allocation from October 2007
(Police Station and Magistrates' Court Rotas)**

A Consultation Paper

Contents

1	Introduction and Background	3
2	The Carter Report	5
3	Impact Assessment Including Race Equality Impact Assessment	6
4	The Proposals	7
5	Summary of Questions	10
6	How to Respond	11

1. Introduction and Background

1.1. This is a consultation paper regarding the Legal Services Commission's (LSC) proposals for the allocation of police station and court duty solicitor slots from October 2007. The consultation runs from **22 June 2007 until 2 August 2007**. The principles were previously consulted upon as part of the Police Station Reforms consultation¹, which closed on 10 April 2007. In that paper we explored the possibility of using historic volumes to determine slot allocation from October 2007. However, it is apparent from work carried out in relation to the interim Market Stability Measures consultation that this is not a viable option at this time due to extensive issues with the underlying data. These issues are:

- The initial dataset had wrongly attributed some police stations to incorrect schemes.
- There were some schemes that showed very low case volumes. The correct police stations were attributed to the schemes but the volumes were far lower than expected. After discussing the issues with local providers it became clear that, for some schemes, the majority of persons in custody were taken to a police station in a bordering scheme.
- Providers who had more than one account number had billed cases to all or only one of their account numbers and not to the account number registered as being part of the local scheme.
- There were some providers that had been billing to incorrect police station codes.
- There were a number of examples of police station closures where work had been temporarily transferred to a bordering scheme, and as a consequence this would be recorded as out of scheme working, which should rightly be attributed to the 'home' scheme. A further issue arises in this situation as a provider may well have submitted claims that should be rightly attributed to the out of area scheme, for example where they have attended an own client. Where this occurs it is not possible to identify the individual claims that should be attributed to the 'home' scheme or the out of area scheme, as the police station code is the only identifier present on the claim.

1.2. We have changed reporting requirements from October 2007 to ensure that, in the future, the issues around identifying which scheme work has been carried out under will be resolved. However, we need to collect data over a sufficient period to be in a position to award slots based on historical volume, therefore it is unlikely that this method could be employed before October 2008. The result is that we are not in a position to propose duty slot allocation according to historical volumes and we are therefore now consulting on how duty slots should be allocated in the period between October 2007 and in the proposed introduction of best value tendering.

¹ Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements, February 2007

- 1.3. Please note that this paper is not part of the second Market Stability Measures consultation. That paper dealt with methods of slot allocation from July to September 2007. This paper relates to the period from October 2007.
- 1.4. Additionally, please note that as a result of the response to the Police Station Reforms consultation published on 21 June 2007, there is now a moratorium on new contracts in place. This means that, unless local need dictates, the LSC will not be issuing new crime contracts and these proposals should be read in light of that measure.

2. The Carter Report

- 2.1. At recommendation 4.2, Lord Carter recommended that “Duty solicitor slots should be allocated to providers....rather than named individual solicitors”. The primary purpose of this recommendation was to break the link between duty solicitors and duty slots. By fixing the number of duty slots that a provider has, it would then open to the provider to determine how best to service those duty slots. Elements of Lord Carter’s proposals in this area have already been taken forward. For example, under the original Market Stability Measures consultation, service requirements were reduced to allow providers to send accredited representatives to a wider range of cases.

3. Impact Assessment Including Race Equality Impact Assessment

- 3.1. A draft Impact Assessment (IA) accompanies this paper. However it is important to note that, as many of the options are forward-looking and dependent on the market at a later date, it is not possible to accurately predict all impacts. For example, a decision on the existence and level of a minimum contract size has not yet been taken. The Impact Assessment gives a full account of the options set out in this paper to the extent that the available data makes possible.

4. The Proposals

- 4.1. Given the issues outlined above, we are now consulting on further options with providers and representative bodies to determine the method of slot allocation from October 2007. There are essentially two broad options available for allocating slots. We are inviting comments on these, as well as additional provisions which change the way in which these options might be applied. Please note that these proposals apply to both police station and Magistrates' Court rotas.
- 4.2. Under both proposed options slots would be awarded on a provider basis and as such rotas would feature provider names rather than those of individual solicitors. We would seek to issue rotas on a six-month basis rather than the current three months. This measure will provide greater certainty to providers and allow the LSC to make administrative savings.

Option A – Continue with current system

- 4.3. Under the current system the number of duty solicitors providers employ determines the number of duty solicitor slots available to a provider. Under this option we would continue to link the number of duty solicitors employed by a provider to the number of slots they are eligible for on any given scheme.
- 4.4. One possible benefit of this approach is that it offers relatively new providers access to duty slots, potentially increasing competition in local areas ahead of the introduction of best value tendering. Also, easy access for new providers is likely to reduce the risk of supply shortages in certain areas. This option is administratively simple for the LSC and providers have experience of its operation.
- 4.5. Conversely, allowing new providers access to slots will impact on existing providers and dilute access to volume for all providers in a given area.
- 4.6. In light of the new contract moratorium, it should be noted that these arrangements would only apply to existing contract holders; a 'new' provider for these purposes would be an existing contract holder seeking to expand into other areas.

<p>Q1: Do you agree with this option? If so, please state why – what are your views on the benefits and drawbacks of this option?</p>
--

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

- 4.7. Under this option, we would take a snapshot of the existing rotas as of 1 July 2007, and then fix these until the proposed introduction of BVT. It would then be open to providers to revisit their employment structures and determine the optimum approach for servicing their duty solicitor slots. This option breaks the

link between duty solicitors and duty slots, and might allow providers to gain efficiencies in terms of delivery and organisational structure.

- 4.8. This approach would stop any new additions to rotas until the proposed introduction of BVT, There is already a moratorium on new providers entering the market between October 2007 and the proposed introduction of BVT, and these proposals would serve to fix duty rotas within the fixed overarching market, other than where necessary because of existing poor provision. We would also make amendments where necessary to reflect mergers and acquisitions of existing contract holders with duty solicitor slot allocations.
- 4.9. Where boundary areas have been amalgamated as part of the wider Police Station reforms, provider slot allocations will also be amalgamated, giving an allocation that covers the revised area.
- 4.10. Under this option, where providers have employed duty solicitors that have yet to feature on the rota as of the snapshot date, such individuals would be taken into account in determining post-October allocations.

Q2: Do you agree with this option? If so, please state why – what are your views on the benefits of this option?

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

- 4.11. Some providers have suggested that they might have been disadvantaged by the LSC's aborted decision to allocate duty slots according to historical volumes. These providers have contended that they made structural changes following the LSC's announcement of 12 February 2007 and that the LSC's subsequent decision to continue to allocate duty slots according to employed duty solicitors from April to September 2007 placed them at a disadvantage for this period.
- 4.12. It is possible, in allocating slots from October 2007 through to the proposed introduction of best value tendering, to address this by re-allocating additional slots to such providers in this period. This could only happen at the expense of other providers' slot allocation.

Q3: Should the LSC reallocate slots to providers who claim to have been disadvantaged by the aborted decision to allocate slots according to historical volume?

Q4: 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 rotas over time.

Q5: What criteria should the LSC use to decide whether to re-allocate slots to such providers?

Taking a different approach in different areas?

4.13. The options outlined above might suit one area more than another. For example, where there are a small number of providers on a duty rota, there might be a stronger justification for allowing easier access to new entrants. This could be, for example, by implementing option A in such areas, or by allowing new entrants in conjunction with Option B (see section 10, below)

Q6: Do you believe that different slot allocation methods should be used in different areas?

Q7: If so, how should this be reflected in conjunction with Option A and Option B?

Q8: 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)?

Access for new entrants

4.14. Option B implies an effective moratorium on new providers accessing duty slots until the introduction of best value tendering. If providers close before the introduction of best value tendering this might lead to supply problems in some areas. Additionally, a smaller number of providers competing in an area is likely to lead to less effective competition under a system of best value tendering. A solution would be to allow new providers to enter the market and access duty slots under certain circumstances.

Q9: Do you agree that there should be a provision to allow new providers to enter the market under certain circumstances under Option B?

Q10: If so, what circumstances should trigger a decision to allow new providers to access duty slots under Option B?

5. Summary of Questions

Q1: Do you agree with this option? If so, please state why – what are your views on the benefits and drawbacks of this option?

Q2: Do you agree with this option? If so, please state why – what are your views on the benefits of this option?

Q3: Should the LSC reallocate slots to providers who claim to have been disadvantaged by the aborted decision to allocate slots according to historical volume?

Q4: 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 rotas over time.

Q5: What criteria should the LSC use to decide whether to re-allocate slots to such providers?

Q6: Do you believe that different slot allocation methods should be used in different areas?

Q7: If so, how should this be reflected in conjunction with Option A and Option B?

Q8: 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)?

Q9: Do you agree that there should be a provision to allow new providers to enter the market under certain circumstances under Option B?

Q10: If so, what circumstances should trigger a decision to allow new providers to access duty slots under Option B?

6. How to Respond

- 6.1. Please send your response by **2 August 2007** to:

Rebecca Tinker
Crime Lower Reform
CDS Policy Team
Legal Services Commission
Roger Street
London
WC1N 2JL

Fax: 0207 759 1051

Extra Copies:

- 6.2. Further copies of this consultation paper can be obtained from the above address and it is also available on-line at www.legalservices.gov.uk

Representative Groups

- 6.3. Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

- 6.4. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 6.5. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a Statutory Code of Practice with which public consultations must comply which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided to us as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the LSC.
- 6.6. The LSC will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

