

Final Regulatory Impact Assessment:

Duty Solicitor Call Centre and CDS Direct Expansion

Introduction

1. This document provides a final regulatory impact assessment (“RIA”) for the following proposals, to be implemented from October 2007.

Title of Proposal

2. Duty Solicitor Call Centre and CDS Direct Expansion

Purpose and Intended Effect

Objectives

3. There are 3 key objectives for the implementation of these proposals:
 - Achieving greater value for money.
 - Ensuring the LSC greater control over Legal Aid expenditure under the proposed fixed fee regime.
 - Affording the LSC access to complete management information on the number, location and nature of requests for publicly funded advice and areas for concern in police practices, which can be investigated and acted upon if necessary.

Background

4. The command paper, ‘A Fairer Deal for Legal Aid’, set the terms of reference for Lord Carter’s Review of Legal Aid Procurement, which began in July 2005 and published its findings in July 2006.
5. Lord Carter’s review was tasked with setting out a plan to deliver fundamental reform that would ensure access to justice, deliver greater value for money and a sustainable provider base.
6. Lord Carter’s final report, ‘Legal Aid: A market-based approach to reform’ recommended a number of changes to the way publicly funded legal services are structured and remunerated.
7. The Commission and the Department for Constitutional Affairs (DCA) issued a joint consultation paper ‘Legal Aid: A Sustainable Future’ to formally consult on Lord Carter’s report. That consultation closed on 12th October 2006. The joint response to that consultation, ‘Legal Aid reform: The Way Ahead’, was published by the Commission and the DCA on the 28th November 2006.

8. This paper is focused solely on the impact of the specific proposals set out in the consultation paper – ‘Duty Solicitor Call Centre & CDS Direct Expansion’. Magistrates’ court revised standard fees in 16 urban areas, market stability measures coming into operation from April 2007 and Police Station Reforms coming due to come into effect in October 2007, may have similar impacts for providers and clients. Separate and full impact assessments either have been published or are soon to be published for these proposals.

Rationale for Government intervention

9. In addition to the objectives set out above, these proposals are intended to support those detailed in the consultation paper ‘*Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements*’. They will ensure that the control over the Legal Aid budget, that ‘Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements’ seeks to achieve, can be realised more expediently.

Consultation

10. The public consultation on the paper ‘Duty Solicitor Call Centre & CDS Direct Expansion’ ran for six weeks from 20 March 2007 until 1 May 2007. During this period we engaged with stakeholders. Comments on the draft impact assessment were also welcomed to help determine the way ahead and inform the full impact assessment.
11. We have received 135 responses to the consultation. 4 responses came from representative organisations. They were:
 - The Law Society
 - The Legal Aid Practitioners Group
 - Liverpool Law Society
 - Association of Major Criminal Law Firms
12. Three responses were received from the Police. These respondents were:
 - ACPO
 - Durham Constabulary
 - Northumbria Police
13. The majority of the remaining responses came from Law firms.

Impact of Consultation

14. The Commission has carefully considered all responses to the Consultation and in light of the practical issues raised in these has decided that whilst we will continue to introduce the changes, the implementation of CDS Direct will be phased in to allow us to refine the process. The DSCC will therefore expand as intended from 1 October

2007 and the first phase of CDS Direct expansion will go live on 31 October 2007. This will cover all requests for legal advice within the scope of CDS Direct coming from the Greater Manchester, West Midlands and West Yorkshire CJS areas. Phase two will include all remaining CJS areas across England and Wales. The areas in the first phase have been selected because together they constitute 20% of total police station work nationally, therefore allowing us to carry learn valuable lessons ready for national roll out three months later.

Consultation responses on Regulatory Impact Assessment

15. Please refer to Paragraphs 61-64.

Options

16. Below is a summary of the proposal presented in the consultation paper. Greater detail of the proposal can be located in the consultation paper itself.

Option	Duty Solicitor Call Centre	CDS Direct
I. Expansion of Duty Solicitor Call Centre and CDS Direct	Duty Solicitor Call Centre would continue to operate in its present format, but be expanded to also handle requests where the client asks for his or her own solicitor	Alongside the expansion of the Duty Solicitor Call Centre, CDS Direct would be expanded to cover all requests for publicly funded advice where the matter is restricted to telephone only advice in the police station
II. Do Nothing	No change	No change

Sectors Affected – Costs, Disbenefits, Risks and Benefits

Sectors and Groups

- Client users of legal aid services
- Providers of legal aid services
- Employees of providers of legal aid services
- The Duty Solicitor Call Centre
- Employees of the Duty Solicitor Call Centre
- CDS Direct
- Employees of CDS Direct
- The LSC and MoJ
- The Police

Analysis of Costs and Disbenefits, Risks and Benefits

Costs and Benefits

17. It is difficult to determine with certainty the possible costs and benefits associated with the expansion of the Duty Solicitor Call Centre and CDS Direct. This Regulatory Impact Assessment sets out the anticipated costs and benefits.

Option I. Duty Solicitor Call Centre & CDS Direct Expansion

18. The Duty Solicitor Call Centre would expand to cover all requests for publicly funded advice in the police station. In its new role, custody staff would contact the Duty Solicitor Call Centre whenever a detainee or volunteer requested publicly funded advice confirming whether the detainee had indicated a preference for a particular solicitor or wished to use the duty solicitor. The Duty Solicitor Call Centre would then contact either the preferred solicitor or the duty solicitor as appropriate.
19. CDS Direct would expand so that all requests for telephone only advice as currently defined by the General Criminal Contract, Contract Specification Part B 8.2, paragraphs 17-18 would go to them. At present this is the case for duty matters but in future it would also be the case for own client work.

Costs, disbenefits and risks:

20. Providers lose revenue currently generated from telephone advice given to own clients at the police station. As the table at 11.2 demonstrates, for 2361 out of a total of 2489 Solicitors' Offices who undertake investigation class work, we anticipate that this loss of volume will amount to less than 5% of their total investigations claim revenue.
21. Costs incurred to the LSC in running these services would increase. As CDS Direct is currently the subject of a tendering process, the Commission cannot quantify how much this increase will be.

Benefits:

22. The LSC will have better management information on the number, location and nature of requests for publicly funded advice in the police station that will then be used to bring about wider CJS improvements.
23. Solicitors will no longer be called during unsocial hours to advise on own client matters that are restricted to telephone-only advice in the same way that duty solicitors benefit from the existing CDS Direct Service.
24. During its first six months, CDS Direct generated net savings to the Legal Aid fund of approximately £3.9 million. It is the Commission's expectation

that these savings would increase further with the expansion into own client work, to approximately £5.9 million per annum.

25. Reducing the risk of an increase in Legal Aid fund spend under fixed fee arrangements brought about by solicitors attending on clients who do not currently need advice provided by the physical presence of a solicitor in the police station.
26. In order to allow proper process to be followed, the expanded CDS Direct service is currently being tendered subject to the outcome of this consultation. 'Invitations to Tender' were issued to successful applicants at the 'Expression of Interest' stage on 5 April 2007. All providers were able to enter this process with a view to potentially increasing their revenue by obtaining a contract to provide the service.

Option II. Do Nothing

27. The Duty Solicitor Call Centre would continue to operate in the way that it currently does, covering requests for publicly funded advice in the Police Station. Detained persons who request their own solicitor will continue to have that solicitor contacted directly by the Police.
28. CDS Direct will continue in its current form, covering duty cases that are restricted to telephone only advice by the General Criminal Contract.

Costs, Disbenefits and Risks of not introducing the Changes

29. The Legal Aid Fund would be exposed to the risk of providers attending upon clients who do not currently need advice in the Police Station in order to obtain a fixed fee.
30. The Legal Services Commission would continue to have limited access to Management Information on Police Station performance, making it more difficult for us to bring about wider CJS improvements.
31. The LSC will not be able to realise the anticipated savings to the Legal Aid fund from expansion of the DSCC and CDS Direct.
32. Solicitors will continue to be called during unsocial hours to provide advice to own clients who are being detained for matters restricted to telephone only advice.

Benefits of not introducing the Changes

33. Providers would be able to continue advising clients on telephone only matters and be paid for this work.
34. There will be no rise in the cost to the LSC for the increased capacity required to operate the expanded service.

Summary of recommendations

Duty Solicitor Call Centre

35. The Duty Solicitor Call Centre will expand to cover requests for own client work with effect from 1 October 2007.

CDS Direct

36. CDS Direct will be expanded as intended. However in light of some of the practical issues raised during the consultation period, this will be done in two geographical phases.

37. The initial phase will cover all requests for telephone only advice within Greater Manchester, West Midlands and West Yorkshire CJS areas from 31 October 2007 and for the rest of the country from 31 January 2008.

38. These areas have been selected because together they represent approximately 20% of total Police Station claims. The Commission considers that this will provide sufficient volume to allow us to refine the process in preparation for full national implementation.

Equity and Fairness: Race Equality, Disability Equality, Gender Equality and Rural Impact

Our Duties:

Race Equality

39. Public authorities in Britain have a legal duty to promote race equality. This means that they must have due regard to how they will:

- Eliminate unlawful racial discrimination
- Promote equal opportunities
- Promote good relations between people from different groups.

40. The MoJ and LSC is also under a specific duty to conduct race equality impact assessments of its policies in relation to the public duty to promote race equality and within this, to identify whether there is a differential and adverse impact on particular racial groups.

Disability Equality

41. The Disability Equality Duty came into force on 4th December 2006. The LSC has published a Disability Equality Scheme, which is available at our website www.legalservices.gov.uk. This sets out the actions that the LSC will be taking to promote disability equality for legal service providers and the clients they serve, and our staff.
42. When carrying out our functions, the MoJ and LSC must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. These are to:
- promote equality of opportunity between disabled people and other people;
 - eliminate discrimination that is unlawful under the Disability Discrimination Act;
 - eliminate harassment of disabled people that is related to their disabilities;
 - promote positive attitudes towards disabled people;
 - encourage participation by disabled people in public life; and
 - take steps to take account of disabled people's disabilities, even where that involves treating disabled people more favourably than other people.
43. From 4th December 2006, the MoJ and LSC are also under a specific duty to conduct disability equality impact assessments of its policies in relation to the public duty to promote disability equality and within this, to identify whether there is a differential and adverse impact on disabled people and other people.

Gender Equality

44. The Equality Act of 2006 places a statutory duty on all public authorities, when carrying out their functions, to have due regard to the need:
- To eliminate unlawful discrimination and harassment
 - To promote equality of opportunity between men and women
45. This general duty will come into effect on 6th April 2007.
46. From 6th April 2007, the MoJ and LSC are under a specific duty to conduct gender equality impact assessments of its policies in relation to the public duty to promote gender equality and within this, to identify whether there is a differential and adverse impact on people of different genders.

Rural Proofing

47. Public authorities also need to take account of rural circumstances and needs (Rural White Paper, 2000). Rural proofing states that policy makers should systematically:
- Consider whether their policy is likely to have a different impact in rural areas, because of particular rural circumstances or needs;
 - Make a proper assessment of those impacts, if they are likely to be significant;
 - Adjust the policy, where appropriate, with solutions to meet rural needs and circumstances.
48. Where appropriate, the LSC also considers the rural impacts of its policies to identify whether there is a differential and adverse impact on rural areas.

Current Position

49. Black and minority ethnic (“BME”) groups, the disabled, people of different genders, and people living and/or working in rural communities will have an interest in any changes to the legal aid scheme, as will the owners and/or managers of solicitor firms and not for profit agencies providing legal aid services, as will employees of those organisations, as will barristers and experts providing services to contracted organisations and as will clients of legal aid services.

Clients of legal aid services

50. For the majority of clients who are being detained for offences that are not restricted to telephone only advice this will have no impact. At present, of clients requesting publicly funded advice at the Police Station 60% request the advice of the own solicitor, the other 40% request the services of the Duty Solicitor.
51. The choice of solicitor will be restricted to CDS Direct for all clients who are being detained for matters, which are restricted to telephone only advice. It is not possible to provide statistical impacts for clients as a result of the shortage of client data for publicly funded criminal services.
52. The changes should result in affected clients receiving a speedier and more consistent service owing to a requirement for CDS Direct advisors to have obtain either ‘competence plus’ or ‘excellence’ ratings under the LSC’s peer review process and a requirement for 90% of requests for advice to be responded to within 15 minutes and 95% within 30 minutes. We anticipate that rapid provision of good quality advice would also have the effect of allowing police stations to process these clients more efficiently.

Providers of legal aid services

53. For certain offences outlined in the consultation paper the expansion of CDS Direct would avoid the need for own client telephone only advice. Although we cannot say what the specific impact would be on BME firms we can point to historic data to forecast what this is likely to be. This information is highlighted below. The impacts on BME firms of other proposals, such as the new magistrates' courts schemes in 16 urban areas and the market stability measures, which came into operation from April 2007 and the Police Station Reforms due to come into effect in October 2007 either are, or will soon be, the subject of separate and full final regulatory impact assessments.
54. We do not currently retain data that could tell us the exact proportion of work that providers may lose, because telephone only matters are not denoted as such on the reporting data. (1B's). The LSC will be publishing later this year a full, cumulative, RIA for all the changes made in April, alongside those due to be implemented in October. Where appropriate, these proposals will be included in that document. However, as can be seen below, for the vast majority of firms the impact is minimal and we do not believe therefore that, when taken in conjunction with any other changes, that these proposals will adversely affect any section of the supply base.
55. Given the lack of data noted above, the table below is therefore based on 'own client' Police Station telephone advice claims. The table shows the existing split between own and duty work for Police Station Telephone advice and Assistance for the year January – December 2006:

		Own	Duty
Number of 1B cases (%)	107,713 (100%)	63,685 (59%)	44,028 (41%)
Value of 1B cases	£4,402,214.69 (100%)	£2,597,505.47 (59%)	£1,804,709.22 (41%)

56. Overall, for the same period the total value of claims for investigations work was £189,135,433.01 of this 1B claims made up £4,402,214.69, representing 2% of total. Furthermore, own client 1B's represent only 1% of this total.
57. The table below shows potential loss of revenue if DSCC and CDS Direct are expanded based on the proportion of total investigations claims that are own client 'Police Station Telephone only' for the year Jan-Dec 2006 comparing BME firms to White British and split management. These are defined by the ethnicity of the majority ownership of firms e.g. 'White British' indicates that the majority of partners are White British, 'BME' indicates that the majority of partners are BME and 'split' indicates that half of a firms' partners are White British and the other half BME.

			Percentage of total investigation claim made up of police station telephone only matters			Total
			0%-5%	5%-10%	10%+	
Ethnicity	White British	%	94.4	4.3	1.3	100
	BME	%	96.7	2.5	0.8	100
	Split	%	93.3	4.4	2.3	100
Total		%	94.6	4.1	1.3	100

(Percentages are based upon responses from the outcome of the LSRC's supplier diversity questionnaire extrapolated across all providers)

58. The second table shows the same data divided by gender of majority managerial control for the year Jan-Dec 2006:

			Percentage of total investigation claim made up of police station telephone only matters			Total
			0%-5%	5%-10%	10%+	
Gender	Male Control	%	95.0	3.9	1.1	100
	Female Control	%	94.6	3.9	1.5	100
	Split	%	92.0	6.7	1.3	100
Total		%	94.5	4.3	1.2	100

(Percentages are based upon responses from the outcome of the LSRC's supplier diversity questionnaire extrapolated across all providers)

Staff employed by legal aid providers, and volunteers

59. Employees of legal aid providers and volunteers will be called less frequently during unsociable hours to provide advice on matters that are restricted to telephone only advice.
60. The proposals on DSCC and CDS expansion are likely to lead to a slight drop in the workload and therefore, revenue of firms that may have an impact upon staffing levels.

Summary of responses to RIA and other diversity issues raised

61. Only a limited number of respondents commented on the Impact Assessment. Comments were centred on firms' profitability and ability to expand as intended by Lord Carter's review of Legal Aid Procurement. Others raised a concern regarding the wider impact of the ongoing CDS reform programme on providers.
62. As noted above, the impacts of other proposals, such as the new magistrates' courts schemes in 16 urban areas, new Market Stability

Measures and the proposals for Police Station Reform due to come into effect in October 2007 either are or will soon be the subject of separate and full RIA's.

63. A number of respondents expressed concerns that this would create a two-tier system of legal advice in the police station.

“Two tier system of access to justice with only the wealthy able to receive advice from a solicitor they know and more importantly who knows them.”

64. The Commission recognises that for a limited number of cases there will be a slight difference in the nature of the service provided to publicly and privately funded clients. However, this will only be applicable for matters within the scope of CDS Direct. Further, CDS Direct will be subject to the same stringent peer review process that applies to private practice firms who conduct publicly funded work. Therefore we feel that this will not result in publicly funded advice in the police station being inferior to that, which is funded privately.

Revised assessment of equity and fairness

Clients

65. For the majority of clients who are being detained for offences that are not restricted to telephone only advice this will have no impact. At present, of clients requesting publicly funded advice at the Police Station, 60% request the advice of the own solicitor, the other 40% request the services of the Duty Solicitor.
66. The choice of solicitor will be restricted to CDS Direct for all clients who are being detained for matters, which are restricted to telephone only advice under the General Criminal Contract. It is not possible to provide statistical impacts for clients as a result of the shortage of client data for publicly funded criminal services.
67. The changes should result in affected clients receiving a speedier service owing to the DSCC deploying a duty solicitor if the requested solicitor does not respond within 30 minutes of being contacted.
68. Additionally, we anticipate that the service provided by CDS Direct will be more consistent owing to a requirement for advisors to have obtained either 'competence plus' or 'excellence' ratings under the LSC's peer review process and a requirement for 90% of requests for advice to be responded to within 15 minutes and 95% within 30 minutes.
69. We anticipate that rapid provision of good quality advice would also have the effect of allowing police stations to process these clients more efficiently.

70. BME clients whose first language is not English will continue to receive the same service from CDS Direct that they do at present via an external agency providing three-way telephone conferencing with an interpreter.

Providers

71. For certain offences outlined in the consultation response the expansion of CDS Direct would avoid the need for own client telephone only advice. Although we cannot say what the specific impact would be on BME firms we can point to historic data to forecast what this is likely to be. This information is highlighted below. The impacts on BME firms of other proposals, such as the new magistrates’ courts schemes in 16 urban areas, the Market Stability Measures and the Police Station Reforms due to come into effect in October 2007 either are or will soon be the subject of separate and full regulatory impact assessments.

72. This RIA should be read in conjunction with these separate assessments.

73. We do not currently retain data that could tell us the exact proportion of work that firms may lose, because matters restricted to telephone only advice are not denoted as such on the reporting data. The data below is therefore based on ‘own client’ Police Station telephone only advice bills (1B’s).

74. The following table below shows the existing split between own and duty work for Police Station Telephone advice and Assistance for the year January – December 2006:

		Own	Duty
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Value of 1B cases	£4,402,214.69 (100%)	£2,597,505.47 (59%)	£1,804,709.22 (41%)

75. The table below shows potential loss of revenue that firms might incur as a result of the DSCC and CDS Direct being expanded based on the proportion of total investigations claims that are own client ‘Police Station Telephone only’ for the year Jan-Dec 2006 comparing BME firms to White British and split management. These are defined by the ethnicity of the majority ownership of firms e.g. ‘White British’ indicates that the majority of partners are White British, ‘BME’ indicates that the majority of partners are BME and ‘split’ indicates that half of a firms’ partners are White British and the other half BME.

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76. The second table shows the same data divided by gender of majority managerial control for the year Jan-Dec 2006:

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Total		%	94.5	4.3	1.2	100

(Percentages are based upon responses from the outcome of the LSRC's supplier diversity questionnaire extrapolated across all providers)

77. We have considered these impacts alongside those of the recent Magistrates Court revised standard fee schemes. 96% of firms affected by the Revised Standard Fees can expect between 0 and 5% of their total investigations claims to be affected by this policy. The sample sizes were too small for any conclusions to be drawn from any other categories.

78. Additionally, the Commission is committed to producing a regulatory impact assessment for the entire Crime Change Reform Programme.

Staff employed by legal aid providers

79. Employees will be called less frequently during unsociable hours to provide advice on matters that are restricted to telephone only advice.

80. The DSCC and CDS expansion are likely to lead to a slight drop in the workload and therefore, revenue of firms that may have an impact upon staffing levels.

Conclusion

Small Firms Impact Test

81. Many providers of legal and advice services are small organisations. The Law Society, the Legal Aid Practitioners' Group, the Advice Services

Alliance and other representative bodies with whom the DCA and LSC consult represent their interests.

Competition Assessment

82. Where the client expresses a wish to be advised by a particular firm or advisor this will continue to be facilitated for matters falling outside the scope of CDS Direct.
83. CDS Direct advisors will be monitored to ensure that they have restricted access to clients in their own geographical area to avoid the possibility of advisors using CDS Direct to increase their own firm's own client base where they are employed by a firm in private practice.

Legal Aid Impact Test

84. This policy will reduce the level of spending incurred by the Commission for the provision of legal advice to persons detained in the police station for offences that are restricted to telephone advice only. As the CDS Direct Six Month Evaluation reflects, CDS Direct unit costs for the provision of telephone only advice are lower than private practice publicly funded costs.
85. The proposals seek to reduce the possible incentive for providers to make unnecessary attendances under the fixed fee arrangements proposed in the consultation paper, 'Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements'.
86. The expansion will increase the administrative cost to the LSC. However, we expect that anticipated savings to the Legal Aid Fund and the availability of better management information would offset these additional costs.
87. The expanded service would afford the Commission greater management information which it is intended will assist the Commission in bringing about improvements in the efficiency of the Criminal Justice system which we anticipate will reduce the level of Legal Aid expenditure yet further.

Compensatory Simplification

88. The Cabinet Office has published interim guidance on compensatory simplification, to be applied when producing regulatory impact assessments. The interim guidance requires government bodies to actively look for opportunities to simplify or remove existing requirements when they want to introduce new regulation, and to assess both the extent to which the simplification proposal(s) will offset the cost of the new regulatory measure and the impact of removing the existing provision.
89. These proposals do not provide firms with any additional or reduced regulatory burdens.

Enforcement, sanctions and monitoring

90. The LSC will monitor the performance of both the Duty Solicitor Call Centre and CDS Direct using a range of key performance indicators and take action where necessary.

Implementation and Delivery Plans

91. Please refer to 'The Way Ahead' section of the Legal Services Commission's Final Response to Consultation.

Post Implementation Review

92. We will monitor and evaluate the impact of the proposals post implementation and report on findings in accordance with our statutory duties and the LSC Equality Scheme.

Summary and Recommendation

93. After consideration of the issues raised above, the LSC considers that the benefits of the proposals outweigh any negative impacts sufficiently to provide justification for implementation and therefore recommends the Expansion of the Duty Solicitor Call Centre and CDS Direct as outlined in paragraph 14.

Declarations and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed:

Date:

Minister's name, title & department: Vera Baird QC MP, Parliamentary Under-Secretary of State, Ministry of Justice

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