

Initial Impact Assessment – Duty Solicitor Call Centre & CDS Direct Expansion – Consultation Paper

1 Introduction

- 1.1 This document is a draft regulatory impact assessment of the proposal outlined in our consultation paper ‘Duty Solicitor Call Centre & CDS Direct Expansion’ which was published on 20 March 2007. The proposal outlined in that paper are currently the subject of a public consultation that closes on 1 May 2007. A response to the consultation will be published by the Commission that will include a full regulatory impact assessment of these proposals soon after the public consultation ends.
- 1.2 The consultation paper outlines the proposal to expand the Duty Solicitor Call Centre and CDS Direct to incorporate ‘own client’ work.
- 1.3 The key changes that have been proposed are:
1. Expansion of Duty Solicitor Call Centre to become the first point of reference for all requests for publicly funded legal advice in the Police Station.
 2. Full implementation of CDS Direct as an expanded service to cover own solicitor work (where matters can exclusively be dealt with by telephone advice under the GCC) in addition to its handling of similar work for the duty solicitor scheme.
- 1.4 The proposal is outlined in the consultation paper ‘Duty Solicitor Call Centre & CDS Direct Expansion’ and follow on from Lord Carter’s recommendations at Chapter 3, Paragraph 48 and recommendation 4.5 of his final report, ‘Legal Aid: A Market-Based Approach to Reform’.

2 Title of Proposal

- 2.1 Duty Solicitor Call Centre & CDS Direct Expansion

3 Objective of proposals

- 3.1 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 forthcoming 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.

4 Purpose and Intended Effect

Background

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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'. A full regulatory impact assessment on these proposals will be published after the close of this consultation. New magistrates' court schemes 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 suppliers and clients. Separate and full impact assessments either have been published or are soon to be published for these proposals.

Rationale for Intervention

- 4.6 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.

5 Consultations

- 5.1 As stated above, the public consultation on the paper 'Duty Solicitor Call Centre & CDS Direct Expansion' will end on 1 May 2007. We will engage with stakeholders during the consultation period. Comments on this draft impact assessment are also welcomed to help determine the way ahead and inform the full impact assessment.
- 5.2 We will provide an analysis of the responses to the consultation in a separate document to be published soon after the closing date. This will include a full regulatory impact assessment.

6 Sectors Affected

- 6.1 Sectors and groups affected include:
- 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 DCA
 - The Police

7 Options

- 7.1 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 publicly funded requests for advice where the matter is restricted to telephone only advice in the police station
II.Do Nothing	No change	No change

7.2 Costs and Benefits

- 7.2.1 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 Draft Impact Assessment sets out the possible costs and benefits and we would welcome views on these as part of the consultation process.

7.3 Option I. Duty Solicitor Call Centre & CDS Direct Expansion

- 7.3.1 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 requested publicly funded advice and they would inform Duty Solicitor Call Centre staff 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 as appropriate.
- 7.3.2 CDS Direct would expand so that all telephone only requests 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:

- 7.3.3 Firms lose revenue currently generated from telephone advice provided to own clients at the police station. As table at 11.2 demonstrates, for 2361 out of a total of 2489 firms who undertake investigation class work, we anticipate that this loss of revenue will amount to less than 5% of their total investigations claim.
- 7.3.4 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:

- 7.3.5 The LSC will have better management information on the number, location and nature of requests for advice in the police station that will then be used to bring about wider CJS improvements.
- 7.3.6 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.
- 7.3.7 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.
- 7.3.8 Reducing the risk of an increase in Legal Aid fund spend brought about by solicitors attending on clients who do not currently need advice in the police station under fixed fee arrangements.
- 7.3.9 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. Expressions of Interest for this tender closed on 9 March 2007. All firms were able to enter this process with a view to potentially increasing their revenue by obtaining a contract to provide the service.

7.4 Option II. Do Nothing

- 7.4.1 The Duty Solicitor Call Centre would continue to operate in the way that it currently does, covering requests for publicly funded advice in Police Station. Detained persons who request their own solicitor will continue to have that solicitor contacted directly by the Police.
- 7.4.2 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

- 7.4.3 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.
- 7.4.4 The Legal Services Commission would continue to have more limited access to Management Information on Police Station performance, making it more difficult for us to bring about wider CJS improvements.
- 7.4.5 The LSC will not be able to realise the anticipated savings to the Legal Aid fund from expansion of the DSCC and CDS Direct.
- 7.4.6 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

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

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

8.1 Our Duties:

Race Equality

8.1.1 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.

8.1.2 The DCA and LSC are also under a specific duty to conduct race equality impact assessments of their 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

8.1.3 The Disability Equality Duty came into force on 4th December 2006. The LSC has already published its Disability Equality Scheme and this is available on the LSC website www.legalservices.gov.uk . This sets out the actions that we will be taking to promote disability equality for legal service providers, the clients they serve and our staff.

8.1.4 When carrying out our functions, we must have due regard to the duties placed upon us by the Disability Discrimination Act 2005. These are to:

- Promote equality of opportunity between people with disabilities and other people.
- Eliminate discrimination that is unlawful under the Disability Discrimination Act.
- Eliminate harassment of people with disabilities that is related to their disabilities.
- Promote positive attitudes towards people with disabilities.
- Encourage participation by people with disabilities in public life.
- Take steps to take account of disabled people's disabilities, even where that involves treating them more favourably than other people.

8.1.5 Since 4 December 2006, the DCA and LSC have been under a specific duty to conduct disability equality impact assessments of their 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

8.1.6 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.
- This general duty will come into effect on 6 April 2007.

8.1.7 From 6 April 2007, the DCA and LSC will also be under a specific duty to conduct gender equality impact assessments of their 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

8.1.8 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.

8.1.9 Where appropriate, the DCA and LSC also consider the rural impacts of their policies to identify whether there is a differential and adverse impact on rural areas.

Current Position

8.1.10 Black and minority ethnic (“BME”) groups, the disabled, people of different genders, and people living and/or working in rural communities have a direct interest in any changes to the legal aid scheme, as the owners and/or managers of solicitor firms providing legal aid services, as employees of those organisations, as barristers and experts providing services to contracted organisations and as clients of legal aid services.

8.1.11 Research conducted by the Legal Services Research Centre (“LSRC”) in 2006, to be published in a forthcoming report has provided information on the ethnicity, gender, age and disability profile of providers of legal aid services, their employees and their clients based on the results of diversity monitoring forms completed by 44.7% of providers with legal aid

contracts, and data from the LSC corporate information system. In addition, the LSC will shortly publish its annual Equality Report for 2006, which provides information on a number of areas including numbers of clients assisted in different groups.

9 Impact on Clients, Providers and Employees

9.1 Impact on Clients

- 9.1.1 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 60% of clients detained in Police Stations request the advice of the own solicitor, the other 40% request the services of the Duty Solicitor.
- 9.1.2 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.
- 9.1.3 The changes should result in affected clients receiving a speedier and more consistent service 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. We anticipate that rapid provision of good quality advice would also have the effect of allowing police stations to process these clients more efficiently.

9.2 Impact on Providers

- 9.2.1 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 come into operation in 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 Regulatory Impact assessments.
- 9.2.2 This RIA should be read in conjunction with these separate assessments and firms should consider how any impact in this paper might tie into their operations elsewhere in legal aid work. Feedback from firms on this during consultation is welcomed.

9.2.3 We do not currently retain data that could tell us the exact proportion of work that firms may lose, because telephone only matters 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).

9.2.4 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
Number of 1B cases (%)	107,713 (100%)	63,685 (59.12%)	44,028 (40.88%)
Value of 1B cases	£4,402,214.69	£2,597,505.47	£1,804,709.22

9.2.5 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%-15%	15%-20%	20%+	
Ethnicity	White British	%	94.4	4.3	0.6	0.4	0.4	100
	BME	%	96.7	2.5	0.0	0.0	0.8	100
	Split	%	93.3	4.4	0.0	0.0	2.2	100
Total		%	94.6	4.1	0.5	0.3	0.5	100

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

9.2.6 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%-15%	15%-20%	20%+	
Gender	Male Control	%	95.0	3.9	0.4	0.3	0.4	100
	Female Control	%	94.6	3.9	0.8	0.0	0.8	100
	Split	%	92.0	6.7	0.7	0.0	0.7	100
Total		%	94.5	4.3	0.5	0.2	0.5	100

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

9.3 Impact on Employees

- 9.3.1 Employees will be called less frequently during unsociable hours to provide advice on matters that are restricted to telephone only advice.
- 9.3.2 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.

10 Rural

- 10.1 Our assessment of the potential impact of the outline proposals on DSCC and CDS Direct expansion is that access for clients in rural areas to legally aided services will be maintained and, in some cases improved, at no extra expense to them although for offences within the scope of CDS Direct, the choice of publicly funded advice will be restricted to CDS Direct.
- 10.2 As the table at 11.2 reflects there are a very small number of firms throughout the whole country that would be significantly affected by these changes. We therefore do not anticipate that these proposals alone will have an impact on clients' access to legal advice in rural areas.

11 Small Firms Impact Test

- 11.1 Many providers of legal and advice services are small businesses. The Law society, the Legal Aid Practitioners Group, and other representative bodies whom the LSC will consult in respect of these proposals will represent their interests. We would particularly welcome the input of small firms on consultation to help inform us draft a full regulatory assessment of the option to expand DSCC and CDS Direct, contained in the consultation paper DSCC and CDS Direct expansion.
- 11.2 The table below shows that for almost all firms the impact of DSCC and CDS Direct expansion to deal with own client work can be expected to be minimal and that for less than 1% of firms overall the impact will be above 15% of their total investigations claim. This rises slightly for firms with a below average investigations take to 1.2% of firms with 93% of small firms expecting an impact of less than 5% on their investigations claim.

Own client police station telephone on advice as a percentage of total investigations claim	Total Number of Firms	Potential Reduction of 0-5%	Potential Reduction of 5-10%	Potential Reduction of 10-15%	Potential Reduction of 15-20%	Potential Reduction of 20%+
Number of Small Firms potentially affected	1,321	1230	61	14	7	9
Number of Medium Firms potentially affected	540	522	17	1	0	0
Number of Large Firms potentially affected	628	609	17	2	0	0
Overall	2489	2361	95	17	7	9

11.3 Small firms means firms with investigations claims of £0-£50,000, medium firms are those with investigations claims of £50,001-£100,000 and large firms are those whose investigations are £100,001 or more.

12 Competition Assessment

12.1 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.

12.2 CDS Direct advisors will have restricted access to clients in their own area to avoid the possibility of advisors using CDS Direct to increase their firms' own client base.

13 Legal Aid Impact Test

13.1 The proposal in the consultation paper will have a direct impact on 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.

13.2 The proposals seek to reduce the possible incentive for providers to make unnecessary attendances under the fixed fee arrangements proposed by the consultation paper, 'Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements'.

13.3 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 will offset these.

13.4 The expanded service would afford the Commission greater Management Information.

14 Enforcement, sanctions and monitoring

14.1 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.

15 Implementation and delivery plans

15.1 This will be completed in the full regulatory impact assessment which will be published after the public consultation closes. However, a draft timetable is included in the main consultation document.

16 Post Implementation Review

16.1 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.

17 Compensation Simplification Measures

17.1 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.

Contact Point:

Katherine Toms
CDS Policy Team,
Legal Services Commission,
Roger Street,
London
WC1 2JL
Email: cds.directorate@legalservices.gov.uk
Fax: 0207 759 1051