

## **Draft Impact Assessment**

### **Market Stability Measures: A Consultation Paper**

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## **1 Introduction**

- 1.1 This document is a draft regulatory impact assessment of the options outlined in our consultation paper 'Market Stability Measures' which was published on 28<sup>th</sup> November 2006. The proposals outlined in that paper are currently the subject of a public consultation that closes on 24<sup>th</sup> January 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 This consultation paper outlined a number of proposals to implement Lord Carter's proposals for market stability.
- 1.3 The key changes that have been proposed are:
- Firstly, the introduction of a new method for allocating duty solicitor slots <sup>1</sup> for police station and court duty work;
  - Secondly, changes to the current 'service requirements'<sup>2</sup> for duty solicitor cases;
  - Thirdly, to enforce the requirement that 80% of police station work and reinstate the requirement that 50% of magistrates court work is undertaken in house; and
  - Finally, that a moratorium be placed on issuing new duty solicitor slots in the absence of local need.
- 1.4 The proposals were outlined in the consultation paper 'Market Stability Measures' and follow on from Lord Carters recommendations at paragraphs 10 to 13 and recommendation 4.2 of his final report<sup>3</sup>.
- 1.5 This paper does not address the wider changes to the police station scheme for example boundary areas, new working arrangements, fixed fees and best value tendering which will be the subject of a separate consultation in early 2007.

## **2 Title of Proposals**

### **2.1 Market Stability Measures: A Consultation Paper**

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<sup>1</sup> Slots are the period a duty solicitor is on call.

<sup>2</sup> The scope of Duty Solicitor services and obligations are included within the Contract (Part B, Section 8)

<sup>3</sup> Legal Aid: A market based approach to reform

### **3 Objective of proposals**

3.1 There are three objectives for the implementation of these proposals

- To ensure the sustainability of the provider base of legal service providers in the lead up to more fundamental changes to the procurement scheme
- To maintain duty solicitor coverage throughout England and Wales between April 2007 and October 2007
- To enable firms to commence the restructuring process and thereby compete in the market more effectively

### **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' in response to Lord Carter's report. That consultation closed on 12th October 2006. The joint response to that consultation, legal aid: the way forward, 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 – 'market stability measures'. These proposals are interim measures in advance of the introduction of wider police station changes in October 2007. A full regulatory impact assessment will be published after the close of this consultation.
- 4.6 Early next year a second consultation paper relating to the wider changes to the police station scheme, including revised boundary areas, new working arrangements and fixed fees will also be published. This second consultation paper will also include a draft regulatory impact assessment of the proposals it contains.

## **Rationale for Intervention**

- 4.7 Under the current arrangements, firms can only access duty solicitor slots by having a solicitor within their firm on the relevant rota. The slots allocated to the firm are therefore in direct proportion to the total number of solicitors within the scheme.
- 4.8 As a result of this allocation system, firms that wish to expand their duty solicitor work typically apply to join as many schemes as possible and look to employ greater numbers of duty solicitors, at a premium, in order to expand their market presence.
- 4.9 The effect of this system is particularly evident within the London area, where many schemes are oversubscribed and individual solicitors are allocated slots infrequently. For example, on schemes such as the City of London and Camberwell it is common for duty solicitors to receive only 2 slots per year.
- 4.10 This system of slot allocation can also make some rural schemes dependant on a small number of individual duty solicitors within their local scheme. Given that there are a fixed number of duty solicitors, rural schemes could be particularly vulnerable to a small migration of their duty solicitors to the larger areas if firms were to expand their market share by increased employment.
- 4.11 The final report of the Carter review stated that there would be a risk of market fragmentation, in advance of implementation of new working arrangements in October 2007, in that firms would seek to introduce large numbers of additional duty solicitors to schemes in order to gain greater market share. With a limited number of duty solicitors available this would inevitably involve individuals moving between firms. Alternatively, individuals may seek to establish new firms or move to financially more attractive parts of the country to provide the service.
- 4.12 Similarly, if proposals to introduce fixed fees for police station work are implemented firms will need to have greater certainty of their available resources and related costs in order to improve efficiency. These issues were specifically highlighted within paragraphs 4.10 – 4.13 and in recommendation 4.2 of the Carter Review. This recommendation lists the protective measures that Lord Carter considered must be in place to mitigate market fragmentation and allow firms to begin the process of restructuring.
- 4.13 The overall objective of these specific changes is to prevent further fragmentation to the market. This will be essential if we are to ensure that a good quality, efficient provider base remains sustainable in the period before the launch of revised boundary areas and new working arrangements.

- 4.14 There was a risk that the current arrangements, if left unchanged, would permit the market to fragment further before October 2007. The other changes will also provide an opportunity for firms to deliver their services more efficiently. In place of current requirements for firms to send specific grades of fee earners to cases, the rules would be harmonised with the 'own' client rules. Finally the changes preserve the share of work that providers have in the market.

### **Slot Allocation**

- 4.15 As outlined in Lord Carters report the primary concern from a market fragmentation perspective is that firms will seek to expand their number of duty solicitors in order to gain greater access to slots. Under the current rules slot allocation is determined by the number of solicitors that a firm has on each scheme. Therefore, if a firm wished to expand their duty solicitor business in the period before the introduction of new boundary areas in October 2007 they would be required to recruit more duty solicitors. This would mean that firms could incur additional recruitment and retention costs in relation to duty solicitor staff. The effect of the proposals would be to protect firms by creating a period of stability in the market during this transition period to October 2007.

### **Service Requirements**

- 4.16 The proposals seek to harmonise the service requirements for duty solicitors with the current requirements for own client attendances. This will give firms a greater amount of discretion in deciding, on a case-by-case basis, which level of fee earner should be attending. This will remove the current requirements set by the Commission, which are a cost driver to firms if they are required to supply more costly fee earners to all duty cases. Under these proposals firms can restructure themselves more efficiently.

### **Performance Standards**

- 4.17 If changes to the service requirements were implemented (as outlined above) there would be a need for the Commission to ensure that appropriate systems of supervision remain in place by all firms who undertake this work.
- 4.18 The General Criminal Contract already requires providers to ensure that designated fee earners conduct at least 80% of their police station attendance cases. In addition Lord Carter recommended that a requirement be added to ensure that 50% of magistrates court attendances are conducted by designated fee earners.
- 4.19 The effect of these requirements is to ensure that firms have control, by supervision and training, of the individuals who are performing a large part of their work.

## **Moratorium on new slots**

- 4.20 The Carter review recommended that there should be a moratorium on all new duty solicitor slots other than in response to changes in local need. This was recommended to prevent further 'market fragmentation' through a number of new duty solicitors being allocated rota slots in advance of the drawing of new boundary areas.

## **5 Consultation**

- 5.1 As stated above, the current proposals are under a public consultation that will end on 24th January 2007. The Commission will engage with stakeholders during the consultation period and has specifically asked for alternative suggestions to achieve our objectives. 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
  - Counsel
  - The LSC and DCA
  - Partners in the wider justice system

## **7 Options**

- 7.1 Below is a summary of the options that are presented in the consultation paper. Greater detail about each option can be located in the consultation paper. This paper also asks whether respondents have alternative proposals that would achieve the same objectives. The options will be reviewed in the full impact assessment early next year.

Recommendation	Option 1	Option 2	Option 3
Slot Allocation	Historic based allocation on the basis of take between July 2005 to July 2006	Issuing a six-month rota in April 2007 by taking a snapshot of the membership as it stood on 28 <sup>th</sup> November 2006 and allocate firms slots on the basis of the number of duty solicitors they have at that date.	N/A
Service requirements	Allow accredited representatives, probationary representatives (non indictable offences only), solicitor with the police station qualification to undertake all types of work at the police station	Allow changes to accredited representatives and solicitors with the police station qualification but do not make changes to the work the probationary representatives can perform	N/A
Performance standards	Enforce the 80% police station requirements and require that 50% of the magistrates court be also performed by designated fee earners	Enforce the police station requirements but not the magistrates court requirements	N/A
Moratorium	Do not issue new General Criminal Contracts between April 2007 and October 2007.	Continue to allocated General Criminal Contracts but do not issue new duty solicitor slots	No changes in advance of October 2007

## 7.2 Costs and Benefits

7.2.1 It is difficult to determine with certainty the likelihood that the possible costs and benefits associated with each option will actually occur. This RIA sets out the possible costs and benefits and we would welcome views on these as part of the consultation process.

### **7.3 Slot Allocation**

7.3.1 As outlined in Lord Carter's report<sup>4</sup> the primary concern from a market fragmentation perspective is that firms will seek to expand their number of duty solicitors in order to gain greater access to slots. Within the current rules this could lead to firms paying inflated prices for staff and may threaten the ability of some firms to deliver a duty solicitor service. The options set out below consider measures, which may mitigate this risk.

#### **Option 1 – Historic based allocation**

7.3.2 The Carter report recommended that, from January 2007, the Commission allocates slots to firms in particular schemes in proportion to the value of work undertaken between July 2005 and July 2006 by those firms in the same scheme.

7.3.3 Therefore, if a firm undertook £100,000 of police station work between July 2005 and July 2006 on a scheme that has an overall value of £1,000,000 that firm could be allocated 10% of the available slots for the forthcoming rota.

7.3.4 Within this option, the Commission could consider any police station work (plus court duty) that a firm had performed on a particular scheme or alternatively consider their duty solicitor work only.

#### **Costs, disbenefits and risks:**

7.3.5 Two types of firms could be disadvantaged by this system. Firstly firms that have commenced duty solicitor work since July 2006 who would not receive any slot allocation for the period between April and October 2007.

7.3.6 Secondly firms that have successfully expanded their business since the July 2006 who would not have this reflected in their allocation.

#### **Benefits:**

7.3.7 This proposal will provide firms with a known allocation of slots that is not dependant on the number of duty solicitors that they employ. This will mitigate against the risk that firms will seek to employ greater numbers of duty solicitors, increasing competition for this resource and driving up recruitment and salary costs and causing disruption to client services.

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<sup>4</sup> Legal Aid: A market based approach to reform

## **Option 2 – Extended rota periods**

7.3.8 At present rotas are produced within each regional office using a live database of current duty solicitors. Rotas are then issued for a three or four month period.

7.3.9 It is proposed within this option, that in order to give firms greater certainty of slot allocation and to mitigate against the risk of movement of duty solicitors between firms, the Commission will prepare and then issue rotas in February 2007 from the existing database to cover April 2007 to September 2007. In order to do this we would take a snap shot of the database on 28th November 2006 and allocate firms slots in proportion to the number of duties on the scheme that day.

### **Costs, disbenefits and risks:**

7.3.10 This option would prevent firms (or solicitors) who were not on the rota as of 28<sup>th</sup> November 2007 from accessing slots for the interim period.

7.3.11 If this option were to be accepted it would prevent practitioners who want to join the rota after 28th November. This may be perceived as a particular concern to those who will apply to join the rota during the consultation period.

### **Benefits**

7.3.12 This would provide firms will an allocation that is more reflective of their current capacity.

7.3.13 This option will continue to allocate slots to firms using current methods. However, as the rotas are issued for a longer period, firms will retain a slot allocation through to the introduction of new boundary areas. If a duty solicitor were to leave a firm during this period the slots would remain with the firm. This will give providers greater certainty through to the introduction of new boundary areas and working arrangements in October 2007.

7.3.14 A six-month rota period would be a better option for market stability than issuing a shorter rota. If a three-month rota were issued firms would be faced with the possibility of a great amount of movement of duty solicitors in advance of the final three-month rotas before the introduction of new boundary areas. Such a scenario would create uncertainty for firms and could further increase costs of employing duty solicitor staff.

## **7.4 Service Requirements**

7.4.1 Service requirements outline the type of work that can be undertaken by different levels of fee earner. These are set out in detail in the annex to the consultation paper 'market stability measures'. There are

currently approximately 3000 accredited representatives and 6000 duty solicitors who are eligible to undertake some work in the police station. The type of work they may undertake depends upon the individual's qualification. The proposals in Lord Carter's final report state that the service requirements should be harmonised with the requirements currently in place for solicitors acting for 'own clients'.

### **Option 1**

- 7.4.2 The first option is to amend the arrangements to allow any accredited representative, probationary representative<sup>5</sup> and solicitor with the police station qualification ("PSQ") to undertake all types of work at the police station from February 2007.

#### **Costs, disbenefits and risks:**

- 7.4.3 There is a risk that quality of service to clients could be affected by removing the requirement that a duty solicitor must attend in specified cases. However these arrangements are currently in place for firms who are attending on own client matters and firms will continue to exercise their professional judgement in deciding what grade of fee earner is required on a case-by-case basis.

#### **Benefits:**

- 7.4.4 This will enable firms greater flexibility and innovation in structuring their resources to maximise efficiency thereby increasing their ability to profit from criminal legal aid work.

### **Option 2**

- 7.4.5 An alternative proposal could involve allowing accredited representatives and solicitors (with the PSQ) to undertake duty work but not making any changes to the work which probationary representatives can perform.
- 7.4.6 This option would place limits on the amount of work that probationary representatives can undertake but would harmonise the remaining fee earner categories.

#### **Cost, disbenefits and risks:**

- 7.4.7 This option restricts firms in how they would use probationary representatives.

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<sup>5</sup> For non indictable only offences.

## **Benefits**

- 7.4.8 Allows firms a greater amount of choice than they currently have in determining who can attend these cases. This will help them achieve greater efficiencies in their staffing structure.
- 7.4.9 Limits the risk of quality reductions to clients by not extending the work that can be undertaken by probationary representatives.

## **7.5 Performance Standards**

- 7.5.1 The General Criminal Contract<sup>6</sup> stipulates that '80% of a firm's police station attendances should be undertaken by a 'designated fee earner'. This broadly means that a fee earner who receives professional supervision from the firm should undertake 80% of a firm's attendances.
- 7.5.2 In addition to ensuring that this requirement is enforced, the Carter review has also recommended that 50% of magistrates court work be performed by a designated fee earner.

### **Option 1**

- 7.5.3 The first option is to enforce the requirement that designated fee earners perform 80% of police station work and designated fee earners perform that at least 50% of magistrates court work.
- 7.5.4 As the second of these requirements is no longer in the contract the Commission would need to amend the specification to require:

'We will expect 50% of instances of advocacy at the magistrates' court to be conducted by designated fee earners'.

### **Costs, disbenefits and risks:**

- 7.5.5 This would place an additional requirement to designate a greater number of fee earners for magistrates court work. This process could place some additional costs upon firms.
- 7.5.6 This would also place additional costs upon the Commission, as we would be required to monitor the magistrate's court requirements in addition to those requirements that are being currently monitored.

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<sup>6</sup> Part D, Rule 5.2

### **Benefits:**

- 7.5.7 Promotes better quality of work in the magistrate's courts by ensuring that 50% of staff undertaking the work are designated and therefore receive professional supervision from the firm.

### **Option 2**

- 7.5.8 The second option would be to enforce the rule as it relates to police stations but make no stipulation as to the level of designated fee earner involvement in the magistrates court.

### **Costs, disbenefits and risks:**

- 7.5.9 There are no costs to firms as this option is a current requirement.

### **Benefits**

- 7.5.10 Places no additional burdens on firms or the Commission as this option reflects current contractual requirements.

## **7.6 Moratorium on New Duty Solicitor Slots**

- 7.6.1 Recommendation 4.2 of the Carter review states that the Commission should consider placing a moratorium on new duty solicitor slots other than in response to changes in local needs. There are three options for implementing this recommendation.

### **Option 1**

- 7.6.2 The first option is for the Commission to cease allocating new General Criminal Contracts until October 2007. This would result in no new firms applying to join duty solicitor schemes, which would in turn ensure that existing providers' work volumes are not reduced.
- 7.6.3 The decision to temporarily cease awarding new contracts would be on the basis that there is no shortfall of supply and that existing firms need a period of stability within which they can plan for future changes.
- 7.6.4 If accepted, this recommendation would take effect from February 2007. The proposal would not prevent new firms from joining the market but simply restrict entry for a defined period.

### **Costs, disbenefits and risks:**

- 7.6.5 This option would prevent any new firms entering the market between February 2007 and October 2007. We cannot say how many firms would otherwise have obtained a contract during this period. However, in section 8, there is information on the number of firms who entered into a crime contract in each year for the past three financial years.

This demonstrates that the number affected could be between 12 and 25 firms who would otherwise obtain a contract within that six-month period.

### **Benefits**

7.6.6 This option would enable a period of stability in the market for existing firms. In some parts of the country there are areas with a potential of oversupply. If new firms continued to be given contracts existing firms would lose a proportionate number of duty solicitor slots.

### **Option 2**

7.6.7 As an alternative, the Commission could continue to allocate new General Criminal Contracts but close duty solicitor schemes to new members. This would in effect create 'own client only' contracts.

7.6.8 The Commission would also propose re-allocating duty slots that become free (i.e. on a firm's withdrawal from criminal work) to existing duty firms rather than own client only contractors.

7.6.9 Firms that have joined the duty solicitor rota part way through the relevant period will be allocated slots in proportion to the work they would have done if there for a full year. This means that established firms will receive fewer slots than they would have done.

### **Costs, disbenefits and risks**

7.6.10 Any firms entering into crime contracts issued between February and October 2007 will be unable to access duty solicitor slots. These new firms would therefore have to rely on own client work alone to support their business. We would welcome feedback on the consultation from providers as to whether this is practical and financially viable.

### **Benefits**

7.6.11 This option still enables the development of new firms that could support an own client business.

### **Option 3**

7.6.12 A third option would be for the Commission to continue awarding contracts as it currently does, at least until October 2007, when proposals for new working arrangements will come into force.

### **Costs, disbenefits and risks**

7.6.13 This option would mean that existing providers would have less certainty of their on-going slot allocation. This will increase the

likelihood of fragmentation taking place and so the overall objectives are not met.

### **Benefits**

7.6.14 This would ensure that entry to the market is not restricted in the short term.

### **Alternatives**

7.6.15 In addition to the above options the Commission would welcome suggestions on alternative proposals that would meet the key objectives identified in section 3 of this assessment.

## **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 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**

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](http://www.legalservices.gov.uk). This sets out the actions that we will be taking to promote disability equality for legal service providers and 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 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.

8.1.5 From 4th December 2006, the DCA 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**

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 6th April 2007.

8.1.7 From 6th April 2007, the DCA and LSC will also be 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**

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 its 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 Most of the options that are suggested in the consultation paper have no direct effect on clients. Both options surrounding service requirements could have an impact on clients as this allows firms greater choice in deciding what level of fee earner could attend.

9.1.2 The first option for service requirements would have a greater effect as it allows firms to use a probationary representative for all non-indictable offences. In the second option the probationary representatives would not gain any greater attendance rights than what they already have in place. We have no evidence that this would result in a reduction in the quality of advice given. These arrangements are currently in place for firms undertaking own client work. We would expect that providers would continue to exercise their professional judgment on the appropriate level of practitioner to attend the police station on a case-by-case basis.

## 9.2 Impact on Providers

### Slot Allocation

9.2.1 By pursuing option 1 (historical based allocation) firms established after July 2006 will be prevented from obtaining a contract. Although we cannot say what the specific impact would be up BME firms we can point to historic data to forecast what this is likely to be.

9.2.2 Table 1 below demonstrates the ethnicity of managerial control of firms that have entered into crime contracts each year since 2003/2004. We can see from this that approximately 66% of new firms are likely to have a White British majority managerial control, between 25% and 30% are likely to have BME majority managerial control and there a small number that are likely to have a split managerial control.

9.2.3 Currently 11.8% of providers with a general criminal contract have BME majority managerial control with a further 4.6% of providers with split managerial control between White British and BME.

**Table 1: Ethnicity of managerial control of firms entering a general criminal contract**

			Numbers of firms signing a contract			Total
			2003/2004	2004/2005	2005/2006	
Ethnicity	White British	Count	38	25	17	80
		% within year	66.7%	69.4%	68.0%	67.8%
	BME	Count	15	11	7	33
		% within year	26.3%	30.6%	28.0%	28.0%
	Split	Count	4	0	1	5
		% within year	7.0%	.0%	4.0%	4.2%
Total		Count	57	36	25	118
		% within year	100.0%	100.0%	100.0%	100.0%

9.2.4 The second table shows the same firms divided by gender of majority managerial control. This table shows that we are likely to see 65% of new firms to be under male control, 20% under female control and 10% under split control.

9.2.5 Of offices holding crime contracts that returned a survey, 72.8% had majority male, 12.7% majority female and 14.5% split managerial control.

**Table 2: Gender Status of managerial control of firms entering a general criminal contract**

			Numbers of firms signing a contract			Total
			2003/2004	2004/2005	2005/2006	
Gender	Male control	Count	44	22	14	80
		% within year	75.9%	62.9%	56.0%	67.8%
	Female control	Count	10	7	7	24
		% within year	17.2%	20.0%	28.0%	20.3%
	Split control	Count	4	6	4	14
		% within year	6.9%	17.1%	16.0%	11.9%
Total		Count	58	35	25	118
		% within year	100.0%	100.0%	100.0%	100.0%

### **Moratorium**

9.2.6 If we proceed with option 1 and do not issue new contracts between February 2007 and October 2007 we would prevent a proportion of the anticipated 25 – 50 new general criminal contracts granted each year from being issued.

9.2.7 The ratio of BME majority managed and the gender of management control would remain as outlined under the slot allocation.

### **Performance Standards**

9.2.8 We do not anticipate any significant impacts to a particular group of providers.

### **Service Requirements**

9.2.9 We do not anticipate any significant impacts to a particular group of providers.

## **9.3 Impact on Employees**

9.3.1 We do not anticipate there to be a direct effect upon employees from the options set out in the performance standards and the moratorium proposals. However both the service requirements and the slot proposals could impact on employees.

9.3.2 The options to amend the service requirements will increase the amount and type of cases that accredited representatives could undertake. If option 1 of the performance measurements proposals were to be implemented then there is likely to be an increased requirement for some practitioners (e.g. counsel acting in the magistrates court) to become designated fee earners. This will involve them receiving professional supervision.

- 9.3.3 As a result of the increase in use of accredited representatives some duty solicitors could be restricted in achieving salary increases. Although there is very limited data on the ethnicity of duty solicitors we do not anticipate there to be a differential impact on any specific group of practitioners.

## **10 Rural**

- 10.1 Our assessment of the impact of the outline proposals 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.
- 10.2 As outlined in section 4 of this paper, some rural schemes are dependant on a small number of individual duty solicitors within their local scheme. Given that there are a fixed number of duty solicitors, rural schemes could be particularly vulnerable to a small migration of their duty solicitors to the larger areas if firms were to expand their market share by increased employment.

## **11 Small Firms Impact Test**

- 11.1.1 Many providers of legal and advice services are small businesses. Their interests will be represented by the Law society, the Legal Aid Practitioners Group, and other representative bodies whom the LSC will consult in respect of these proposals. We would particularly welcome the input of small firms on consultation to help inform us draft a full regulatory assessment.

## **12 Competition assessment**

- 12.1 Total spending on criminal legal aid in 2005-2006 was in excess of £1.1 billion. Of this £800 million was paid directly to solicitors. Duty Solicitor advice and attendance cases in the police station accounted for £75 million in 2005-2006. These interim measures relate only to the duty solicitor work.
- 12.2 We anticipate that as the outline proposals represent a series of interim measures as the first steps towards a wider police station programme, there will be only an interim effect on competition as a result.
- 12.3 The proposals that most affect competition are those for a moratorium on new duty solicitor slots.
- 12.4 Under the first option for a moratorium there would be no new General Criminal Contracts issued until October 2007. However this option would only mean a temporary restriction to a small number of firms (see table 1 in section 8.2 of this paper for details on the numbers of

new firms each year) until the new working arrangements and boundary areas are launched in October 2007.

- 12.5 Under the second option General Criminal Contracts could continue to be issued but there would be no new duty solicitor slots issued for the period until October 2007. This would have a more limited affect on new firms as they would still have the ability to undertake other types of crime work in the interim period.

### **13 Legal Aid Impact Test**

- 13.1 None of the proposals in the consultation paper will have a direct impact on the level of spending incurred by the Commission for duty solicitor work. As outlined earlier in the paper the cost benefits will be realised by the firms themselves.

### **14 Enforcement, sanctions and monitoring**

- 14.1 The LSC will monitor the performance of providers using a range of key performance indicators and take action where necessary, including terminating contracts.

### **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.

### **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.

17.2 These proposals do not provide firms with any additional or reduced regulatory burdens. However the proposals are an interim measure to enable the introduction of a wider programme for change in the police station that will lead to the introduction of fixed fees in the police station that will be clearer, simpler and easier to administer.

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