

# **Market Stability Measures**

## **Final Response to the Public Consultation**

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# 1. Introduction and Background

- 1.1 This is the Legal Services Commission's final response to the public consultation on the proposals to amend the current duty solicitor arrangements from 1st April 2007.
- 1.2 This consultation 'Market Stability Measures' commenced on 28<sup>th</sup> November 2006 and closed on 24<sup>th</sup> January 2007.
- 1.3 Two key changes were proposed to the current system:
  - 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.
- 1.4 In addition there were also proposals within the consultation paper to create a temporary moratorium on new contracts being awarded and to ensure that performance standards are enforced.

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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)

## **2. Overall Conclusions**

The Commission has decided to proceed on the following basis:

### **1. Slot Allocation**

To implement a new system of duty solicitor slot allocation. This new system will mean that duty solicitor slots will be allocated to firms in proportion to the **number** of claims for duty solicitor and own client police station work that they billed between 1<sup>st</sup> December 2005 and 30<sup>th</sup> November 2006. This will include all 1 claims except for 1A.

These changes will apply to police station duty solicitor slots only. The court duty solicitor session allocation method will remain unchanged for the interim period. This may change from October 2007 depending on the outcome of the consultation on wider police station changes as set out in the paper 'Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements.'

### **2. Service Requirements**

To allow accredited representatives and solicitors (with the PSQ) to undertake duty solicitor work but will make no changes to the work that probationary representatives can undertake.

### **3. Performance Standards**

To introduce a requirement that 50% of magistrates court work is conducted by a designated fee earner.

### **4. Moratorium**

That a moratorium on letting new general criminal contracts be introduced from 12<sup>th</sup> February until 1<sup>st</sup> October 2007. There will be two exceptions to this moratorium

- If there is a shortage of supply in a local area
- To enable two existing firms to merge.

Exceptions will be considered on a local basis by the relevant regional office.

## 3. The Responses to individual questions

### The Responses

We have received 116 responses to the consultation. Six responses came from representative organisations. They were

- The Law Society
- The Legal Aid Practitioners Group
- London Criminal Courts Association
- The Association of Major Criminal Firms
- The Independent Defence Lawyers Group
- Institute of Legal Executives

3.1 There were four questions asked in the consultation. These questions were the same for each area of proposed change.

**Do you have a preference for either of the options on slot allocation outlined in section (e.g. Slot Allocation)? What improvements, if any, would you suggest to the options outlined? If you do not agree with either of the options expressed can you explain your reasons why? What alternatives would you suggest?**

### Question 1: Slot Allocation

3.2 As outlined in Lord Carter's report<sup>3</sup> the primary concern from a market fragmentation perspective was that firms would seek to expand their number of duty solicitors in order to gain greater access to slots. Within the current rules this would see firms paying inflated prices for staff and may threaten the ability of some firms to deliver a duty solicitor service. The options that were set out considered measures which may mitigate that position.

3.3 The responses on the favoured option were divided. A number of responses supported the option to allocate work on historical volumes.

3.4 Some of the reasons cited by respondents who supported the option to allocate in proportion to historical volume included the following,

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<sup>3</sup> Legal Aid – A market based approach to reform; Chapter 4 paragraphs 10-13

*It would protect the firms that have had a long association with police stations in a particular area*

*The alternative would be to simply reward those firms that have suddenly expanded creating the artificial position that has now arisen*

3.5 There were a number of respondents who stated that the alternative option was preferred whereby the Commission would take a snapshot of the eligible duty solicitor database as at the start of the consultation (28<sup>th</sup> November 2006) and allocate slots in proportion to the number of duty solicitors that were employed by the firm at the time.

3.6 Some of the reasons cited by those respondents who supported the option to allocate in proportion to the number of duty solicitors that they had on a scheme as of 28<sup>th</sup> November 2006 included

*If option one were selected our firm would loose significantly*

*Allocating in accordance to historical volumes would be detrimental to our local firms.*

3.7 Some respondents were also very concerned that the snapshot would not accurately reflect the level of work that have undertaken as they were temporarily short of a duty solicitor who they had not replaced.

3.8 There were also a number of respondents who did not consider either option to be acceptable.

3.9 The reasons varied but included a concern that neither option that was put forward would accurately reflect the expansion of some businesses since November. Other responses argued that there should be no change in the method of allocation at this point and that duty solicitor slots should remain assigned to individuals.

3.10 We have considered all of the responses carefully and the Commission has made the decision to allocate the duty solicitor slots in accordance with historical volumes of cases. Lord Carter recommended that these volumes be based on the figures between July 2005 and July 2006. However, some respondents have suggested that the dates Lord Carter had proposed are no longer recent enough to reflect some of the changes that firms have made. The Commission has decided to implement the option but using from 1<sup>st</sup> December 2005 to 30<sup>th</sup> November 2006 as the reference dates. This in our view represents a balanced approach to these considerations.

3.11 The changes will not apply to the allocation of court duty solicitor sessions. These will continue to be allocated according to their current methods for the interim period. There are proposals to change this from October 2007. These proposals are set out in a separate consultation

paper entitled 'Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements.'

- 3.12 A pro rata adjustment will be applied to those firm that have started their criminal contract during the twelve month period. Firms that have received a contract since 1<sup>st</sup> December 2006 will not be allocated any duty solicitor slots in the interim period. Allocation of slots from 1<sup>st</sup> October 2007 is addressed in the paper '
- 3.13 Suppliers will be receiving correspondence in the coming weeks that will detail the number of slots they have been allocated in the six month period between April and September inclusive. Please check this webpage for latest news on estimated dispatch dates.**
- 3.14 This letter will also detail how to contact the Commission if a supplier wishes to query the allocation that been awarded.
- 3.15 The rotas will be issued for two sets of three month periods rather than a single six month rota.

## Question 2: Service Requirements

3.16 Lord Carter recommended that the Commission harmonise the duty solicitor service requirements with the own client service requirements.

3.17 We proposed two options in the consultation paper for change. Firstly we proposed to amend the arrangements to allow any accredited representative, probationary representative<sup>4</sup> and solicitor with the police station qualification to undertake all types of work at the police station from February 2007. Alternatively, we proposed to allow accredited representatives and solicitors (with the PSQ) to undertake duty work but not making any changes to the work which probationary representatives can perform.

3.18 Some respondents stated that they considered the latter option to be acceptable if firms had the appropriate structures in place

*No quality issues should arise as probationary representatives will be supervised by their solicitors*

3.19 However there were a significant number of other firms who considered the changes to the service requirement criteria of probationary representatives to be a step that would allow some staff *'to undertake work which is outside their capability'*. However there was still positive recognition that this option would *'enable firms to make better use of resources'*.

3.20 The Commission have decided to implement the second option. This will allow accredited representatives and solicitors (with the PSQ) to undertake duty work but will not make any changes to the work which probationary representatives can perform.

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<sup>4</sup> for non indictable only offences

### Question 3: Performance Standards

- 3.21 Lord Carters review recommended that the Commission implement a requirement that 80% of a firm's police station attendances and 50% of a firm's magistrates court attendances should be undertaken by a designated fee earner.
- 3.22 The '80% rule' already applies in the police station. Therefore we put forward two options for the implementation of this recommendation. The first option stated that we would implement the recommendation for the magistrates court. The second option indicated that we would only enforce the rule as it relates to police station.
- 3.23 One respondent stated
- By reintroducing the requirement to have 50% of the work undertaken by designated fee earners could be driving up costs of employment*
- 3.24 However the majority of respondents supported the reintroduction of the 50% requirements in the magistrates' court. Many cited quality as the basis for this support.
- 3.25 The Commission have decided to extend the designated fee earner requirement to include 50% of a firms magistrates court work from 1<sup>st</sup> April 2007.

#### **Question 4: Moratorium**

- 3.26 Lord Carter's final report recommended that the Commission should have a moratorium on new duty solicitor slots. The consultation paper outlined three options for taking this forward.
- 3.27 The first option was for the Commission to cease allocating new General Criminal Contracts until October 2007. This would result in no new firms being allowed to join duty solicitor schemes, which would in turn ensure that existing providers' work volumes are not reduced.
- 3.28 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.
- 3.29 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.
- 3.30 The final option that was proposed was that the Commission would continue awarding contracts as it currently does, at least until October 2007, when proposals for new working arrangements will come into force. This would ensure that entry to the market was not restricted in the short term but it would also mean that existing providers would have less certainty of their on-going slot allocation.
- 3.31 Many of the respondents who commented on this question agreed that there was a need for a moratorium to be in place. However there were concerns that this is not required in some parts of the country.
- 3.32 The Commission have considered the issues raised and have decided to implement a moratorium on all general criminal contracts until October 2007, but with two exceptions. First, if there is a particular local need in the area then applications for new will be considered by the relevant local regional office. Second, new contracts will be permissible to facilitate two existing firms merging.
- 3.33 The above rules will be applied to all new requests for general criminal contracts from today. Applications for new contracts should continue to be directed to the relevant regional office for consideration.

## **4. The Way Ahead**

- 4.1 The Commission will confirm in writing the number of slots to be allocated to firms for the period between 1<sup>st</sup> April 2007 to 1<sup>st</sup> October 2007.
- 4.2 Slots will be allocated to firms but with assigned named solicitors for the Duty Solicitor Call Centre (DSCC) to contact. Firms should contact the DSCC if they wish to change the name of the individual to contact.
- 4.3 There will be no changes to the Court duty solicitor slot allocation method. This may change from October 2007 depending on the outcome of the current consultation paper 'Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements.'
- 4.4 A final Regulatory Impact Assessment of these changes will be published on the Commission website ([www.legalservices.gov.uk](http://www.legalservices.gov.uk)) on 15<sup>th</sup> February 2007.

