

Market Stability Measures – amendments to proposals for the allocation of Duty Solicitor Slots

A Consultation Paper

Consultation Paper

27/04/2007

This consultation will end on 18/05/2007

Market Stability Measures

Amendments to proposals for the allocation of
Duty Solicitor Slots

Contents

Introduction & Background

The proposals

Consultation Questions

How to respond

The Consultation Criteria

Introduction & Background

1. This is a consultation paper regarding the Commission's proposal to amend the method originally identified for the allocation of duty solicitor slots from 1 April 2007. The original consultation paper, *Market Stability Measures*, was published on 28 November 2006 and our response, published on 12 February 2007, and the draft Regulatory Impact Assessment can be found on our website at www.legalservices.gov.uk.
2. Lord Carter's final report, *Legal Aid: A market-based approach to reform* identified a series of measures that the Commission could put in place in advance of implementing Lord Carter's broader recommendations to prevent what he referred to as 'market fragmentation'. Our consultation paper *Market Stability Measures* addressed this issue and outlined our proposals for a series of measures including:
 - A new method of allocating duty solicitor slots;
 - New service requirements for practitioners undertaking legal aid work;
 - Revised performance standards for providers to deliver; and
 - A proposed moratorium on the allocation of duty slots for new firms until October 2007.
3. We considered that these changes were desirable in order to protect the market against fragmentation prior to the more fundamental changes proposed by Lord Carter and accepted by the Government and the LSC, the detail of which (at the time) was to be the subject of further consultation. In particular we wanted to ensure that there was no incentive either to break up existing firms or to recruit large numbers of duty solicitors in the run up to implementation of the main proposals.
4. We published our response to this consultation on 12 February 2007. In brief, our proposed way forward at this time was:
 - **Slot Allocation** – a new system for police station duty solicitor slots to be allocated to firms in proportion to the number of claims for duty solicitor and own client police station work billed between 1 December 2005 and 30 November 2006.

- **New Service Requirements** – allowing accredited representatives and solicitors (with the PSQ) to undertake duty solicitor work.
 - **Performance Standards** - a requirement for 50% of magistrates' court work to be conducted by a designated fee earner.
 - **Moratorium** - a moratorium on issuing new general criminal contracts from 12 February until 30 September 2007 (with exceptions for certain specified circumstances).
5. These proposals, with the exception of the proposals for slot allocation, came into effect from 1 April 2007.
 6. When we began implementing the new slot allocation system we discovered discrepancies in the data, hence we announced that we intended to delay implementation of this proposal until 1 May. This allowed us to contact over 2,000 providers to ascertain the robustness of the data provided by firms over the relevant period. We received several hundred written responses, as well as oral feedback at supplier briefings around the country, informing us that the case volumes firms had recorded differed from our figures.
 7. We wrote to all suppliers from 12 March 2007 explaining how the new scheme would work and what the recorded case volumes were for each supplier. An indicative market share was also included. However, it was noted in the letter that even if a suppliers case volumes were correct, there could still be a change to the market share proportion, as an adjustment to any other firms case volumes in the same area would impact on every other suppliers total proportion.
 8. Between **12 – 14 March 2007** letters were generated and posted to all crime suppliers. This letter contained information on the schemes that firms were members of, the total number of recorded cases for them in that scheme and an indicative proportion of the total number of cases undertaken in that scheme area. Suppliers were asked to respond to their regional office if they had queries on the figures quoted.
 9. The message coming back from suppliers was that the numbers calculated were incorrect and thus not an acceptable basis upon which to calculate duty solicitor slots. When responding to the initial letters the following facts were checked with respondents before investigating further
 - Clarifying that they were calculating from the same reference period; and

- Clarifying that they were only counting cases on the schemes they were members of.

10. However, despite following the above two points correctly, there were still a number of suppliers who had case totals that did not accord with our calculated totals.

11. The early investigations showed that the following themes occurred frequently:

- The initial data set had wrongly attributed some police stations to incorrect schemes.
- There were some schemes that showed very low case volumes. The correct police stations were attributed to the scheme but the volumes were still lower than expected. After discussing the issues with local suppliers it became clear that, for some schemes, the majority of persons in custody were taken to a police station in a bordering scheme.
- Suppliers who had more than one account number had billed cases to all or only one of their account numbers and not to the account number registered as a member of the local scheme.
- There were some firms who informed us that they had been billing to an incorrect police station code.
- There were a number of firms who had acquired other criminal practices in the period between and since the reference dates. Therefore the work that had been undertaken by the business subsumed into the current form was recorded against the original businesses account number.
- There were a number of examples where police stations had been closed for part of the reference period. All of the cases for those police stations temporarily transferred to a bordering scheme. Therefore the finance data showed that many firms had high levels of out of scheme working (if they were not already members of the bordering schemes). In urban areas, the impact was disproportionately significant in firms with their rota slots during this period.

12. Having identified these problems with the help of the profession, it became apparent that we could no longer implement our preferred proposal for the allocation of duty slots within a reasonable time-scale and that it would be impracticable to implement it in the period before October 2007, when new

arrangements, on which consultation has just finished, would start. It would take a minimum of six weeks to correct the data issues, at least two weeks to prepare new rotas and a further four weeks notice before the rotas could commence. The earliest theoretical date for new rotas therefore would be August, however, it is by no means guaranteed that we would be able to meet this date if the data exercise were to take longer than six weeks. Due to the uncertainty of meeting this date and given that the new rota would only be in place for a maximum of two months, we consider this option to no longer be viable and believe that the options outlined below would provide certainty of the way ahead for firms for the remainder of the interim period.

13. Given the above, we approached The Law Society and other key representative groups on 10 April 2007 to consult on the possibility of implementing the second option in *Market Stability Measures*.
14. . The rationale in suggesting this approach was that, as outlined in our original response to consultation, the views of providers on the best method for allocating slots was not significantly weighted in favour of any option, though tended to favour option one, with a significant percentage of responses in favour of each approach.
15. This second option would have involved the allocation of duty slots to firms on the basis of a 'snapshot' of the market taken on the day of publication of the original consultation. This would have resulted in firms receiving the number of slots proportionate to the number of duty solicitors they had on each scheme on that day. Due to the more straightforward nature of this exercise and the data involved, we suggested to The Law Society that we could implement this option by the 1 June if they agreed that this represented the best way forward. However, to meet this deadline we informed The Law Society that we required a response from them and other representative bodies by the 24 April.
16. Having considered our proposal, The Law Society requested that more time be granted to consider the best way forward. We agree and also believe that, given this extension, we should now widen this consultation and make it available for all providers and representative bodies to share their views on the options outlined below.
17. In considering these options, it is important that those who respond are mindful of the fact that in this consultation we are only considering *interim* measures, for the period between 1 July until the end of September. The planned future allocation of duty solicitor slots has been considered under a separate

consultation – *Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements*, which closed on 10 April. We are considering making changes in the interim for two reasons. Firstly, and consistent with our original desire to protect the market against instability, we are keen to hear from practitioners as to what method of slot allocation would be best for their businesses between now and October. Secondly, because we are mindful of the fact that there will be a number of firms who have started the process of restructuring their firms in good faith based on our announcement of 12 February 2007, we are particularly concerned to minimise any disruption or harm to them.

18. Given the fact that the life of any new slot allocation method which emerges from this consultation will be no more than a few months, that the original implementation date was 1 April 2007, and in the light of the fact that considerable discussion and consultation has already taken place, we consider an abbreviated consultation period appropriate. This consultation will therefore close on **18 May 2007**.

The proposals

1. When issuing our response to the consultation *Market Stability Measures* we simultaneously published our proposals for the way forward for legal aid work in the Police Station from October 2007. This consultation, *Police Station Reforms: Boundaries, Fixed Fees and New Working Arrangements*, closed on April 10 2007 and we will be publishing our response outlining the way ahead in June. This response will include detail on how duty solicitor slots will be allocated from October.
2. However, given the problems outlined above with implementing our original proposal for the allocation of duty slots, we are asking both providers and representative bodies for their views on the options outlined below the best method of allocation until the introduction of fixed fees in October 2007.
3. We believe that the original Regulatory Impact Assessment (RIA) which accompanied *Market Stability Measures* remains relevant to this consultation paper. We intend to update the RIA to show the impact of the two options below. However, if firms provide sufficient reliable data to further inform this document, an updated version will be published alongside our response to this consultation.

Option A – Issue a three-month rota from 1 July that is drafted on the current method of slot allocation

4. The Police Station consultation paper describes the new allocation method that is being considered for use from October, which is consistent with the original market stability proposal.
5. One option to cover the gap between now and the implementation of the further police station reforms in October 2007, would be to continue to draft the rotas according to the existing rules.
6. Under this option the LSC would construct a new duty rota for the period leading to fixed fees from 1 July until the end of September on the existing rules. This approach would also provide firms with certainty as to the number of slots they will receive in the period leading up to the introduction of fixed fees and ensure that, were any duty solicitors to leave a firm in this period, the firm would not lose this volume of work.

7. As with previous rotas, we would use the PROMIS computer system (in the applicable regions), which is designed to ensure a fair distribution of slots among scheme members, to allocate work to firms. As is the situation currently the slots would remain fixed to the firms once the rota is issued. This would, therefore, deliver a fixed number of slots for that period. As with the previous method of allocation, firms would still be able to swap their slots with another firm if they so wished.
8. However, this approach could disadvantage any firms that have re-structured their businesses as a result of our initial announcement of the way ahead in February 2007. Firms that have removed duty solicitors from schemes because they no longer required duty solicitor simply to get duty slot, and considered that they could run more efficiently structured with fewer duty solicitors, could experience a loss of duty slots in the time between implementation and the introduction of fixed fees. This could have an adverse effect on business and the LSC is keen to avoid this if at all possible. We are therefore especially keen to hear from any practitioners who believe that they would be adversely affected in the manner described.

Option B – ‘Snapshot’

9. This option would allow slots to be allocated as per a ‘snapshot’ of the LSC’s database on 28 November 2006, with firms receiving a proportion of slots as per the number duty solicitors they had on each scheme on that day. We would introduce this method of allocation from the 1 July 2007 and it would run until the end of September 2007.
10. This option would maintain the spirit of our original proposals and ensure that the benefits identified in our original consultation for reforming the allocation of duty slots in the period leading to fixed fees were retained to a certain extent. This approach would also provide firms with certainty as to the number of slots they will receive in the period leading up to the introduction of fixed fees and ensure that, were any duty solicitors to leave a firm in this period, the firm would not lose this volume of work.
11. It is possible that this approach will not result in the identical slot allocation that would have been the case under our original option 1. It may be the case that many firms that would have gained under our original way forward will also benefit from this method. But, we are particularly keen to hear from firms whether this new method of allocation during the interim period will assist their

business, or whether the additional change will be a disruption and a distraction.

Consultation Questions

- Q1.** Do you have a preference for any of the options on slot allocation outlined above? What improvements, if any, would you suggest to the options outlined?
- Q2.** What impact, if any, would each of the options above have on your firm if implemented? Please provide any evidence possible to support your response.
- Q3.** Are there any other options for slot allocation available that have not been considered above and that you feel would provide the greatest benefit to firms?

How to respond

Please send your response by **18 May 2007** to:

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Extra copies

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

Publication of response

A paper summarising the responses to this consultation will be published on 31 May 2007. The response paper will be available on-line at **www.legalservices.gov.uk**

Representative groups

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

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000

(FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

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