

**London Criminal Courts Solicitors' Association ("LCCSA")**

**Response on Preferred Supplier Scheme**

The LCCSA represents the interests of specialist criminal lawyers in the London area. Founded in 1948, it now has more than 1000 members who include lawyers in private practice, Crown prosecutors, freelance advocates and honorary members who are circuit and district judges.

The objectives of the LCCSA are to encourage and maintain the highest standards of practice and advocacy in the criminal courts in and around London, to participate in discussions on developments in the criminal process, to represent and further the interests of members on any matters that may affect solicitors who practice in the criminal courts and to improve, develop and maintain their education and knowledge of those actively concerned with the criminal courts including those we are in the course of their training.

Any questions in relation to this response should be referred to either:-

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The following members of the Association's Committee assisted with this response:

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All members of the sub-committee participated as individual members of the LCCSA and the views expressed do not necessarily reflect those of any of their firms or their organisations.

## The Preferred Supplier Scheme

### Questions

1. **Do you consider that the quality of advice tools in appendix A are proportionate? If not, please explain why, and indicate the changes you would propose.**
  - 1.1 We support the development of peer review whilst recognising its limitation re work undertaken in Court, but generally capable of assessment of file management and quality of advice.
  - 1.2 Our additional view is that there should be a clear (institutional) separation of the critical/ coaching/mentoring dimensions, that peer review coupled to relationship managers may encompass as a model for assessing and promoting quality and the separate taking of contractual sanctions. We would welcome involvement in developing such a model.
  - 1.3 We would welcome the proposal to contract with firms rather than offices. Similarly, peer review should encompass the organisation as a whole.
  - 1.4 Quality profiles rely on the collection of data for individual firms and when aggregated, for all firms provide a device for “bench marking”. This may be a useful exercise but we know firms are very diverse. They operate in a mature and very complex market often with particular types of clients. Extrapolation of reasons for “differences” between a firms profile and any national profile should be approached cautiously. We agree that understanding a profile of a particular firm is vital. The expression “if concerns are not resolved” is vague. What concerns precisely would give rise to file assessment or further peer review? The intervention into a firm’s normal conduct of business through file assessment or peer review is burdensome and costly. We believe the basis for further intervention needs to be precisely defined.

- 1.5 File Assessment. How frequently and in what numbers are closed files to be assessed alongside sample bill assessment? It is difficult to comment on proportionality in the absence of a precise scheme. This is described as a “continuous process throughout the year”. We are very concerned about the meaning of this phrase. Our experience of audit is that it is incredibly time consuming and resource intensive and gives rise to endless argument and conflict. We would need a great deal of detailed information on these processes before we could be convinced that their benefit outweighs their cost and that this is not the maintenance of the pernicious audit system.
- 1.6 The same comments apply to contract compliance and value for money (para 10 appendix A). Whilst much is said of better working relationships, simplified processes and lower transaction costs, it seems unlikely that these proposals bear any relationship to these aims and in fact will be complex and costly.
2. **Do our proposals for extending devolved powers strike the right balance between maintaining fund control and reducing the administrative burden for providers? If not, please explain why and provide any alternative suggestions.**  
This relates to civil work.
3. **Which of the proposed key features and benefits offer the most benefit? What other key features and benefits do you see as a priority for future development?**
- 3.1 Relationship managers. There are 3000 firms supplying legally aided services. The Pilot Scheme had 25 suppliers with five relationship managers. Maintaining that ratio requires 600 managers. We doubt this is possible within any short timescale. There is a history of under funding rolled out arrangements compared to pilot schemes (eg the CPS).

- 3.2 Simplified billing and claiming. There are no actual proposals in the consultation paper. Our view is that some change does introduce simplicity (ie the cut to telephone advice), but not necessarily a benefit. Other change introduces complexity (eg the new means test), again without benefit to suppliers. The trend of bureaucratisation is always to add layers of data collection and increased transaction costs. We will need to be told in detail of anything that was both simpler and of benefit to suppliers or our clients.
- 3.3 The key benefit which should be a priority is a increase in the rate of remuneration. The prosecution have been provided with unprecedented resources. These “drive” costs within the Criminal Defence Budget. (See the LCCSA submission re price competitive tendering. Whilst PCT was seen as a panacea for “over supply” in London, it now appears to be part of national proposals. Abandoning PCT, recognising the reality of our market and of the external cost drivers, and improving rates of pay for police station, Magistrates Courts and ordinary Crown Court work would be a real benefit).
- 3.4 We have been here before. The proposals that introduced franchising were all about building quality relationships. There is in our collective experience a vast gap between the words of intent and what actually happens in practice. The latter is dominated by cuts, claw backs, auditing and conflict.
4. **Is the proposed performance management framework for preferred suppliers set at the right level? If not, please explain why and provide any alternative suggestions.**
- 4.1 We do not support the transfer of responsibility for Quality Assurance to the regulatory arm of the Law Society. Quality Assurance should be about the processes of improvement through training, coaching and mentoring and not about sanction. See above. Para 1.2

- 4.2 We are especially sceptical of the value to be obtained from monitoring case outcomes. The development of contractual sanctions in immigration work based on “poor outcomes” is a disgraceful way of interfering in the solicitor client relationship. Peer review is a proper method of assessment with regard to quality of advice and strategy deployed.
- 4.3 The idea of the relationship manager producing an Annual Supplier Performance Evaluation lacks detail. Is there to be a national template, which collects the data, is a draft to be submitted to the supplier, what is to be recorded and how are disputes to be resolved? How important will it be if a preferred supplier does not agree with the evaluation or the basis of moving forward?
- 4.4 This raises the whole issue of the relationship manager and the connection between that role and what is said in appendix B regarding financial performance and the mandatory requirement to provide a very long list of financial information and in financial performance 2 for an “ongoing commitment to an open book approach”. What is it within this open relationship that the relationship manager does exactly?
- 4.5 For several years there has been a conceptual battle between the LSC and suppliers over who owns the client. Suppliers take the view that the clients are theirs. They have direct, one to one long term relationships with people in the communities they serve. In the past, the LSC has seemed at times to believe that the suppliers were simply the providers of legal services to their clients. (Incidentally, the Carter Review seem not to recognise the concept of own client at all). There has been some resiling from this position in the last year. However, it now seems that the LSC wishes to “own” our businesses or in some sense to direct them to control the levels of profit by equity partner, borrowings, securities given and so on. This represents an unprecedented level of intervention in our businesses. What is the justification?
- 4.6 That inexperienced recently recruited relationship managers should be asked to take on a business planning role is, frankly, absurd. How our members run their businesses is a matter for them and not the LSC.

- 4.7 Confidentiality. We do not believe that business information will be held confidentially. Anecdotes already circulate within our community with regard to the confidential business information of pilot scheme firms.
- 4.8 Confidentiality does not extend simply to historical data but to business judgments and plans. Relationship managers are envisaged as having a number of firms in their portfolios. There must inevitably be conflicts of interest. Firm A may seek to expand into the territory of firm B both of whom have the same relationship manager. Firm A may seek actively to recruit criminal lawyers working for firm B in order to support the expansion of A's business and to the detriment of B's business. Firm A may have an extremely good "business" idea. Is it the intention that the relationship manager should then share this with other relationship managers or other firms in a portfolio?
- 4.9 It is still the case that a large number of firms have other business interests than Legal Aid work. It is also the case that in a significant number of firms, Legal Aid work is done on sufferance by partners engaged in higher fee paid work than Legal Aid. Each burden which is imposed on a firm and each burden which is felt by the non-Legal Aid Partners, is likely to cause more firms to drop out of Legal Aid work and to diminish the supplier base. These proposals are likely to have that impact.
- 4.10 We suspect that the proposals are brought forward to deal with a problem which arises from a lack of system operated by the LSC. Namely, the inability of some suppliers to repay overpaid monies to the LSC, when a large gap has opened up between claims and payments. The simple mechanism for dealing with that problem is for the LSC to ensure quick review on known parameters of any such "gaps" and therefore quick, agreed adjustment of payment levels.
- 4.11 In our view, a certificate from each firm's accountants confirming business viability will represent sufficient assurance provided that the LSC puts its own house in order in relation to claims and payments.
- 4.12 The proposed requirement for firms to disclose their tax returns and other confidential information is entirely unacceptable. Some of our membership have suggested that

this is a sinister proposal. That the true purpose of obtaining this information is to enable the Legal Services Commission to drive down hourly rates and to understand which elements of Legal Aid payment cross subsidise unprofitable work and/or how private work may cross subsidise profitable Legal Aid work. That the real purpose of these proposals is not about developing the business in some kind of open and transparent relationship, but that the object is to undermine and diminish profitability.

4.13 The further conflicts which would arise relate to the transmission of this information to other levels of bureaucracy within the LSC in the event of price competitive tendering and the further conflict for relationship managers if they are involved in any bidding process on behalf of different firms with regard to levels of bid.

5. **Are there other ways in which the commission could reduce bureaucracy for providers without compromising our duty to secure quality and value for money services?**

5.1 We agree that E Business relationships are the way forward. There is a reference for a requirement for firms to participate in wider criminal justice IT initiatives. Usually, these are for the benefit of the procuring body and a cost to suppliers. In the context of the historical decline in hourly rates, and a series of cuts for suppliers, all would welcome proposals which transfer the burden of cost of change to the procuring body away from the suppliers.

6&7. **What improvements if any, might you suggest to the proposed process for the award of preferred supplier status (appendices B and C)?**

**What additions or deletions would you make to the proposed selection criteria to identify preferred suppliers and do you have any comments or concerns about specific criteria?**

- 6.1 It appears that any system of prioritisation depends upon the outcome of the Carter Review. We are unlikely to support the recommendations of the Carter Review and do not, as an association, accept the necessity for a minimum contract size, the elimination of small firms or the promotion of local monopolies for larger suppliers.
- 6.2 Regarding the generic criteria, we do not see the necessity to lump together all ratings. There may be extreme prejudice to a firm that employs a single immigration lawyer with a low rating and has a very large criminal department. Lumping ratings together is likely to persuade firms to “dump” more marginal fee earners and activities. It is clearly possible to de-bundle a firm’s services and to provide preferred supplier status by category.
- 6.3 The criteria include “no adverse OSS findings”. This is unrealistic. Any adverse finding must be viewed in context and it would be more appropriate for there to be some concept of relevance and materiality in relation to the outcome of any complaint process.
- 6.4 We are concerned that there should be fairness between all firms. We do not accept that firms could be prioritised by virtue of volume. It would also not be fair for firms to gain competitive advantage by becoming preferred suppliers to whom other advantages are then made available whilst other firms are in a queue as a result of a lack of LSC resources.
- 6.5 Reference is made to cost management and value for money and to the fact that criteria will be based on a procurement regime established after the Carter Review. We look forward to further consultations.

- 6.6 Our view of quality assurance in relation to police station advice and advocacy in the Magistrates Court is that quality is assured if the person giving advice is accredited regardless of whether or not they are a designated fee earner and that the 80% rules are not necessary.
- 6.7 We have concerns about using bill assessment rates. Choosing averages always means that a very substantial proportion of firms are above any given average. This is not a satisfactory way of proceeding because if it is a mandatory criteria, it will eliminate every firm who is above an average point. It may well be the case that firms with below average costs are in fact doing a very poor job and again we are in the territory of disagreement with regard to whether work was reasonably necessarily and properly done. It is also the case that individual cases may have very dramatic effects on statistics. We do not support bill assessment rates as criteria for admission to the status of preferred supplier.