

23 March 2017

The LCCSA response to the LGFS and Court Appointees Consultation

Introduction:

We are deeply disappointed by the announcement that the consultation could not be extended to allow consideration of the 3rd quarter of Legal Aid spend, the figures being due on the 31st March 2017.

We do not believe there is any justification for capping PPE or implementing the 8.75% suspended cut. The overall budget is on target, volumes are falling and inflation is rising. The case for cuts now is not made out, indeed on the evidence it would be irrational.

We hope this is a genuine consultation and that logic and reason, based on the evidence, will prevail.

1. Cutting Expenditure

1.1 It is abundantly clear that the purpose of the consultation is to effect *savings*. The summary, (B. Rationale and Policy Objectives, para 7.) says:

“In the short term the policy objective is to return expenditure to 2013-14 levels, while ensuring that we pay fairly for work actually and reasonably done”

And (para 11) that the proposed cap of PPE at 6,000 pages is an “interim measure” pending agreement on changes to the LGFS scheme.

1.2 The entire short term proposal arises from a view that there is an upward trend in LGFS expenditure following the Cost Judge’s decision in Napper. We do not believe that the figures establish that this is the case.



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SPEND ANALYSIS IN £M

	Crime Lower		Crime Higher				Total
	Police Stations	Magistrates Court	AGFS	LGFS	VHCC		
Year							
2013/14		376	226	292	56		950
2015/16		285	226	341	26		878
2016/17*		282	234	314	28		858

(* figures are a projection from first 2 quarters)

1.3 We also note that the numbers of VHCC contracts fell dramatically from 63 in 2008/9 to 28 (11/12), 20(12/13), 12(13/14), 3 (2014/15), 10(2015/16), and the projection of 2016/17 is 6. This is work decanted into the LGFS scheme and spend on Crime Higher was in fact as follows:

Year	LGFS	VHCC	TOTAL
2013/14	292	56	348
2015/16	341	26	367
2016/17*	314	28	342

(* Projected Figures)

Expenditure is already at 2013/14 levels and the increase in 2015/16 was a ‘blip’, magnified by excluding a substantial fall in VHCC spend. Further overall crime expenditure is £92 million below 2013/14 levels.

1. Payment for work actually and reasonably done

2.1 Prior to the LGFS scheme this was the basis for the assessment of bills. We were told that such a payment system was anachronistic. The LGFS is a crude mathematical formula envisaging “swings and roundabouts” and based on approximating national average outcomes by category of case.

2.2 It did not include “bolt ons” (as in the AGFS), to reflect other characteristics of cases such as custody or mental illness, payment for unused material or bad character applications; the proposal to CAP misunderstands what solicitors do. PPE takes account of all the work done, attendances on the client, witnesses and experts, site visits, scheduling (analysis of the significance of evidence) and especially work on unused material. These fees were modelled on historical spend on aggregated preparation. Reduction robs lawyers of payment for time spent.

2.3 LGFS built in a cut to expenditure and like all averaging schemes penalised the conscientious and rewarded the less so. That you now criticise your own scheme as not ensuring “tax payer’s money is best used” is a singular irony.

2.4 There was from 2008-9 a dramatic fall in VHCC designations, as rules were altered and discretion executed to decant cases into the LGFS. Falling VHCC spend was not fully reflected in LGFS rise. Our view is that the cut to “lower end” Crown Court LGFS cases was so high that it masked the transfer of ex-VHCC cases into the LGFS scheme.

2.5 The Average Costs per Case Table (Table 3, P6 Evidence Base) reflects the very low levels of payment. The largest percentage rises in Categories B (serious violence, serious drug offences) 27%, and K (other dishonesty, high value), 21%, are actually rises of one thousand pounds per case in B, and £5,100 in K. However the analysis is incomplete as we expect the detail of the falling trend identified in 2016/17 will show falls in these averages.

2.6 Elsewhere we note serious sexual offences, category J, fell by 13% and £700/case. Other work such as category E, Burglary, at £700/case is extraordinarily underpaid for defendants often in custody.

2.7 All Crown Court case fees incorporate a first sending now entirely unpaid since the abolition of committal proceedings and associated payments. The point is that you propose the reintroduction of payment for work actually and reasonably done but not for a great mass of work which is grossly underpaid.

2. Stability and Budget

3.1 Huge sums have been removed from Crime Spend. We accept volumes have fallen. We doubt that there is substantially less crime. We know much that could be prosecuted is not as Police and CPS struggle with their own cuts.

3.2 There is an overwhelming mass of evidence to support the view (see Otterburn, KPMG reports during “Two Tier” Consultation, Oxford Economics analysis) that more cuts will cause chaotic closure of firms.

3.3 Further that Crime Spend Budget objectives have been reached. Net spend (less VAT) is now below £750m and per Oxford Economics the trend is downwards.

3. Inflation

4.1 Inflation erodes the Costs Regime. Proposals are not “within the fixed envelope” when value is constantly declining as prices rise. This is particularly acute in London where all business costs, (e.g. rent, “rates”, wages, travel.) are all substantially higher.

4.2 Special Preparation envisages valuing work on hourly rates eroded by inflation for over two decades. This in itself is neither fair nor sustainable. *Actual pay* requires an upward revision of hourly rates.

4. The Rule of Law

5.1 It was a by-product of the expansion of legal aid that it promoted social inclusion (through access to justice), a numerous independent legal profession (both Solicitors and Bar), with local access (High Street Firms) and thereby promoted the Rule of Law. The latter is said in the foreword to be the basis “on which a fair and just society thrives.”

5.2 A review of the LASPO, including crime is due to report in the spring of 2018. The short term economic case for a cut is not made out by the figures. Engagement over a reformed LGFS should proceed in parallel to and be integrated with the LASPO review.

5.3 There is a threat to still implement the suspended 8.75 %, the second half of the enormous 17.5% cut to rates. The entire rationale of that cut was that a consolidated market would have economies of scale to offset hugely reduced fees. The collapse of two-tier contracting means that no consolidation took place and the 8.75% cut was simply gratuitous.

5.4 The economy of scale is a chimera in so far as there are physical limits on the capacity of any single solicitor at court or in the office. Every office comes with very considerable overheads which limit the benefit of volume.

5.5 The divorce of the costs of time (which relate the overheads of practice to fee earner hours) from Legal Aid rates has led to very low margins.

5.6 There is a flight of lawyers from defence work alongside difficulties in recruitment and an ageing cadre; all of which are a marker of future difficulties in sustaining both solicitors practices and barristers chambers.

5.7 Further cuts will be catastrophic. There is no budgetary case to do so unless cynically funds are needed to be spent elsewhere on prison officers. We need to note that less resources to defend people will result in a higher prison population (unrepresented defendants in video link cases go more frequently to prison). It is a catastrophe that should be avoided. We hope to engage in

constructive reform in relation to the multitude of initiatives across the Criminal Justice System, which will include a fair basis of payment.

Consultation Questions

Q1. We do not agree with the proposed reduction of the threshold of PPE to 6000 pages. It is not necessary nor justified by the published statistics on spend, see above.

Q2. We do not propose a different threshold or any other method of addressing the issue of a rising trend in LGFS expenditure because there is not one.

Q3. We do not agree with the proposed capping of court appointees costs at Legal Aid rates. This is difficult private work. It is not legally aided criminal work. Such a proposal would significantly underpay the work as completely inadequate legal aid hourly rates will often be less than a legal aid order. The proposal risks market failure with unintended consequences for the complainants of domestic violence.