



Procurement of Criminal Defence Services: Market-based reform

On 5 July 2005, following the publication of the command paper 'A Fairer Deal for Legal Aid', the Lord Chancellor appointed Lord Carter of Coles to conduct an independent review into legal aid procurement. The review will produce a plan for a procurement system which achieves maximum value for money and control over spending, whilst ensuring quality and fairness of the justice system.

Throughout the course of the review, Lord Carter and his team have had regular meetings with key stakeholders in the legal profession, including practitioners and their representative bodies, as well as receiving a number of written submissions. This has allowed Lord Carter to gain significant input from the profession, as he develops his proposals in an iterative manner.

Lord Carter and his team have visited courts and police stations throughout England and Wales, and have met regularly with the judiciary, the Legal Services Commission, central government departments and other public authorities.

On 9 Feb 2006, Lord Carter published his interim report on his proposals for a market-based approach to criminal legal aid procurement. The proposals are designed to reward good quality, efficient practitioners by providing them with the opportunity to grow through access to increased volumes of work.

Introducing his interim report, **Procurement of Criminal Defence Services: Market-based reform**, Lord Carter said:

"We should be proud of our system of criminal legal aid. It ensures that everyone, whatever their wealth, has access to justice. But there are inherent inefficiencies in the way criminal legal aid work is procured that need addressing if we are to control increasing costs.

The lawyers and their staff delivering publicly funded legal services provide a valuable and constitutional service. However, a significant amount of the criminal legal aid budget is spent on unproductive time and anomalies in the system.

Moving to a sustainable market-based procurement system should help create a quality defence service that rewards the most efficient suppliers, provides clients with appropriate choice and brings greater predictability to cost."

Lord Carter says in his report that a one-size-fits-all solution will not be appropriate, and there will need to be sufficient time to allow a sustainable efficient supplier base to develop. Particular consideration will need to be given for certain areas, such as those with large black and ethnic minority communities and those areas that are sparsely populated. Lord Carter also acknowledges the need to maintain the continuity of delivery for criminal defence services in London, and the approach put forward in his interim report replaces the Legal Services Commission's original proposals for price competitive tendering in London.

Throughout the final stage of the review, Lord Carter will work closely with the profession to develop an orderly transition process with a sensible timescale which will ensure the sustainability of the new procurement system.

Key Proposals in the Interim Report

It is important that the legal profession, especially those delivering criminal defence services, are aware of the key proposals made in the interim report. In summary, they include the following:

Police Station

- Fixed price contracts for group of stations
- Contracts to be awarded based on quality and volume bids
- Travel and waiting to be built into contracts
- Duty Solicitor scheme for magistrates' court work to be built into contracts
- Price competition to be introduced over time, replacing previous LSC proposals for competition in London

Magistrates' Court

- Introduce fixed fees based on case type, offence type and region
- Magistrates' court contracts will be linked to police station contracts
- Travel and waiting to be incorporated within the fixed fee

Crown Court Non-VHCC

- All cases expected to last 30 days or less will be paid through a graduated fee system for both barristers and solicitors
- The scheme will also cover those cases over 30 days that the complex crime unit will decide not to run under contract
- Solicitors to gain work through panels matching police station contract areas
- Panel membership for firms/consortia of firms to be initially based on volume bids
- Current graduated fee scheme for advocates to be simplified (base fee according the offence type with tapered uplifts applying after 2-3 days)
- New graduated fee scheme to be introduced for solicitors

VHCC

- Panel for teams of defence suppliers (litigators and advocates)
- Enhanced quality test based on experience and expertise before bidding for panel access
- Price and volume bidding for panel access
- Tapering of rates over life of case

- Case management protocols demonstrating the working relationship between litigators and advocates in order to minimise duplication
- Selection of concluded cases assessed by professionally-led panel against quality criteria
- All cases likely to last longer than 30 days to be reported – discretion to rest with LSC on whether or not to contract

Lord Carter's acknowledges that moving towards competition is a significant change from the present system, and his final plan will include recommendations on transitional support for practitioners. That is why Lord Carter proposed in his interim report that the reforms should be introduced in three phases over a three-year period up to 2009. These phases are:

1. Fixed pricing for defence services where it doesn't already exist and re-balancing inequities in current fixed pricing schemes;
2. Promoting a managed market by guaranteeing access to volume for those preferred suppliers with sufficient capacity and quality, and providing support services to aid transition; and
3. Introducing managed competition where a healthy market has developed based on quality, volume and price so that the most efficient, good quality suppliers can grow and thrive.

To take forward the final phase of work, including refining and financially modelling the proposals made in the interim report, Lord Carter will continue to engage with practitioners and their representative bodies.

Timetable

Lord Carter is expecting to publish his final report later this Spring, covering:

- Fully costed criminal legal aid schemes based on the earlier interim paper
- Design and costing of new approach to civil and family legal aid procurement
- Outline of new delivery arrangements (including effect on admin efficiencies and transitional support)
- Overall spending profile for next 3-5 years

Further information

Regular updates on the Review, including Lord Carter's recent interim report, can be found at www.legalaidprocurementreview.gov.uk.

Contact Us

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