

## From the President

To Presidents and Secretaries  
Local Law Societies

By email

5 September 2013



### **Proposals to reform the procurement of criminal legal aid**

Earlier today the Ministry of Justice published a substantially revised set of proposals for reforming the procurement of criminal legal aid for public consultation. As today's revised proposals represent the outcome of a period of detailed and constructive dialogue between the Ministry of Justice and the Law Society I wanted to write to you directly to explain how we got to today's announcement.

When the Lord Chancellor published his original proposals back in April I, like many of you, was horrified. We faced the prospect of up to 75% of firms not receiving a contract, and those remaining at the mercy of a highly risky price competition. We presented Chris Grayling with hard evidence – from Otterburn Consulting and Deloitte – which spelled out very clearly what a huge risk the proposals were for viability of the sector and the future of quality legal representation.

However, we have consistently said – and our expert evidence confirmed – that the status quo is not a viable option either. The sector needs to be economically viable and sustainable over the long term. All of the evidence suggests that the present market, predominantly because it is so highly fragmented, is ill equipped to face the challenges of the future.

It is for this reason that we sought to persuade the Government to substantially amend their proposals. It is as a result of that decision to engage directly and constructively with the Ministry that today's proposal represents such a step forward.

Today's announcement means:

- Clients able to choose their own legal aid lawyer.
- Tendering criteria based on quality and capacity, not on price.
- All firms meeting a minimum quality criteria qualify for own client contracts.
- Contracts will cover small geographical areas where populations are thinly spread.
- More time for firms to prepare for the new contract arrangements.

Under today's plans all firms who meet a basic quality threshold will be permitted to undertake own client work. There will be a separate contracting scheme for duty solicitor slots, with additional capacity and capability requirements.



The Law Society

Throughout this process a major concern has been to ensure the financial viability of firms. We have agreed with the Ministry of Justice to jointly commission independent research to determine the minimum level of work required to give a reasonable assurance of viability. This will help to set the number and size of duty solicitor contracts. The consultation suggests that there may be around 570 such contracts awarded. In areas where there are more bidders than contracts available, contracts will be awarded on the basis of capacity and capability criteria. Price will play no part in this assessment and fees will continue to be set administratively.

There will be 62 procurement areas for duty contracts, compared to 42 in the original proposals. London will be sub-divided according to the nine Local Justice Areas, and rural areas will be divided based on a range of criteria, including a maximum 1.5 hours drive time.

The new arrangements will not provide a duty solicitor contract for every firm, but smaller firms will have the option of forming consortia or other joint arrangement. This, taken together with the fact that 80% of the slots are currently fulfilled by 25% of the firms, means that much of the work will likely remain with the firms currently undertaking it. The consolidation of the market will take place over a timescale that will allow most firms that want to continue doing this work to be able to plan a way forward. The new contracts are now expected to start in Spring 2015. We will be providing guidance and template documentation to help firms to develop such plans.

We have not achieved everything we would have liked. In particular, we have not persuaded the Ministry of the significant risk to the long-term sustainability of the supplier base if significant cuts are introduced. However, they have been persuaded of the need to phase their introduction, so that they can see the impact of the first stage of cuts before imposing the second stage. We have also persuaded them to introduce some measures to improve cashflow, which we hope will mitigate some of the impact of the cuts.

Our aim throughout this process has been to achieve the best possible outcome for our members and those who require legal aid in the circumstances. We are under no illusion that under today's proposals our members undertaking criminal defence work face a very challenging future. We recognise that some firms in some areas will be unable to survive a failure to secure a duty contract.

Nonetheless, given what we faced in April of this year, today's proposals represent the best achievable outcome and the most likely opportunity for a long-term sustainable criminal defence community.



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