

Protest March

The Criminal Law Solicitors Association has unveiled plans for its first training day next month – and is calling for 100 per cent attendance by criminal lawyers around the country.

The event will take place at the NEC in Birmingham on 21 March. It will focus on proposed changes to police station work and Very High Cost Cases, looking at the Legal Services Commission's consultation papers which were released earlier this month.

The police station session will deal with the basics of the paper, and will also look at how practitioners might respond and debate other ideas, perhaps not included in Lord Carter's report, for improving the current system. The VHCC session will simply ask: "Is this an effective consultation?" Attendees will get two CPD points.

CLSA Director Rodney Warren stressed that the days would be open to both CLSA members and non-members alike and he would like to see full attendance. "All courts and police forces will be notified," he added.

"These changes will affect everyone in the criminal law system. We want to make people aware of the content of these consultations and hear their views about what changes need to be made. These changes are so fundamentally essential, everybody engaged in police station advice or representing people in courts at every level should be aware of these proposals. 21 March will be devoted to this task."

See below for reasons to attend the training day. For more information contact Sue Johnson (tel: 01273 676725 or e-mail: sue@clsa.co.uk).

War on errors

Criminal defence solicitors have this month branded new plans by the LSC to overhaul police station arrangements as 'nonsense' and 'unsustainable' – and have warned that they could cause more industrial action and prove to be the final nail in the coffin of the justice system.

Launching its consultation paper 'Police station boundaries, fixed fees and new working arrangements', the LSC moots combining current boundary areas, changing slot allocations, imposing new minimum contract thresholds, and basing fixed fees on the new setups. A major concern is that firms will not be paid for travel and waiting.

Current schemes where there are less than six providers or where the scheme overall is worth less than £300,000 annually for police station work will be scrapped and merged into other schemes, although 'three or four' existing schemes in London will be combined no matter how big they are or how much they reap financially. Providers should spend no more than 45 minutes getting to the custody centre to qualify for a scheme, although confused solicitors are at a loss to know how the LSC has calculated those figures.

The LSC said the new arrangements would provide 'a practicable basis for [best value] competition'. The cut-off date for responses to the consultation is 10 April. The changes are planned to come into play in October.

Chief executive Carolyn Regan said: "We are committed to improving value for money and creating a sustainable legal aid scheme so clients have continuing access to the serviced they need."

But Helen Cousins, partner at Leeds firm Cousins Tyrer and former CLSA chair, argued that the figures put forward for the miles between firms and police stations were "a joke", as were the calculations for the time taken to travel between the two.

"This is total nonsense and completely unsustainable, we can't work with the fees being imposed on us or under the strictures they are putting on us," she told Criminal Lawyer Bulletin.

She said the LSC had worked out that her firm's lawyers should take under six minutes to travel to one custody centre in Leeds, but it normally took staff 40 minutes. "Maybe you could do it by helicopter, but certainly not in any other way," she insisted.

Wiping travelling and waiting out of the equation also meant there would be no profit in police station work as these were the greatest variables in fixed fees and were outside of lawyers' control, she added. Helen Cousins predicted there would be more strikes if the proposals went ahead, along with other types of action such as not attending the police station out-of-hours. "People are now angrier than I have ever seen them before," she said.

John Smith, partner at Carlisle Criminal Law Chambers, agreed. "The overall effect seems to be that [the plans] will increase travelling, which is not something the LSC will pay us for," he said. He warned that firms were now in the lamentable position of considering whether to do the same volume of police station work but be paid less, work 'like hell' to achieve current rates of pay, or give up entirely and do something else. "Firms staying in will get increased volumes of work but not profitability," he predicted. "It is a disaster."

To sum up, Helen Cousins said: "I personally would now happily consider action to disrupt the system. These proposals have crystallised the minds of many."

High cost for access to justice

'Farcical' LSC proposals to change the way Very High Cost Cases are dealt with are fundamentally unfair and will see firms deserting clients in some areas of law and parts of the country, criminal solicitors have warned.

The LSC is currently inviting firms to compete for places on one of two panels – panel 'A' will include firms that fulfil the Commission's 'essential' and 'desirable' requirements and bid at the best price. Panel 'B' will also have to bid at a low price but need only fulfil the essential requirements, and will take on work where no 'panel A' member is available.

The LSC said this would provide "increased or more consistent" workload for firms dealing with VHCCs.

Carolyn Regan said although there were some aspects of a case that were outside the control of defence lawyers, defence teams should concentrate on concluding cases "in

the most efficient way, focusing on the core issues and sharing work across a team of experienced individuals, rather than duplicating tasks”.

The closing date for responses to the consultation is 23 March. Application packs will be available from May, with firms having to bid by July and the new regime coming into play in September.

But Brian Craig, practice manager at national firm Tuckers, said the consultation was ‘ill conceived’, not even letting solicitors know what remuneration they would get under the new scheme. “It’s an absolute farce that they put out a consultation paper without identifying what fees they are intending to pay,” he said. He also complained that the LSC was basing its assessments on cases done in the past, and was disregarding recent and current cases, that the fees would not be at the market clearing rate, and that there was no appeals process. He predicted that firms in London and the south east would leave in droves because there would be no uplift, even though costs in those areas are higher than in other parts of the country.

Richard Nelson, partner at Nottingham firm Business Defence Solicitors and secretary of the Specialist Fraud Association, also predicted an ‘exodus’ of specialist fraud lawyers, many of whom have transferable skills to take them into the more lucrative areas of commercial and financial services law. He said the real ‘sting in the tail’ would be the rates and complained that many cases that took years to prepare would no longer qualify as VHCCs because of their relatively short trial length. Less experienced lawyers would suffer largely from rates cut, and many firms doing mainly business-related crime could be pushed out because they do not undertake other Crown Court work, he said.

“There is a steady stream of fraud lawyers who now want to get out of legal aid work,” he said, adding: “It is not a good time to go into court as an innocent person.”

Closed shop

It will come as no surprise to solicitors across the country that the controversial Public Defender Service has shut the doors on half of its offices because they have not proved to be cost effective. The PDS branches in Darlington, Birmingham and Chester are to cease operating, while the Middlesbrough PDS will not re-open following its closure last year. Swansea and Pontypridd will stay in business but are under review. Only the Cheltenham and Darlington offices are on a sure footing.

Legal aid minister Vera Baird proudly said that research had shown that the offices provided better quality of service than private practice, arguing that the remaining four offices offered “a strong platform for the PDS future”.

LSC chief executive Carolyn Regan was adamant the PDS had achieved good value for money as well as high levels of client satisfaction. She blamed the closure of half of the offices on “the way the PDS was initially set up”.

CLSA director Rodney Warren pondered how the offices would fare if they were subject to best value tendering, according to the LSC’s plans for the process to be implemented in the largest metropolitan areas first.

He also questioned why the LSC justified keeping the four PDS offices open by saying they were a “testbed for service delivery”, arguing that private practice was already serving as a guinea pig through no choice of its own. He said: “I’m intrigued by the suggestion that the remaining PDS offices are a testbed when the LSC seems to regard the entire profession as being there to provide that service.”

On the edge

On that same note, Rodney Warren slated the government and the LSC earlier this month when he appeared in front of the Constitutional Affairs Select committee, which is looking into the Carter review of legal aid. MP Jeremy Wright suggested that it might be ‘safer’ to test reforms in the criminal arena before applying them to the civil justice system.

Rodney Warren replied: “It seems to be taking an extraordinary risk with the effective operation of the criminal justice system to try an experiment across the board, and just hope that it is going to operate effectively. I think we are united in expressing degrees of concern about varying aspects of it, and, therefore, to leap ahead with criminal law without being certain of the consequences, I think, is taking a very great risk indeed. I do not think it is a question of putting one before the other as a means of testing it; it seems that such an experiment should be proved to be a successful pattern and process before it is put into operation.”

He was joined in the evidence session by Helen Cousins and Brian Craig.

Helen Cousins told the MPs that law firms were on the brink of quitting criminal law work. “The criminal justice system as a whole feels, to those who practise within it, to be right on the very edge,” she warned. “The police are struggling, we understand, with various aspects; the Probation Service fails to produce reports more often than they produce them; the court staff are striking. We are right on the edge. It seems to me that if you push the criminal profession any further than they are at the moment, which will take them over the edge, then the whole thing will collapse, because it cannot work without us. To try and experiment on a system that is so fragile and on a group that within that system is beyond fragile seems to me to be lunacy.”

For information about LSC consultations and the PDS, see www.legalservices.gov.uk

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