

'The Criminal Law Solicitors Association is very keen to let all its members know what's happening, so in addition to our newsletter and regular e-mail alerts, we will now publish this monthly on-line Bulletin.'

*Rodney Warren, CLSA director*

### **Consultation Watch**

CLSA is urging criminal defence solicitors to bring their views to the table when it comes to consultations – but they should get their skates on if they want to have their say. Firstly, there is the LSC consultation entitled 'Market Stability Measures', with a closing date for responses of 24 January. This poses four main questions on criminal lawyers' preferences – and ideas for improvement – regarding slot allocations, service requirements, performance standards and whether there should be a moratorium on new contracts.

Also on the agenda is consultation on amendments to the general criminal contract, due to come into play on 7 April. It encompasses changes needed to overhaul the magistrates' standard fees court structure in main urban areas. It also includes further important amendments to change the funding arrangements for prescribed proceedings, as well as other 'minor' amendments. The deadline for responses is 9 February.

And a note for the future: the Legal Services Commission will shortly be consulting on boundary areas for police station duty solicitors in early February. Lord Carter said in his review that the current areas should be revised and more clearly defined, so the LSC will be looking for ideas on how to implement this and to find out what impact any proposals will have on the ground. See [www.legalservices.gov.uk](http://www.legalservices.gov.uk) to take a look at the current consultation papers.

### **What does it mean?**

CLSA chairman Ian Kelcey explains why he believes the government's changes to means testing has resulted in 'a mess' which, according to recent research, has seen the number of people eligible for legal aid drastically cut: 'When means testing was being discussed, all the practitioner associations urged the Department for Constitutional Affairs and the LSC to consider piloting it in some areas to see what the effect would be but – strangely for a government that has more pilots than BA – they refused. We now have the mess that is means testing, ill thought through on a rushed timetable based on flawed data. Whilst it gives me no pleasure to say "We told you so", that is exactly what we say. Three weeks before implementation the LSC were told both by myself and John Baker, the excellent representative of the Justices Clerks Society, that unless they made significant changes and took more time before implementation this would be "disaster writ large". Well, you can be the judge of whether that is right. We now have the New Policy Institute findings which show that 75% of working adults are now ineligible for legal aid. The system is fundamentally flawed and needs to be scrapped and redrawn so it provides justice and not injustice.'

### **Make a plea to your MP**

CLSA calls on all solicitors to contact their MPs with their concerns about the legal aid system before it is too late. This follows a debate in the House of Commons last week which saw legal aid minister Vera Baird come under fire for continuing cuts. Simon Hughes demanded to know why legal aid had 'taken so much of a hit' compared to health and education spending, while his colleague Dominic Grieve put a question mark over the DCA's role in the public funding fiasco, asking why it had been 'one of the biggest losers in the various spending rounds and negotiations [with the Treasury]'. This suggests that worried MPs are sitting up and listening to fears over the legal aid crisis, but they need more ammunition in the form of lawyers' views.

### **Gradual progress**

The LSC has agreed to look at ways of revising its graduated fees scheme for Crown Court work, amid concerns from practitioners that original plans did not take into consideration what their work actually entails. At a meeting in November last year, lawyers told LSC officials that it was unrealistic to apply the same pay regime to litigants that advocates work under. Rob Brown, representing the London Criminal Court Solicitors Association, argued that it was unfair to base payment on the type of case, volume of prosecution evidence and the length of trial – as with advocates – because there were many different factors affecting litigators, such as looking at unused material or advising clients with language difficulties. The LSC has now agreed that the 'swings and roundabouts' approach may not work for crime practitioners. Rob Brown says the result is encouraging. 'At least they have agreed to look at it, rather than just buying a model off the shelf,' he adds. The changes are likely to come into play in October.

### **A matter of preference**

The LSC has amended its preferred supplier model after solicitors expressed concerns, particularly over the impact on small firms and the need to give providers sufficient time and support to achieve preferred supplier status. Simon Pottinger, director of consultancy JRS, says the LSC's response to consultation is rather vague, but believes the new scheme appears to have taken out the worst elements, such as financial disclosure and immediate peer review if a firm fails to meet the 'category 2' threshold. But he warns that criminal practices in particular could be disadvantaged as some of the criteria applied – including electronic case management – are harder for crime firms to achieve. He predicts that business planning could pose other problems. 'It's difficult when you don't know what the future holds and when you have to wait and see how Carter pans out,' he says. 'But business planning is something that is very important in the preferred supplier scheme.'

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