



News round-up: issues, consultations and CLSA responses

Virtual courts

The London Criminal Justice Board decided that a video link between the police custody area and the court would be an effective and speedy way of dealing with some defendants. The prototype scheme was based at Camberwell Magistrates' Court. Since then, the concept has grown. In his 2008 Independent Review of Policing Sir Ronnie Flanagan flagged virtual courts as a possible way to go in order to improve efficiency.

Now full pilots are soon to be under way in south London and Ebbsfleet in north Kent.

Implementation of this scheme would amount to a major shift in the work of the courts and the way in which defendants are treated, so CLSA's view is that there must be public consultation after the fullest evaluation of the pilots.

Three particular issues are of concern to CLSA: First, the financial aspects for solicitors working in the scheme. The offer is effectively a standard fee as part of the magistrates' court payment regime, £200 plus vat, £240 plus VAT out of hours. For subsequent appearances in the magistrates' court, the value of that work is rolled up in the fee.

Secondly of concern are the practical processes of the operation and what it will mean for solicitors, and thirdly, from a wider public interest perspective, whether the scheme is capable of enhancing or reducing public confidence in the criminal justice system, and whether justice is being done for the defendant, in circumstances where there has been no public consultation.

Defendants' costs (central funds) orders

The Association opposes both the abolition of defendants' costs orders for acquitted defendants in the magistrates' court and the Crown court, and the proposal that defence costs orders be limited to recoverable legal aid rates. The State chooses to prosecute defendants; those who are innocent of the charges brought against them do not have that choice. The Association takes the view that the opinion expressed by Lord Bach in his foreword to the consultation, that the choice of a defendant to privately fund his defence is akin to the choice of a parent to privately fund his child's education, is an entirely inappropriate comparison.

If the country needs to save money on the administration of criminal justice it would be better to focus on the quality of the decisions to prosecute rather than on those who successfully defend those state prosecutions.

2010 contract

Although we agree that the current contract is overly complex and bureaucratic, we do not accept that the LSC's continuing desire to change and rewrite every contract up for renewal is an appropriate course. However, the Commission's work on Duty Solicitor Arrangements could be useful. The proposal is that an individual can join the duty solicitor scheme based on a test which will simply be the office location according to postcode. CLSA supports this move, which should not result in changes for anyone but will introduce some clarity and simplicity.

VHCC

Broadly speaking, solicitors do not see the need to change from the current hourly rate position and are understandably sceptical about 'benefits' and see it as change for change's sake. It has always been our position that any change must involve identifiable improvement for solicitors. It is now clear that the current scheme will not be workable for the Bar either.

Possibly, the current contract could be extended by up to one year, and one solution might be to take that option to allow more time to develop a successor scheme.

CLSA is particularly conscious of the position of new entrants.

More detailed proposals as to the future of the current contracts are likely to be published around the end of March.

Crown Court means testing

The LSC's suggestion that means testing was working well in magistrates' courts is a distortion: it was a disastrous implementation, with many frustrating teething problems. It has now settled down but it took a long time. The Commission is looking to implement the scheme in the Crown Court slightly differently: income and capital levels are the same, but the scheme will be contributory, and the legal aid order will not be revoked if people do not make their contributions. In those circumstances, legal aid will be allowed but enforcement proceedings would be brought. This is a strange concept. The reason for this is that the Commission is aware that the most widespread criticism of means testing is that it can destroy access to justice. It is unpopular with judges who do not like dealing with unrepresented defendants, and cases become more complicated and take longer.

A big problem with the system in the magistrates' court is that it can be difficult for some people to satisfy the requirements as to means.

In the Crown Court, if a defendant can't prove means, he will be put on maximum contributions. However, this could mean enforcing against someone with no money, or a person may just refuse to take legal aid because of the high contributions and end up representing himself.

The CLSA view has always been that those who can afford to, pay, so we welcome the fact that people who are wealthy are made to contribute.

What we still query, however, are the levels and the bureaucracy in the magistrates' court.

Litigators' graduated fee scheme

So far this has been a disaster for defence practitioners, as the fees have been pitched too low. It is impossible to make a scheme previously designed for advocates fit the different work of solicitors. We get served with a lot of material which doesn't go towards the page count, and the Commission does not have a good system for ensuring accuracy in the page count.

There is also disparity in the time taken for cases to come to court in different areas – in the south of England it can take up to a year, while in the north, three months is common. This is unfair because of the additional work required to manage the case and the defendant for longer.

Also, there is no additional fee for breach matters, and the fees for committals for sentence are very low. The only cases which seem to pay well are those with a very high page count, so the system works disproportionately in favour of fraud cases.

If you have any specific issues, particularly in regard to the litigators' graduated fee scheme, please email **Rodney Warren** at rw@clsa.co.uk

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