



House of Commons
Constitutional Affairs
Committee

Implementation of the Carter Review of Legal Aid

Third Report of Session 2006–07

Volume I



House of Commons
Constitutional Affairs
Committee

Implementation of the Carter Review of Legal Aid

Third Report of Session 2006–07

Volume I

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 18 April 2007*

HC 223-I
Published on 1 May 2007
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Constitutional Affairs Committee

The Constitutional Affairs Committee (previously the Committee on the Lord Chancellor's Department) is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Constitutional Affairs and associated public bodies.

Current membership

Rt Hon Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)
David Howarth MP (*Liberal Democrat, Cambridge*)
Siân James MP (*Labour, Swansea East*)
Mr Piara S Khabra MP (*Labour, Ealing Southall*)
Jessica Morden MP (*Labour, Newport East*)
Julie Morgan MP (*Labour, Cardiff North*)
Robert Neill MP (*Conservative, Bromley and Chislehurst*)
Mr Andrew Tyrie MP (*Conservative, Chichester*)
Rt Hon Keith Vaz MP (*Labour, Leicester East*)
Dr Alan Whitehead MP (*Labour, Southampton Test*)
Jeremy Wright MP (*Conservative, Rugby and Kenilworth*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

All publications of the Committee (including press notices) are on the internet at www.parliament.uk/conaffcom

Committee staff

The current staff of the Committee are Roger Phillips (Clerk), Dr Rebecca Davies (Second Clerk), Maik Martin (Committee Legal Specialist), Jane Trew (Committee Assistant - EDRM), Alison Mara (Committee Assistant), Chryssa Poupard (Secretary), and Jessica Bridges-Palmer (Committee Media Officer).

Contacts

Correspondence should be addressed to the Clerk of the Constitutional Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is conaffcom@parliament.uk

Media enquiries can be addressed to Jessica Bridges-Palmer, Committee Media Officer, House of Commons, 7 Millbank, London SW1P 3JA. Telephone number 020 7219 0724 and email address bridgespalmerj@parliament.uk

Contents

| Report | <i>Page</i> |
|--|-------------|
| Summary | 3 |
| 1 Introduction | 5 |
| The inquiry | 5 |
| Legal aid and access to justice | 6 |
| The reform proposals | 8 |
| 2 Business background | 10 |
| The Legal Aid budget | 10 |
| Increases in the Legal Aid budget | 10 |
| Identifying the major cost drivers | 12 |
| The supplier base | 15 |
| The decline in the supplier base | 15 |
| The fragility of the legal aid supplier base | 18 |
| 3 Fixed and graduated fees in the transitional period | 20 |
| The move from hourly rates to fees per case – a continuing process | 20 |
| The new fee schemes | 21 |
| Flat fixed fees and the quality of legal aid | 23 |
| Protecting vulnerable clients | 24 |
| A risk to specialist providers | 26 |
| Regional differentiations in fees | 28 |
| The inclusion of travel and waiting time costs in the fee schemes | 28 |
| Not for Profit organisations – a special case? | 30 |
| Detailed impact of the new fee schemes | 32 |
| The criminal fee scheme | 32 |
| The family fee schemes | 35 |
| The civil fee schemes | 37 |
| The combined impact of the fee schemes | 40 |
| Conclusion | 41 |
| Lack of adequate data | 41 |
| Risks in the transitional period | 43 |
| 4 ‘Best Value Tendering’ – the market-based approach | 45 |
| The legal aid market – how will market rules apply? | 45 |
| The existence of an appropriate market | 45 |
| The Government’s acceptance of increasing prices | 46 |
| What will happen after the first bid round? | 48 |
| ‘Winner’s curse’ and market stability | 48 |
| Competition and market entry in subsequent bid rounds | 49 |
| The tendering process – a guarantee for quality? | 51 |
| The fee structure and adequate sharing of economic risk | 53 |
| The need for piloting competitive tendering | 55 |

| | | |
|-----------|---|-----------|
| 5 | A move to fewer and larger suppliers | 59 |
| | Lord Carter’s plan: fewer and larger legal aid providers | 59 |
| | The impact of moving to larger providers | 59 |
| | Gearing in legal aid firms and the impact on quality | 60 |
| | Adequate provision in rural areas and smaller towns | 61 |
| 6 | Sustaining high quality and expert advice | 63 |
| | Peer review and the new quality assurance mechanism | 63 |
| | The LSC proposals | 63 |
| | Comments on peer review | 64 |
| | Quality assessment on the basis of a file | 65 |
| | Permanence of quality standards | 66 |
| | Recognition of expertise | 67 |
| | Child care proceedings | 67 |
| | Police station work | 68 |
| 7 | The impact of the reforms on BME firms and clients | 70 |
| | BME providers | 70 |
| | BME clients | 71 |
| | A comprehensive race impact assessment | 72 |
| | A breach of the Race Relations Act? | 73 |
| 8 | The relationship between the LSC and suppliers | 76 |
| 9 | Conclusion | 79 |
| 10 | Recommendations | 80 |
| | Formal minutes | 89 |
| | Witnesses | 90 |
| | List of written evidence | 91 |
| | List of unprinted evidence | 93 |

Summary

This report examines the Government's proposals for radical reform of the Legal Aid system. The Government plans to change the basis on which Legal Aid is to be procured by introducing a transitional system of fixed and graduated fees for cases (rather than payment on an hourly basis as is the practice now in many areas of legal aid work) as a way of preparing for full competitive tendering for Legal Aid contracts by solicitors.

The Government is rightly concerned about the considerable increase in the Legal Aid budget in recent years. The purpose of these reforms is to find a way of halting these increases and easing the pressure on civil legal aid. To do this, it suggests a wholesale reform of the Legal Aid system, even though the two main areas in which expenditure has risen unsustainably are Crown Court defence work and public law children cases — other areas of expenditure are either stable or, in real terms, declining. Despite the rise in Legal Aid expenditure, in recent years there has been considerable financial pressure on solicitors providing Legal Aid services. Many have stopped doing Legal Aid work.

Legal Aid practitioners and others have criticised the plans for imposing fixed and graduated fees in the transitional period. They are seen as over-complex, rigid and likely to impose unsustainable cuts in the fee income of solicitors' firms. The plans have not been based on adequate data. The most vulnerable clients — those most in need of Legal Aid assistance — are likely to suffer. The plans for a transitional scheme should not proceed.

The Government's goal is to introduce a market-based approach by way of Best Value Tendering. No detailed plans for how this will work have been made public. The Legal Services Commission has not yet thought through how it intends to implement this reform. There is a complete lack of reliable research into the potential effects of competitive tendering on legal aid suppliers and clients. These proposals need to be tried out in a geographically limited area before any general scheme is introduced.

The drive to limit the cost of provision of Legal Aid by ensuring price competitiveness raises questions about the continuing quality of the advice provided by Legal Aid solicitors, especially in areas of specialist expertise. A system of peer review is proposed to ensure the maintenance of high quality. There are concerns about peer review's effectiveness, particularly under a system of competitive tendering.

The Government's plan is to involve fewer but larger solicitors' firms in the Legal Aid system in order to achieve administrative savings. We doubt whether the potential savings resulting from such a move would justify the risks inherent in this change. There is no evidence to suggest that larger providers would necessarily be more efficient and deliver legal aid work at a higher quality than smaller providers.

The impact of the reforms on black and minority ethnic (BME) firms and their clients is one of our main areas of concern. Such firms will be disproportionately disadvantaged by these proposals. The question has been raised whether they would constitute a breach of Race Equality legislation.

The clear breakdown in the relationship between the Legal Services Commission and

suppliers has been a disquieting aspect of the inquiry. This has recently come to a crisis point. Before any successful reform can be implemented, the two sides must rebuild a sense of trust in each other.

Overall, while we support the fundamental aims of the reforms and recognise that there is an urgent necessity to limit Legal Aid expenditure, we believe that the Government has introduced these plans too quickly, in too rigid a way and with insufficient evidence.

