

# Legal Aid Reform: the Way Ahead





# **Legal Aid Reform: the Way Ahead**

**Presented to Parliament  
by the Secretary of State for Constitutional Affairs and Lord Chancellor**

**By Command of Her Majesty  
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## Contents

Foreword	3
Introduction and Executive Summary	6
Criminal Legal Aid	14
Civil, Family and Immigration Legal Aid	24
Managing The Change	39
Conclusion	48
Annex A - Tailored Fixed Fee replacement, fees to apply from 1 October 2007	50
Annex B – Timetable for reforms	52
Annex C – Outline of Government Responses to Lord Carter’s proposals for Legal Aid Procurement	57

## Legal Aid Reform: the Way Ahead

## Foreword

by Lord Falconer, Secretary of State for Constitutional Affairs and Lord Chancellor  
and Vera Baird QC MP, Parliamentary Under-Secretary of State

This paper explains how the Government and the Legal Services Commission are going to deliver a new system of legal aid that will be sustainable in the long term. It describes the proposed Fixed and graduated fee schemes that will apply to nearly all areas of legal aid, along with other measures to encourage efficiency and innovation, prior to the introduction of best value competition. It follows an intensive consultation exercise with the professions, which was launched in July 2006.

Legal Aid is fundamental to a fair and decent society. Since Clement Attlee introduced legal aid nearly 60 years ago, it has provided millions of people with advice, support and representation, many of whom would otherwise have been denied access to justice because they could not have afforded to pay.

Legal aid is one of the cornerstones of the post-war welfare state, yet it is unique as a public service in that it is provided almost entirely by thousands of private and third sector practitioners, running their own businesses. Some of these practitioners focus exclusively on legally aided clients, others provide services to a whole range of people seeking help.

The expectations and pressures faced by the legal aid system today are very different to those of sixty years ago. Legal aid fulfils two roles: it needs to be a part of an ever more sophisticated justice system, and, as an integral part of the welfare state, it needs to contribute to the fight against social exclusion. We need to reform the system to make sure it can continue to fulfil these roles effectively.

The Government wants a system that puts clients first, that offers both choice and quality. However legal aid, like the rest of the public sector, needs to live within a finite budget: the increase in spending over the last decade (£1.5 billion in 1997 to over £2 billion now), is unsustainable. We want a system that is fair to clients, fair to the taxpayer, and fair to practitioners. We want a legal aid system that will be sustainable, and is suited to the needs of the 21<sup>st</sup> century. We want a system that will safeguard the future provision of legal aid for those who really need it.

## Legal Aid Reform: the Way Ahead

The Government outlined this vision in the paper *A Fairer Deal for Legal Aid*, published in July 2005. It set out a new direction for the provision of legal aid and a wide-ranging programme of reform. Follow up to it has included; *Review of the Child Care Proceedings System in England and Wales* (May 2006), and *Getting earlier, better advice to vulnerable people* (March 2006). We also commissioned Lord Carter's review of legal aid procurement; and the Legal Services Commission has taken work forward in parallel with this, including the publication of its Community Legal Service Strategy in March 2006.

Legal aid practitioners are extremely hard working and dedicated. But they are caught in a system that has not kept up with the times.

Lord Carter put forward proposals for a competitive market based system for legal aid procurement, based on quality, capacity and price. This means moving away from a system which simply rewards hours worked, and towards one that rewards the case as a whole. It means letting efficient providers prosper, and not supporting inefficient ones. It means letting practitioners focus on their core tasks of delivering good quality advice to clients, and not making them fill in gaps left by the wider justice or welfare systems. It means providers taking their own decisions on how to conduct and expand their businesses, rather than being stuck in an administratively based system. This is what we are seeking to deliver.

To make this happen, we need to look at the justice system as a whole. It is in everyone's interests to have a justice system that operates efficiently, quickly and proportionately. This is why the Government announced, last July, a number of measures designed to improved the efficiency and effectiveness of the court-based Criminal Justice System, in *Delivering Simple, Speedy, Summary Justice*. We now need to build on these measures and deliver truly first class services in courts and tribunals, so delivering a palpable improvement in the public's experience of the justice system.


We would like to thank all of the 2372 individuals, firms and representative bodies who responded in writing to the consultation on Lord Carter's Report and the accompanying Consultation Paper. We would also like to thank all those who attended the meetings on legal aid reform over the summer.

We understand that many practitioners are concerned about the effect of these proposals. We have listened carefully to these concerns, and as a result we have refined the detail and sequencing of some of the reforms to ensure we can deliver them effectively. We will also be reconsulting on our proposed new family schemes. But there is no escaping the fact that these are radical changes that will

not always be easy. Yet the coming years will offer real opportunities for providers willing to change and innovate. The challenge we face is to manage this process in a way that is fair to all involved. It is by keeping to the fore fairness to the client, fairness to practitioners and fairness to the taxpayer, that we will be able to deliver a truly sustainable future for legal aid.

Handwritten signature of Lord Falconer of Thoroton in black ink.

**Lord Falconer of Thoroton**

Handwritten signature of Vera Baird QC MP in black ink.

**Vera Baird QC MP**

## Introduction and Executive Summary

1. *A Fairer Deal for Legal Aid*<sup>1</sup>, published in July 2005, set out the Government's long-term strategy for legal aid. It highlighted a number of areas in which the current system needed to be modernised. It also identified the need to rebalance spending between civil and criminal legal aid, as well as various problems with the current system. A critical element of the strategy was a detailed examination of the way Government purchases legal aid services. To this end *A Fairer Deal* announced that Lord Carter of Coles would be commissioned to conduct an independent review into legal aid procurement. Lord Carter's remit was to deliver a system that would achieve maximum value for money, whilst ensuring quality and the fairness of the justice system.
2. Lord Carter published his final report on 13 July 2006<sup>2</sup>. The Government and the Legal Services Commission simultaneously published a joint consultation paper on the proposals, *Legal aid: a sustainable future*<sup>3</sup>. This latter paper also included the Legal Services Commission's detailed proposals for reforms to the civil, family and immigration schemes.
3. The consultation period lasted until 12 October. Over the summer months, the Legal Aid Minister, Vera Baird QC MP toured the country to meet practitioners to hear their views on the proposals. This involved some twenty-five meetings in twelve different cities, meeting approximately one thousand different practitioners. The Legal Services Commission also met practitioners to explain the proposals and answer questions. Over 1700 legal aid professionals attended fourteen of these events in the early autumn.
4. The Department for Constitutional Affairs (DCA) and the LSC received 2372 written consultation responses. These have all been analysed and considered. Owing to the volume and complexity of these responses the analysis of these responses is published in a separate paper on both the Department and the LSC websites at [www.dca.gov.uk/publications.htm](http://www.dca.gov.uk/publications.htm) or the consultation sections

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<sup>1</sup> Department for Constitutional Affairs, *A Fairer Deal for Legal Aid* (July 2005) Cm 6591

<sup>2</sup> Lord Carter of Coles, *Legal Aid: A market-based approach to reform* (July 2006)

<sup>3</sup> Department for Constitutional Affairs and Legal Services Commission, *Legal Aid: a sustainable future* (July 2006) CP 13/06

of both the Community Legal Service and Criminal Defence Service pages at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

### Key principles

5. The Government asked Lord Carter to devise a system of legal aid procurement that would deliver a number of key objectives:
  - € Good quality legal advice and representation for clients;
  - € A sustainable, effective and efficient supplier base;
  - € Value for money for the taxpayer; and
  - € Contribution to the efficient, speedy and proportionate operation of the criminal justice system.
6. Having considered a range of alternatives, Lord Carter concluded that the system best able to meet these various requirements was one of best value competition, based on quality, capacity and price. Most of those responding accepted that the procurement system is in need of reform. Key representative bodies, and many individual respondents, all accepted that a market-based system offered the best route for this reform. The Government agrees.
7. The issue of quality was a vital part of Lord Carter's thinking. This is why he proposed a minimum standard of quality for all practitioners, assessed through a system of peer review. The concept of best value competition must encompass both *price* and *quality*. All the proposals in this paper are designed with this fundamental tenet in mind.
8. A market-based system should be more efficient to run than an administratively based one, and it should encourage greater efficiency amongst providers. More importantly, it also offers the best long-term guarantees for a stable and sustainable legal aid system. A market in which practitioners can make a reasonable return on their investment is one that is likely to continue to attract new entrants of the right calibre.
9. The Government is also attracted to such a system because it leads to a focus on paying for effective service provided to the client, rather than the hours worked by the practitioner – a system based on delivery, rather than inputs. This is the most responsible approach to take in the interests of both clients

and taxpayers. It is also the fairest approach for providers, in that it both encourages and rewards efficiency.

10. The current proposals also address the unsustainable escalation in legal aid spending we have witnessed over the last decade. Lord Carter recognised that a market-based system could not take effect immediately (or at least, not everywhere), and that therefore the prospect of this would not in itself immediately stop the rise in spending.
11. Lord Carter proposed a system of fixed and graduated fees to manage the transitional period to full market competition. Fixed or graduated fee schemes were put forward for a range of criminal work. Simultaneously, the Government and the LSC also published proposals for new civil, family and immigration fee schemes.
12. Most respondents expressed at least some opposition to fixed and graduated fees. However, the firm view of both the Government and LSC is that the principle of fixed and graduated fees is the right one. A predictable payment encourages a focus on the work required, and encourages efficiency. The Government considers that both these elements need to be incorporated into the procurement system as soon as possible, in order for market disciplines to develop. In the context of a £130 million overspend on legal aid, fixed and graduated fees are also vital to stop the unsustainable rise in spending – which will otherwise put particular pressure on civil and family legal aid services.
13. Nonetheless, Lord Carter also recognised that ‘one size does not fit all’. As fixed and graduated fees are crucial to the long-term success of our strategy, we recognise that we must get the design and timing of each fee scheme right. We understand that this is a major change for practitioners. We have listened to, and carefully analysed, what the various respondents have said, and we have made a number of adjustments to particular schemes, whether on the timing of their implementation or on their detailed design.
14. Many respondents suggested that the proposed fees, across the various schemes, did not make sufficient allowances for variables caused by local market conditions. However, in order for efficiency to be fully encouraged, the fees must generally be as simple as possible, without an array of ‘bolt-ons’: if additional payments were available as a matter of course in more expensive cases, there would be far less of an incentive to seek more efficient working practices. Fixed and graduated fees revolve around the concept of ‘swings and

roundabouts' – that is, a case that is more expensive than the standard fee to a firm will be balanced, in the long run, by one that is cheaper.

15. One of the points respondents made was that they should not be financially penalised as a result of factors outside of their control. The whole justice system needs addressing if firms are to maximise efficiency. Lord Carter also saw this as crucial to the success of his proposals; the Government agrees. There is a wider process of criminal justice reform taking place, focusing on efficiency, speed and proportionality of approach ('simple, speedy, summary'). Lord Carter also put forward a number of concrete measures for better information sharing between Government and the professions, and better engagement between Government agencies and legal aid professionals. Respondents largely accepted the value of such an approach, and we will be taking this forward.
16. An important part of this 'whole system' reform is reform of the LSC itself. Lord Carter recommended, and we accept, that the LSC must make efficiency savings as part of the new system. This document includes a section on how the LSC will take this forward.
17. We have paid close attention to what respondents have said to us, and have adapted some of our proposals, where necessary, to get the reforms right. However the following principles will structure our approach to buying legal aid in the future:
  - € a focus on service to the client rather than simply hours worked;
  - € best value competition based on quality, price and capacity;
  - € fixed and graduated fees to manage the transitional period, both to prime the market and stabilise spending (with certain allowances for exceptional cases and particular local market conditions); and
  - € measures to ensure sustainability both in the transitional period and in the long term.
18. These principles run through the schemes set out in this document.

### Summary of criminal legal aid schemes

19. The Legal Services Commission will introduce fixed fees for legal aid work in police stations from October 2007, prior to the introduction of competitive tendering on an area basis from October 2008. There will be further local consultation on the design of boundary areas in February 2007.
20. Revised standard fees for magistrates' courts work will be introduced in urban areas from April 2007, rolling up travel and waiting payments. Competitive tendering will be introduced to the market from October 2008.
21. The DCA and the LSC will introduce a revised graduated fees scheme for advocates from April 2007. The new scheme will incorporate individual fees for many ancillary hearings within the graduated fees, making the scheme simpler. The new scheme also rebalances the existing one, so that shorter cases are fairly rewarded.
22. The DCA and the LSC will introduce a Litigators Graduated Fees Scheme from October 2007 for all Crown Court cases that are not individually contracted under the Very High Cost Case Contract regime. The litigators graduated fee scheme will replace the current scheme in which fees are paid ex post facto in non contracted cases. The introduction of the scheme has been delayed (from April 2007) in order to allow providers to adapt to such a significant change.
23. By October 2008 the LSC will introduce a Single Graduated Fee scheme, which will combine fees for both litigators and advocates and begin to introduce competitive tendering.
24. The LSC will introduce a panel of Very High Cost Cases (VHCC) providers for criminal work. Detailed proposals on the qualification and selection process for the VHCC panel will be the subject of further consultation early in 2007.

### Summary of civil, family and immigration legal aid schemes

25. The rates for solicitors in private family law cases as between the county court and the family proceedings court will be harmonised in April 2007, in advance of the introduction of the new Family Private Representation scheme in April 2008.

## Legal Aid Reform: the Way Ahead

26. Early in 2007, the Legal Services Commission will re-consult on a revised Care Proceedings Graduated Fee Scheme, with a view to implementing the new scheme – apart from for advocacy – in October 2007.
27. At the same time, the LSC will re-consult on a revised scheme for Family Help - Private, with a view to implementation in October 2007.
28. The extensive responses received to the consultation will help us significantly in ensuring that the new family schemes can strike the right balance in being fair for providers, the vulnerable, and the taxpayer. Since there has already been a full three-month public consultation on these fee schemes, the second consultation will be shorter and with more restricted questions and circulation. However the proposals will be published to all on the Legal Services Commission website.
29. The LSC will consult separately and fully in the early summer of 2007 on new proposals for solicitors in Family Private Representation, with a view to implementing them in April 2008.
30. The LSC will also consult on proposals for advocacy fees for solicitors and barristers in both Care Proceedings and Private Family Law. We agree with respondents' comments that it is sensible to look at the procurement of family advocacy from both parts of the profession. Although our Consultation Paper did not contain proposals to amend the Family Graduated Fees Scheme for the Bar, recent data have demonstrated that the Bar's costs in family cases, particularly in public law, are increasing at an unsustainable level.
31. The Tailored Fixed Fee (TFF) Replacement Scheme will be implemented from October 2007 for both solicitors and for the Not-for-Profit sector, though payment arrangements for NfPs will change from quarterly in advance to monthly in advance in April 2007.
32. The current TFF scheme will therefore continue in all categories to which it applies until October 2007. Payments to NfP providers will continue on the current basis until that date.
33. The LSC will be making announcements shortly on changes to the proposed schemes for immigration and asylum, and for mental health with a view to implementation in October 2007.

34. The LSC will be implementing the Unified Contract in April 2007, to replace the current contract which comes to an end. Discussions are still continuing with stakeholders on the detail of the contract. The Unified Contract will contain revised Standard Terms, but the Contract Specification will remain largely in its current form until introduction of the new fee schemes in October 2007. Changes to the Specification to implement the fee schemes will be consulted upon.

### Summary of measures to manage the change

35. We will introduce measures to help manage the impact of the procurement changes and create the right market conditions. These include:

- € New stakeholder arrangements based on regular, multilateral meetings with key stakeholders and an annual roundtable chaired by the Lord Chancellor;
- € Stronger links with existing national and local stakeholder structures so that legal aid has a stronger voice, which includes the Legal Services Commission having representation in all 42 Local Criminal Justice Boards in 2007;
- € Introducing a new management information system so that we have better information about the pressures and risks on the legal aid budget. This will enable us to identify upward movements in unit costs;
- € Development and integration of the Legal Aid Impact Test as an essential part of the work by government departments when assessing the costs and benefits of policy changes;
- € Rolling out peer review to support Best Value tendering. The peer review process will be managed initially by the Legal Services Commission, but it will eventually be transferred to the Law Society;
- € Developing a quality framework for advocates;
- € Monitoring and promoting the diversity of the supplier base, including setting up a diversity reference group to inform the Legal Services Commission's vision and strategy for diversity; and

- € Better use of resources by all participants in the Criminal Justice System, enforced by the judiciary in their management of cases. We are developing internal judicial training, through the Judicial Studies Board, on this issue.

36. The following chapters set out these measures in more detail.

## Criminal Legal Aid

1. Criminal legal aid needs to be placed on a sustainable footing to ensure that resources are directed towards the people who really need them. The recent introduction of means testing in the Magistrates' Court is part of this.
2. The Government accepts Lord Carter's proposals for the Criminal Defence market as the blueprint for reform and modernisation. A market-based system will ensure that criminal legal aid is procured at the fairest price for the taxpayer and for the practitioner. The interim period of fixed, graduated and standard fees will encourage efficiency and help the market prepare for wider competition from October 2008. A number of changes to strengthen the VHCC contracting regime will immediately help us to get better control of expenditure on Very High Cost Cases. The introduction of a quality threshold will only permit high quality providers to operate in the legal aid market and ensure that all defendants receive high quality advice.
3. In response to representations from practitioners, we have refined some of Lord Carter's proposals so that conditions during the transition are more favourable for solicitors firms seeking to make adjustments and efficiencies in the run-up to best value competition.

## Police stations

4. Lord Carter recommended a change to the remuneration scheme in Police Stations by introducing fixed fees in April 2007, ahead of best value competition from 2009-10. He made additional recommendations about the working arrangements for legal aid, to facilitate these changes.

## Fixed fees and Best Value Competition

5. Lord Carter recommended a move towards a competitive market, with fixed fees as an interim measure. Lord Carter argued that firms should be able to set the price for providing services at the police station themselves in a competitive market. The quality of those services would be assured by peer review. This means that the price of police station work in a locality would most accurately

reflect the true cost of providing that service. Lord Carter further argued that the introduction of fixed fees would encourage firms to increase efficiency ahead of the introduction of a competitive market. These fixed fees should be quantified so as to include only two thirds of travel and waiting time because it was felt that firms could make efficiency savings immediately.

6. Many respondents accepted that there was a need for change but they also expressed real concern about several elements of Lord Carter's proposed scheme. Whilst the majority of respondents claimed that the level of fixed fee proposed by Lord Carter was too low, and would put pressure on the quality of advice provided at the police station, others argued strongly that linking fee levels to broad Criminal Justice System areas meant that remuneration rates were not sensitive enough to local conditions. A significant number of respondents also challenged the logic underlying Lord Carter's proposal to introduce police station fixed fees in April 2007, with the concomitant cuts, two years before competitive tendering would allow firms to make up the deficit by increased volumes of cases. Others argued that firms needed longer before they would be able to adjust to a fixed fee regime in the first place.
7. We have considered these points carefully together with many other issues raised in response to consultation. We have concluded that it is essential to move towards a competitive market as soon as practicable, so that the market can determine the best price of providing the service. We have also concluded that fixed pricing provides the most suitable means of preparing the market for competition. We therefore propose to change the basis on which rates are fixed and the timing for the introduction of the new rates. We are satisfied that the peer review system endorsed by Lord Carter will safeguard the quality of service provision.
8. We will be making the following adjustments to Lord Carter's proposals:
  - € First, we have been persuaded by powerful arguments made in the consultation that we should not make any cuts to police station remuneration in April 2007 and we should not move to fixed fees for a further six months;
  - € Second, we have listened to concerns about the geographical configuration of the fees. We accept the argument that CJS areas are too large to allow for sufficient sensitivity to local conditions or for accurate and fair quantification of fixed fees. The LSC will therefore consult on new police

station duty rota scheme boundaries from February 2007, and when they are settled will quantify the fees for police station work by reference to each specific rota boundary area. At this stage we will adopt the financial envelope proposed by Lord Carter. The new schemes and the new fees will be introduced by October 2007.

€ Third, we believe that providers should be given the opportunity to bid competitively – setting their own prices for undertaking police station work – as early as possible. Therefore, we intend to begin a competitive tender for quality-assured providers by October 2008, after having allowed them some opportunity to adjust to fixed fees.

9. We have taken on board the powerful arguments made by practitioners in both rural and urban areas that there is a need to support the profession in rural areas while the market develops in urban centres. Fixed fees will therefore be introduced everywhere in October 2007, based on new boundary areas. The fees will include an element for travel and waiting, but any reductions will initially only apply to those areas able to make efficiency savings.

### Working Arrangements

10. Lord Carter envisaged that a number of changes to the way that the police station scheme worked would be required to facilitate the introduction of fixed fees and best value tendering. They include early measures to promote market stability and the allocation of duty solicitor slots to firms rather than individual solicitors. Both these proposals were welcomed by a number of respondents.
11. A number of consultation responses argued that proposals to reduce service requirements for 'duty' cases would lower the quality of service provided at the police station. Some responses also suggested that Lord Carter's proposals for 'own client' provision could damage established client relationships and adversely impact on the vulnerable. Others urged us to look closely at the levels of any minimum threshold and/or minimum work requirement. As a result the final decisions on these issues will be made in the context of the new boundary areas and the local market. We intend to conduct individual impact assessments for each new police station boundary area. A general regulatory impact assessment accompanies this document and can be found on the DCA and LSC websites.

12. The first draft of the proposed boundary areas will be available in February 2007. The detail of these consultations, and a separate consultation by the Legal Services Commission *Market Stability Measures* setting out proposed changes to the allocation of Duty Solicitor slots, can be found on the LSC website.

### Magistrates' Courts

13. For magistrates' court work, Lord Carter proposed:

- € A revision to current standard fees, to incorporate an element of travel and waiting from April 2007. Lord Carter enclosed his proposed fees at Annex 4.3 of his report;
- € Further work to develop a graduated fixed fee for magistrates' courts work, for introduction in April 2008;
- € Consideration of alternative arrangements for payment of assigned counsel, or introduction in April 2008; and
- € The introduction of a competitive market from 2009/10.

14. The inclusion of an element of travel and waiting into the revised standard fees attracted some criticism during consultation. Respondents argued that waiting time is almost always outside of the control of providers and the aggregate reduction in expenditure in this area would unfairly penalise defence practitioners. A number of consultation replies also contended that Lord Carter's proposal to provide an uplift for Lower Standard Fees and guilty plea cases would threaten the fair delivery of justice, and would put pressure on providers to advise their clients to plead guilty inappropriately. Many respondents also argued that the reduction in spend on travel and waiting would have a disproportionately high impact on rural and remote providers. They argued that the latter are already likely to focus their work in a local area and would be unable to reduce their travelling time to retain an appropriate level of profitability under Lord Carter's proposed fees.

15. In considering our response to Lord Carter's recommendations and the consultation responses received, we have noted that the current system of standard fees operating in the magistrates' courts has been broadly successful.

It has controlled absolute and unit costs, and is largely accepted by providers as a fair method of remuneration. As with the provision of police station advice (above), we accept Lord Carter's assertion that travel and waiting is unproductive time and that spend in this area should be minimised. We also believe that peer review will safeguard quality standards. We do not accept that Lord Carter's relatively modest uplift for Lower Standard Fee and guilty plea cases will place undue pressure on practitioners to advise their clients to plead guilty inappropriately. As such we accept Lord Carter's recommendation to revise the standard fees for magistrates' courts for introduction in April 2007, in line with Annex 4.3 of his final report.

16. We have taken into account the arguments put forward that rural and remote providers would be disadvantaged. Consequently, as with new police station fees, the new magistrates' courts fees will only be introduced in the main urban areas so that the Legal Services Commission can have the opportunity to measure the exceptional costs, outside these centres, and, if necessary put in place mechanisms to deal with them before implementing fixed fees there.
17. We also note that Lord Carter experienced great difficulty in attempting to design a graduated fee scheme for magistrates' court work. Whilst we accept his view that an element of graduation would provide the most accurate remuneration for each case, there are considerable practical difficulties in designing a graduated fee for magistrates' court work. Our decision to begin the rollout of a competitive market by October 2008 also needs to be taken into account. This means that we will need to consider carefully, and closer to the time, the feasibility of introducing a graduated fee for magistrates' courts work (and alternative payment arrangements for assigned counsel) in April 2008.

### The Crown Court

18. Lord Carter proposed Graduated Fees for both advocacy and litigation work undertaken in the Crown Court. He also separately recommended that the Legal Services Commission consider harmonising payments into a single graduated fee. For Very High Cost Cases, he recommended establishing a quality assured panel of providers (competing for access to VHCC work on quality and price), and a range of measures to give the LSC greater control of work under the contracting regime.

## Advocates

19. Since their inception, Graduated Fees for advocates have offered a fair method of remuneration for the totality of work done by advocates in a case, and at the same time have been successful in controlling costs (particularly administrative costs) for chambers and the Legal Services Commission. They offer more certainty to advocates of the income they will receive for a particular case – enabling chambers to manage their businesses better – and are sensitive to the inevitable variability between the size and complexity of Crown Court cases. In moving forward, we want to make the structure simpler still, wherever possible remunerating through a graduated case fee rather than payment for individual hearings.
20. Many of those who responded to the detail of the proposed revised Advocates Graduated Fee Scheme (AGFS) were positive, with a number of respondents welcoming the proposed level of remuneration for the junior bar. A small number of respondents expressed concern at specific elements of the proposed fee structure – e.g. the proposed capping of ancillary payments (particularly where hearings may be brought about as a result of prosecution behaviour), and the mechanism for allocating payment to the first instructed advocate (with the Bar Council putting forward the suggestion of a provisionally instructed advocate who would manage the case until the trial date was fixed).
21. We have listened to the range of consultation responses in this area, and we have concluded that keeping a small number of ‘bolt-on’ payments outside of the base fee for certain ancillary procedures and hearings is necessary at the present time. We will monitor the number of ancillary payments made as Lord Carter suggested – adjusting the funding arrangements accordingly – and at the same time the Government will work with the professions to decrease the number of unnecessary ‘mention’ hearings.
22. It is essential that the lead advocate takes responsibility for the conduct of the case advocacy, and we will implement, with AGFS, the proposals to pay one advocate who will manage any sub-contracted payment. This lead advocate should be identified at the earliest possible stage (and ideally by the Plea and Case Management Hearing at the latest), so that they can take control of the critical pre-trial phase. We intend to set out how this will best be achieved as part of the revised Funding Order (to be published shortly) which will set out the detailed arrangements for the new fee.

23. On cracks and guilties, prior to Lord Carter's review, the October 2005 changes brought about a better means of fixing cracked trial fees - in relation to the point in the case when the trial cracked - by introducing the concept of cracks in the first (same as that for a guilty plea), second and final third. Using the date that the case is first fixed or the first placing in a warned list, provided certainty and a scheme that was more consistent throughout for guilties, cracks and trial. We accept his recommendation to review the operation of this scheme.

### Litigators

24. Lord Carter set out the problems with continuing to pay solicitors on an ex post facto basis (whereby fees in each case are subject to an individual determination open to appeal). He also set out why Graduated Fees would be a more efficient way of providing a certain, fair and simple way of remunerating Crown Court work by litigators, and why they would be an essential first step toward competition.

25. A number of respondents felt that modelling the litigators' graduated fee scheme on the advocates' graduated fee scheme did not adequately capture the differences between litigation and advocacy. Many respondents stated that the scheme lacked sufficient flexibility to reflect the complexities of preparing defence cases, and that it applied inappropriate proxies in setting fee rates.

26. As respondents have identified, Graduated Fees for criminal cases can be effectively structured around those elements of a case that determine its complexity (so qualifying the representative for higher fees). We are satisfied that on balance, case type, case length, class of offence and prosecution pages of evidence are effective proxies to predict the likely weight of a case in the Crown Court. But, we accept the powerful arguments put on consultation that there is a need for further work on a structure of the litigator fees, in particular as between base fee and the uplifts between longer and shorter cases.

27. We recognise the scale of change that the GFS represents and the degree of planning firms will need to undertake to meet this change. We have also been persuaded that we should not implement the remuneration reductions that were part and parcel of Lord Carter's litigator fee until the profession has had more time to adjust to the proposed changes and their potential for enhanced profitability through competitive tendering, which is being brought forward. We

intend therefore to wait until October 2007 before implementing the new Litigator Fee and proposed remuneration reductions, and will consult further prior to finalising the rates and before they are implemented.

### Single Graduated Fee

28. Moving forward, it is our intention to move to a Single Graduated Fee that will be subject to best value tendering, and to aim to do so from 2008. This proposal is the final step in bringing about a fairer method of determining the price of work in this area, and is also consistent with the wider structural changes provided for by the Legal Services Bill. This facilitates changes to the way legal firms are owned and run giving greater scope for operate more efficiently whilst continuing to deliver a good quality of service to clients. It will also provide greater flexibility to litigators and advocates to agree how best to organise the work between them in individual cases and provide an incentive to efficiency in doing so.

29. Respondents noted the challenges of bringing about a single fee, including ensuring that the market was ready for such a degree of change, and adequately safeguarding the interests and roles of barristers and solicitors. We recognise these concerns, which is why we do not intend to move to competition and a single fee immediately. We are, however, committed to tendering beginning in 2008, and are confident that it will provide greater stability over rates levels, and will give providers greater opportunities to structure their firms in a more efficient way.

### Very High Cost Cases in the Crown Court

30. Lord Carter set out a range of measures to tackle the current disproportionate level of expenditure on Very High Cost Cases. We intend to implement Lord Carter's proposal to create a panel of VHCC providers, all of whom are subject to assessment of the quality of their legal advice and case management, and their capacity and experience in conducting VHCCs.

31. Respondents have recognised the need to tackle expenditure in this area (one respondent commenting that "High cost cases are an area where efficiencies can be made without necessarily reducing the quality of service. Any tightening

of restrictions is not necessarily a bad thing if it is sensible and proportionate”). A number of respondents also questioned the need to introduce a separate VHCC panel along the lines suggested by Lord Carter, saying that there was no benefit to be gained through further price reductions in this area.

32. Following the consultation process, we are satisfied that better value for money can be obtained for this work. This will best be achieved by giving defence teams some probability of increased or more consistent volume in return for some reduction in hourly rates. To do so will involve limiting access for the VHCC panel to defence teams who can show a track record of experience in working on VHCCs. This is preferable to having unlimited access for firms who may be so numerous that they do not actually get any - or very little - work. We will work with panel members to recognise and incentivise efficient production of high quality case management, as a means of delivering better value for money.
33. A number of respondents have expressed concern about the panel's composition, and the stage at which advocates and litigators form to join a defence team. We do recognise the importance of flexibility in forming teams to take on individual cases. However, it is our view that for the team approach to work in the way intended by Lord Carter, team members must work together from the earliest possible stage, with any price competition taking place through bids put forward as a team (firms attaching lists of advocates).
34. A small number of respondents commented on the detailed proposals connected with the Expressions of Interest criteria and the tender rules. We recognise the importance of the detailed panel entry criteria, and will be conducting a further consultation with the professions on the detailed changes required to underpin the introduction of a new VHCC panel in the New Year. This will involve consulting on and making legislative changes to change the scope and funding arrangements for VHCCs.
35. We will also ensure that the new arrangements for VHCCs fit with other fee schemes in the Crown Court (including the new Graduated Fee for litigators), implementing Lord Carter's proposal to take a small number of exceptional cases with an estimated trial length under 40 days into the contracted regime. This will be supported by the new procedures to ensure better notification of possible VHCCs at an early stage.
36. We intend to ensure that the panel is well supported by a more effective contracting unit, using internal and external legal expertise to back up the unit's

decision making, and improved documentation to identify best value behaviour expected from providers. We are taking forward work to establish the audit and referral panels proposed by Lord Carter.

## Civil, Family and Immigration Legal Aid

1. The Government and the Legal Services Commission have carefully considered all the points which respondents made on the civil, family and immigration schemes. We understand the challenges facing providers in moving to the new schemes, and as a result of the representations, we will be making some changes to the timetable for implementation, and to the detail of the proposed schemes. But it remains our clear view, as set out in Lord Carter's report and our consultation paper, that we need to modernise legal aid procurement by moving to fixed and graduated fees where possible. Our intention in giving further time to introduce revised schemes is to get the detail right and to allow more time for providers to adapt to the new arrangements.
2. The Government's aim is to ensure that high quality provision is available to those who need it, while also ensuring that the legal system remains financially sustainable. All the current proposals for fee schemes have this in mind.
3. It is important that providers consider the new schemes on the basis of what firms they will receive as a whole, rather than individual practitioners. Fixed and graduated fees should be seen as a tool for encouraging efficiency, and this means looking at providers' overall caseload, instead of how the fee applies in any one particular case. As we have made clear, providers will need to take on a variety of cases which can be handled by individuals with the most appropriate level of experience and expertise, whilst ensuring that appropriate training and supervision are given, in order to meet the required quality standards.
4. There is no money available for an increase in legal aid fee levels, but no money was taken out overall when calculating the fees. All the schemes were put forward on the basis of redistributing case costs in the data used amongst the new fees.
5. We supplied the Law Society and the Legal Aid Practitioners Group, and other representative bodies, with the data used in modelling the schemes, along with a detailed explanation, so that they could check the calculations and the assumptions made when setting the fee levels.
6. The full body of 2005/06 data is now available, and in line with our assurances to the representative bodies during the consultation process, we will use that

data in any recalculated fees. The position of immigration is slightly different – in that the fees are not based directly on historical costs (because of the large numbers of changes in processes), but instead divide expected expenditure amongst the new fees.

7. We are committed to the principle of fixed and graduated fees, and, in the longer term, full competition based on price and quality. However, we have listened to what has been said in consultation, and we agree that changes are needed to the detail of the schemes. The delay in implementation of some schemes while the details are refined will give more opportunity for firms to restructure their business.
8. The following sections set out how we now propose to implement change.

#### Tailored Fixed Fee replacement (excluding family and mental health)

9. The Government and the Legal Services Commission have considered carefully the views of respondents on the proposal to replace the Tailored Fixed Fee (TFF) scheme with a new scheme involving fixed fees, from April 2007.
10. We have concluded that it is right to continue with this replacement, but we will delay implementation until October 2007. In the interim, the existing TFF scheme for solicitors, and current payment arrangements for Not-for-Profit providers will continue. This will allow more time for NfPs (who receive nearly two thirds of the payments involved), to move from quarterly payments for hours to monthly output related payments (as described at para 28 below).
11. We will also make a number of important changes to the scheme as proposed, which will recognise the different positions of solicitors and NfPs entering the proposed scheme. They will be intended to build on the substantial improvements already achieved in this area over the last two years with acts of assistance increasing from 590,000 in 2004/05 to 708,500 in 2005/06 and comfortably exceeding the 750,000 target in the current year. Thus they should contribute greatly to the aim of providing convenient and timely legal advice to all those who need it and are eligible for it.
12. The present TFF scheme, introduced in 2004, was explicitly intended as a stepping-stone to fixed fees. It would be difficult to justify continuing to maintain

pay differentials based on performance during the 2003/04 financial year, and the scheme therefore needs radical overhaul in one way or another.

13. Current TFF rates are based on a simple, single fixed fee, for each category of law, including travel and waiting and disbursements. The replacement fees will exclude disbursements (which will therefore be paid in addition – subject to assessment). However we will maintain the principle of a single fee for each category of law. Travel and waiting is included in the fees. Current average costs in these categories of law show no significant difference in cost per case between those in urban or rural areas.
14. The TFF replacement scheme covers what was formerly paid as initial advice and assistance. For complex cases involving court proceedings further funding in the form of a legal aid certificate may be available. We have considered carefully the views of respondents on categories that could be excluded from the scheme, but feel that the successful operation of TFF has shown that fixed fees can be suitable in these areas of work. The categories of law covered in this scheme are housing, welfare benefits, debt, education, employment, consumer, public law, community care, personal injury, clinical negligence, actions against the police and miscellaneous matters.

### Fee structure

15. At this level of help, providers are expected to take on a range of cases reflecting the needs within their community rather than specialising within different sub categories. We are accepting Lord Carter's recommendation that providers should be encouraged to develop services across a wider range of categories of civil and family law. Indeed holding the Specialist Quality Mark involves dealing with a range of cases. Splitting down categories of law reduces the 'swings and roundabouts' effect for providers of cheaper cases compensating for more expensive ones. In the light of this direction, we will also be paying a composite rate for housing cases without maintaining the proposed separate fee between homelessness and other housing cases.
16. We set out for consultation both national fees and regional fees, stating that we would prefer to move to a national fee for this work. Responses to the consultation on this point were fairly evenly split with 79 favouring national fees and 89 favouring regional fees. Most respondents indicated that their response was driven by which fee offered the higher rate of pay to them. We have decided that fees will be national rather than regional as the broad range of

costs within regions means that fees based on the LSC regional boundaries cannot be said to truly reflect 'local' conditions. Further, the small numbers of providers in some categories in some regions mean that averages can be distorted by just one large provider – who may for example have very low costs.

17. We have considered the option of London/non-London fees proposed by a small number of the respondents to consultation but have decided not to proceed with this. In most (but not all) categories the average of London fees is higher. However there are currently numbers of suppliers in London with average costs below the proposed fixed fees – just as there are numbers of firms outside London with average costs above the fixed fees. The real issue is one of firms with higher costs – not of LSC regions. These changes will achieve a flattening of the rates – but the exceptional cases escape will continue to provide a mechanism for higher cost cases – of which there will generally be more in London.
18. A majority of respondents commented that the proposed escape set at four times the fee is too high. However, simply lowering the escape lowers the fee by removing more of the higher cost cases from the mix used to calculate the average; and the same respondents have often also said that standard fees are too low. However, in response to the many concerns raised on this issue, we will reduce the escape to three times the fee levels. This creates further pressure on costs because of the increased numbers of exceptional cases not covered by the fees. It also reduces fee levels for those cases not escaping, because the average cost of those cases is by definition lower. However this will be balanced in some categories by other elements of the revised scheme.
19. To maintain cost neutrality in the light of these concessions – including the decrease in the exceptional cases levels - the LSC will need to manage contracts in a more proactive way. The LSC will consult on criteria for setting contract levels from April 2008 which will redistribute some cases from providers whose average costs are either very low or very high (in the latter case based on exceptional cases) when compared with other suppliers. This is likely to be subject to maintaining the current 80% guarantee of cases year on year and will give providers time to change behaviour. This more proactive approach to the setting of future contract schedules will also allow the LSC to continue to move towards the commissioning of more seamless and integrated services across social welfare law.

## Fee levels

20. The fees to be set are given at Annex A. The consultation proposals were based on average TFF payments using claims submitted in the first 8 months of 2005/06. In accordance with the general principle set out above, the present fees have been set using full 2005/06 data.
21. We have listened carefully to the views of the Not-for-Profit sector on this issue – and agree that it is appropriate that a common set of fees should be based on data from both sides of the provider base. We have therefore also included in that data the cost of cases carried out by the NfP sector in 2005/06, (the value of their funding adjusted to remove under-performance on hours and level 1 work). Average NfP costs (adjusted as above) are significantly higher than solicitor costs in the debt category, slightly higher in the welfare benefits category and lower in other categories, such as housing.
22. The allowance for up to 10% of cases for clients whose legal aid eligibility is not assessed (Level 1 work) will not continue. However, this funding will not be withdrawn from NfP agencies – instead it will be used to help clients that are eligible for legal aid. A majority of NfP respondents were opposed to removing Level 1. However, we consider that legal aid needs to be focused on eligible clients and specialist advice.
23. There will be a separate fee for tolerance work. Many respondents to consultation argued against the proposal to pay tolerance fees 15% less than category specific cases. Many of these arguments were made on the assumption that tolerance cases did not have lower costs. In fact, the costs of tolerance cases are lower in most categories, and we believe that the fees should reflect this, as well as encourage work in category specific contracts. The fee for tolerance cases will therefore be based on the average cost of those cases. In some categories this will mean that tolerance fees are more than 15% below other cases, in some categories less. In the former categories removing tolerance cases from the calculation of fixed fees for non-tolerance cases increases those fixed fees.

### Payments to Not-for-Profit providers

24. We proposed that the same remuneration arrangements would apply to both solicitors and NfP providers. We recognise that this would provide a challenge for NfPs and the consultation invited views on appropriate transition arrangements. Solicitor respondents generally agreed with the common approach whilst NfP respondents expressed concerns about fee levels and in particular the move to payment in arrears rather than in advance.
25. Paying on a different basis for what should be the same services is difficult to justify. The Legal Services Commission will therefore move to paying NfP providers the same fees as solicitors.
26. However, the 6-month delay in implementation of the fee scheme and the changes that we will make in light of the many responses to consultation on this issue (particularly including NfP average costs in the calculation) will significantly assist the Not-for-Profit sector in moving to this system.
27. Many NfP providers already have average costs comparable to solicitors. NfP productivity in terms of numbers of cases has gone up over recent years, particularly in 2006/07, owing to concerted action by the Advice Services Alliance (ASA), the LSC and individual providers. In practice therefore most NfPs will already be performing at a level at least commensurate with solicitors.
28. This means that NfPs can be moved to payment for claims rather than hours from October 2007. This will include payments for work in progress on cases begun under the old system, which will continue to be claimed under hourly rates. Individual NfP funding will (subject to any reductions for under-performance under the current contract) be set at the same level in 2007/08 initially as it would have been under the current contract. The LSC will continue to make payments in advance to NfPs, though these will move to monthly rather than quarterly from April 2007. After October 2007 these payments will be reconciled against claims, but the LSC is likely to allow reconciliation over a longer period than the first year of the contract in order to assist with transition. These arrangements will be discussed with the representative bodies through the life of the new contract to ensure that we maintain sustainable services. This approach will be particularly important for agencies that are expanding the work that they do or coming into legal aid for the first time.

### Care Proceedings Graduated Fee Scheme

29. The cost of publicly funded legal advice for care proceedings continues to increase with profit costs rising from £109m in 2004/05 to £129m in 2005/06 – an increase of 10.8% per certificate issued. The Government and the Legal Services Commission agree with Lord Carter and respondents to the consultation that there should be a whole system solution to the increased costs of these proceedings involving the judiciary, counsel and experts. Implementation of the recommendations of the Child Care Proceedings Review (which was also commissioned in “A Fairer Deal for Legal Aid” and whose report was published on 18 May 2006) is proceeding accordingly with a view to making significant improvements during 2007. However, it remains important to proceed with proposals to move solicitors’ fees onto a new footing as the first step to modernising legal aid procurement in line with Lord Carter’s recommendations.
30. We have considered the argument put forward by respondents that we need to allow more time before moving solicitors to a new fee regime for these cases. We agree that some delay is merited. More time will allow the LSC to develop a revised scheme; it will also help providers adapt to both the concept and practicalities of the new regime.
31. Implementation of the new fee regime in care proceedings will therefore be staged – first, with its implementation in October 2007 other than for advocacy. The LSC will issue a further paper on this aspect in early 2007 with revisions reflecting some of the concerns raised and inviting further comment on particular aspects. The next stage will be to set rates for advocacy work that cover both solicitors and counsel, which will include a reworking of the Family Graduated Fees Scheme for barristers, from April 2008. The LSC is proposing to consult fully on that area in the early summer of 2007. The LSC is also considering measures to deal with pressures arising from increases in experts’ costs and ways of bringing in more control of exceptional and high cost cases.
32. The delay in implementing the new fee regime for public law children cases means that the proposed level 2 (pre-proceedings advice) will not be introduced in April 2007. However, the LSC will issue guidance around the use of General Family Help in the interim period to help support pre-proceedings advice, as outlined in the Child Care Proceedings Review recommendations. Many respondents were opposed to the concept of pre-proceedings advice, on the grounds that it provided potential to deter people from contesting interim

hearings. It is important to state therefore that the purpose of this advice is not to deter people from going to court if need be, but to offer every opportunity for better quicker resolution. The LSC will work closely with other stakeholders in the system to ensure that this advice is integrated into changes being made in other parts of the system.

33. The paper to be issued early in 2007 will detail the fees for implementation in October. The main concerns of respondents on the structure of the scheme were about the proposed payments for advocacy, the calculation of the fees based on a per certificate rate, the overall level of the fees and whether they should be calculated on a national basis, the escape provision for exceptional cases, and the removal of payments for panel uplifts.
34. These concerns will be addressed in the revised proposals. Fees are likely to remain based on three levels – initial advice, negotiation and full representation – but with a lower escape mechanism leaving significantly more exceptional cases which will be paid at hourly rates. This will reduce the level of financial risk transferred to practitioners. It is likely that, rather than the fee being payable for each child represented, there will be an additional uplift to reflect the additional costs of representing more than one child.
35. We noted from the responses that the preference for London/non-London fees against national fees was fairly evenly split. We will consider this issue further and include revised proposals in the early 2007 consultation paper.
36. In response to our proposals in relation to panel membership, the great majority of respondents did not agree with the removal of the 15% uplift for panel members. We recognise the importance of skill and experience when dealing with care cases and remain committed to the quality that specialists provide. However the current arrangements have not led to an increase in panel membership, and under fixed fee arrangements more experienced staff can gain as they will deal with cases more efficiently. Any uplift arrangements would also increase the complexity and cost of managing these payments for both providers and the LSC. We will continue to review the issue of payment for panel membership before the publication of further proposals early in 2007.
37. Delaying the fee schemes and leaving more exceptional cases creates cost to the fund. In addition to these cost increases we have seen an increase in the number of certificates with costs approved over £25,000. We are concerned to make sure that we apply greater control over this level of costs and will be re-

introducing case planning for Very High Cost Cases in family (public and private) with immediate effect.

### Family Help – Private

38. We recognise the concerns raised by respondents over the proposed timetable for introducing the Family Help - Private scheme. Delaying implementation of the proposals will help practitioners adjust to the new fee schemes. We want to introduce a scheme which enables practitioners to do the most effective job and for there to be incentives for them to do this. There will therefore be a two stage approach – with fees up to Level 3 being introduced in October 2007, following publication of proposals in the early 2007 paper already referred to - and fees for all other work including preparation and advocacy at the final hearing being introduced in April 2008, following a full consultation in early summer 2007 alongside the proposals for advocacy in child care proceedings. As with the Care Proceedings Scheme, at that stage we would hope to be able to set a fee scheme for advocacy that covers both solicitors and counsel, from April 2008.
39. Many respondents opposed the payment of a single fee in children, finance and domestic violence cases. They were also concerned about more complex private law matters such as Rule 9.5 and Child Abduction being covered by a standard fee.
40. We have listened to these specific concerns and the revised scheme will aim to provide for a separate fee for children work and finance work with allowance made for cases with several elements. The Legal Services Commission will also further consider how emergency Domestic Violence work is best incorporated – although work under a legal aid certificate will remain excluded at this stage. The LSC will also continue to consider whether any work types should be excluded from the Family Help scheme, but we believe that it is important that costs are controlled even in complex areas.
41. We have also noted particular concerns about the structure of the proposed scheme in relation to the move to contested proceedings. We accept that changes need to be made to the levels in order to restrict any perverse incentive to move from Level 2 to contested proceedings or to proceed to final hearing. These changes will support the aim to settle cases early and avoid contested court proceedings wherever possible and safe to do so.

42. A large majority of respondents felt that at four times the limit for exceptional cases ('escape') was too high. The LSC is carrying out further modelling work on case cost profiles and will review the exceptional fees limit as part of the paper to be published in early 2007.
43. There were mixed views on the proposed payment for advocacy with some support for advocacy payments being included in the standard fee, while other respondents were concerned that this would impact on people being able to get representation at interim hearings. We need to achieve control of the cost of advocacy work and will therefore proceed with this proposal, with the October 2007 changes including advocacy payments up to but not including the final hearing within standard fees. However, the fee levels will be reviewed to ensure that they are sufficient to allow instruction of counsel if necessary. As noted above, full coverage of advocacy by both solicitors and barristers from April 2008 will be the subject of consultation in early summer 2007.
44. Respondents raised similar issues with regard to payment for panel membership as with the Care Proceedings Scheme. As with the Care Proceedings scheme, we will continue to review the issue of payment for panel membership and the LSC will cover this in the paper to be issued early in 2007. That paper will also cover final proposals for the operation of the statutory charge.

#### Harmonisation of solicitor legal aid rates

45. The impetus to implement harmonised court fees prior to standard fees being available is the DCA Judicial Resources Review recommendation to encourage more cases to start in the Family Proceedings Court (FPC) by equalising the rates between the county court and the FPC. The majority of respondents who commented on our proposal to introduce harmonised fees were in favour of harmonising the rates in principle. Some, however, made the point that they would still be unlikely to use the FPC as the county court is more appropriate for a variety of reasons, including the availability of the President's Private Law Programme and the experience of county court judges over family magistrates. There were respondents who suggested all work should be paid at the county court rates, however this would not be consistent with cost neutrality.
46. We consider that it is important that current legal aid rates do not act as a barrier to effective management of judicial resources. It is also important that

rate changes do not lead to increased expenditure. We have therefore decided to introduce the harmonised rates as consulted upon for all work in FPCs and County courts in advance of the introduction of the Family Help - Private scheme, which will cover all tiers of court. We believe that this will better fit with and support any changes by HMCS around the allocation of proceedings and allocation to the judiciary to ensure more cases begin in the FPC.

### Immigration & Asylum

47. Many respondents felt that the timetable for implementation of the proposed Graduated Fee Scheme did not allow sufficient time for business planning. There were also concerns that the level of fees was too low to maintain quality standards and business viability and that the exceptional fee threshold was too high and placed providers at too much risk.
48. The Government and the Legal Services Commission have taken careful account of all the responses to the consultation and have concluded that implementation of the Graduated Fee Scheme and the proposals for services excluded from this scheme, planned for April 2007, will be delayed until October 2007.
49. This will give more time to:
- € Assess the impact of the full roll out of the New Asylum Model and reach agreement with the Home Office about the role of pre-application advice;
  - € Carry out further consultation on the contracts for services excluded from the Graduated Fee Scheme and finalisation of the criteria and process for bid rounds;
  - € Evaluate the existing Detention Centre advice and Police Station telephone advice pilots; and
  - € Have further discussions with representative groups.
50. We consider that the broad framework for the Graduated Fee Scheme and the shape of supply as set out in the consultation paper is correct and provides a basis for moving forward to competition. However, before final details are

announced, the LSC will be giving further careful consideration to the issues raised on consultation including:

- € The objections to including interpreters' costs in the asylum fees;
- € The arrangements for dealing with more complex cases, for example. whether the proposed exceptional case limit is set at the correct limit and whether there are other types of cases that should be excluded from the Graduated Fee Scheme;
- € The proposal to introduce an early resolution payment; and
- € The payment arrangements where a client's case is initially funded under the Graduated Fee Scheme but subsequently becomes funded under the excluded services scheme (or vice versa).

### Mental Health

51. Although many respondents were against fixed and graduated fees in principle for Mental Health work, the fact that 22% of providers (dealing with over 40% of cases) have been operating under Tailored Fixed Fees since August 2004 shows that standard fees can operate successfully in this area of law, as in others.

52. However, while we remain committed to the principle of fixed and graduated fees, we recognise that concerns were raised about the structure of the scheme as proposed in the consultation paper. For example, respondents were concerned about the definition and amount of the "Level 1" fee, and we accept that this will need to be looked at again. The Legal Services Commission is therefore reconsidering the structure of the scheme in the light of responses, and is conducting a file review exercise to inform this. To allow for this review and re-modelling, we will therefore postpone implementation of the new fee scheme until October 2007. Details of the new scheme will be published in early 2007.

## Common Issues

### *Variation of fees*

53. We will maintain the power to vary the fees as set out in the consultation paper – this is essential in order to live within budget and continue to obtain value for money. We will maintain our commitment to review the fees at the end of each year, to make sure that standard fees are working in the way intended. However we cannot commit to increase fees if claims increase, in the way that some respondents suggested.

### *Exceptional cases*

54. Although the principle of exceptional cases that are paid at hourly rates was broadly welcomed, most respondents felt that the proposed escape of four times the fee level was too high. However, as already explained, lowering the limit also lowers the standard fees if cost neutrality is to be maintained. We consider that this issue is best resolved on a scheme-by-scheme basis. We are likely to lower the limit in some schemes, but the Legal Services Commission will need to take other measures over time to deal with the increased number of exceptional cases.

### *Disbursements*

55. Most respondents agreed with disbursements being excluded from the standard fees. The proposal to include interpreter's fees in immigration cases was not generally agreed, and this is being reviewed.

### *Statutory charge*

56. Most respondents agreed with the proposal that for TFF replacement cases, the charge should not arise in relation to recovery at the Legal Help level. This proposal will be implemented, along with the principle of quantifying the charge in those cases where it later arises at the standard fee level (unless the case is exceptional). The proposals for the application of the statutory charge in family cases will be reviewed in light of the final form of the family schemes.

### *VAT*

57. The proposals to set the fees net of VAT, with providers claiming it in addition where applicable, were generally agreed. Some Not-for-Profit providers expressed concerns about practical arrangements, and these will be discussed further with the representative bodies.

*File review*

58. Although respondents were against the removal of file review payment, it is not considered that a payment for an aspect of quality that providers should be providing as standard is a justified use of limited resources. No further payments will therefore be made after the current claims (due in late 2006) have been met.

*Amendments to the Funding Code – Annex C*

59. These will be delayed and reviewed pending finalisation of the family schemes. Consultation on any amendments to the Funding Code will take place in accordance with the provisions of the Access to Justice Act 1999.

## Unified Contract

60. Most respondents supported the concept of a Unified Contract for crime, civil and Not-for-Profit providers.

61. The new Unified Contract will take effect on 1 April 2007 for civil providers – both solicitor and Not-for-Profit. It will take effect from 1 April 2008 for crime providers.

62. The Unified Contract will contain revised Standard Terms, but the Contract Specification will remain largely in its current form until introduction of the new fee schemes in October 2007. Changes to the Specification to implement the fee schemes will be consulted upon.

63. The Legal Service Commission has been in consultation with the representative groups on the detailed contract provisions and will be publishing the final versions separately in time for implementation in April 2007. This section therefore deals only with some issues of broad principle not covered in the detailed discussions:

### **Minimum contract size**

64. We proposed the introduction of a minimum contract size of £25,000 or £50,000 for civil suppliers from April 2007. A majority of respondents were against the proposal – at least without some appropriate exceptions.

65. We believe that providers with larger volumes of work will have a greater ability to organise themselves more efficiently, provide a wider range of quality legal

aid services (and therefore a more holistic service to clients), be more able to work with fixed and graduated fees systems, be more able to invest in the development of future generations of legal aid lawyers and will enable the LSC to operate more efficiently. The cost and time of administering a large number of very small contracts – including file assessment and peer review, also drive the introduction of a minimum contract size.

66. However, it is clear that the issues of access and impact need to be considered carefully before such a measure is introduced. This would drive an incremental approach and further analysis. The LSC will therefore include a power to introduce a minimum contract size in the Standard terms for the Unified Contract, but there will be no minimum introduced in April 2007.

### The ending of licence-only contracts

67. The focus on providing early advice (for example in family cases) means that providers should be able to provide Legal Help to their eligible clients. Therefore Licence-only contracts will no longer be issued. Current Licence-only only contract holders will be offered a Controlled and Licensed work contract from 1 April 2007.

### Peer review

68. Whilst almost all respondents support peer review as a measure of quality, imposing a peer review standard of 'competence plus' from April 2007 was seen by many as too early. Whilst the LSC remains committed to raising standards to competence plus via preferred supplier, the standard in the Unified Contract from April 2007 will remain as currently set at competence – level 3.

## Managing The Change

1. In order to ensure that we create the right market conditions and provide a solid basis for the procurement reforms, the Government and the Legal Services Commission are implementing a number of measures to manage the impact of change. These measures will provide essential underpinning for the procurement changes we are introducing, and are aimed at supporting a good quality, diverse and efficient provider base within an effective legal aid system that has strong links with its partners in the wider justice system
2. We will build on the work that the LSC has been doing on quality standards, and continue to promote improvements in the quality of providers. We will work closely with our providers and partners to carefully manage and support the transition to the new procurement arrangements and promote wider justice system efficiency. This includes reaffirming our commitment to sustaining a diverse and high quality legal aid provider base that meets the needs of individuals and communities.
3. We recognise that there is a need for much better management information, and the LSC is addressing this, so that we have greater understanding of, and secure agreement about, the pressures on the legal aid budget. This is especially important when we move to best value tendering, as it will mean that changes in volume will become the major driver in costs. The Government and the LSC are creating a new stakeholder framework to improve our relationship with our key stakeholders through regular multilateral meetings. We are promoting stronger links with existing mechanisms at both national and local level, especially in the Criminal Justice System, so that we can better anticipate and identify future pressures and risks.

## Transforming the Legal Services Commission

4. Lord Carter's reforms are designed to ensure that legal services are procured with legal aid in the most efficient manner and within the resources available. Through the introduction of competition, the reforms will deliver control over the cost of legally aided service and at the same time allow quality assured providers to benefit from their efficiency.

5. In order for these benefits to be fully realised the LSC will improve the efficiency of the way it administers the legal aid fund. The LSC is redesigning its systems and processes in order to reduce the administrative burden on providers of delivering legally aided services.
6. The LSC's objective is that by 2011 it will have reduced by up to £30 million, at 2011 prices, the cost of administering the legal aid fund. This will be achieved by transforming the way that the LSC conducts business with its providers, the introduction of simplified bill processing, extension of devolved powers allowing providers to make the majority of legal aid related decisions during the lifetime of a case, and will conduct almost all of its business electronically allowing more flexible working and less intrusive contract management. These changes will require providers to have in place compatible electronic case management systems by 2011 at the latest.
7. These changes will ensure that the providers spend less time managing their contracts leading to efficiency savings for the providers. At the same time the changes will allow the LSC to reduce its staff numbers and therefore the proportion of the legal aid fund spent on administration without loss of control of the fund.
8. The LSC will announce in February 2007 its timetable for the development of its new systems and processes and will engage with providers of legally aided services, their representative bodies and legal software providers before consulting more widely on the new management and control regime in the Autumn 2007.

### Quality

9. Quality is at the heart of our legal aid reforms. We need to ensure that changes to the procurement system do not compromise good quality service for clients and defendants. Quality is essential to the market-based approach in our legal aid reforms, as price can never be the sole consideration for awarding contracts. All providers wishing to undertake legal aid work should pass a strict quality threshold. Such an assurance of professional quality should both protect and help individuals to have confidence in the service that they receive, and also contribute to an overall sense of trust in the justice system. This

commitment to quality was endorsed by the overwhelming majority of respondents.

### Litigation

10. Peer review will provide the basis, where practicable, for the quality threshold for providers, and this will be managed, in the first instance, by the Legal Services Commission. As a quality assessment process, it is widely accepted that peer review is the most effective and preferred means by which the quality of legal advice and assistance by solicitors can be assessed on behalf of the client. We strongly support this approach and providers wishing to take part in the best value tendering process will initially be required to meet a threshold level of peer review of “competence”, “competence plus” or “excellent”. Providers who continue to operate in the legal aid market will be expected to demonstrate that they can meet a peer review threshold level of “competence plus” or “excellent” for the second round of bidding.
11. Lord Carter recommended that the responsibility for quality-assuring all solicitors should be transferred to the Law Society by April 2009. There were some concerns expressed about this proposed transfer of ownership for the peer review process. While we acknowledge the concerns expressed, and will take them into careful consideration as part of any handover process, it is essential that the legal profession take responsibility for quality assuring their own services. We therefore accept this recommendation and will shortly agree on an operational process and timetable with the LSC and Law Society to transfer all quality assurance for solicitors, subject to consideration of any legislative requirements, once the initial implementation of peer review has been completed. The Government will require assurances from the Law Society that the peer review rating system and process will remain as robust as present.

### Advocacy

12. Lord Carter recommended that a proportionate system of quality monitoring, based on the principles of peer review and a rounded appraisal system, should be developed for all advocates working in the criminal, civil and family courts. We have therefore set up a working group on Quality Assurance and Advocacy. The working group is chaired by the Senior Presiding Judge, and has representatives from the Bar Council, the Institute of Barristers’ Clerks, the

Law Society, Institute of Legal Executives, the CPS, DCA and the LSC. It is envisaged that any system of quality monitoring should cover case management, client service and effective interaction with the wider justice system as well as advocacy skills and legal knowledge. There is also agreement that standards need to be underpinned by competency frameworks that focus on peoples' behaviours and skills, and that enable measurable outputs to be demonstrated.

### Transitional Arrangements

13. It is very important that the process of restructuring and transition is managed carefully, so providers can adapt to the new market conditions and procurement changes in readiness for the move to Best Value competition. The transition process is a shared responsibility, as providers will be expected to demonstrate the required quality standards, and should be able to grow their business and reduce costs.

### Securing a diverse sector

14. We are under a duty to ensure that specific needs, for example those of black and minority ethnic clients and communities, are served fairly and adequately. The LSC and the DCA are committed to working with providers and partners to promote diversity within the legal profession. We have a diverse legal aid provider base that we want to sustain and develop so that it better reflects the communities that it serves. Lord Carter recommended that the LSC and the DCA should help sustain a diverse supplier base through monitoring ethnic data, regular monitoring that quality checks do not have unintended consequences on diversity, and providers have an equal opportunity policy in place. The LSC has already begun to improve the quality and content of the data that it collects on both clients and providers to help inform future policy development. The LSC has broadened the scope of the Legal Services Research Centre Annual Diversity Report and will introduce new contractual requirements obliging all providers to supply key data. This will enable the LSC to build up a comprehensive profile of its provider base and clients served, so that the impact of the changes can be assessed and monitored effectively. The LSC has already built in a number of steps to its peer review process to ensure this it is equality proofed and it will continue to review and develop the quality tools to ensure that they have no unintended impacts.

15. The new Unified Contract, which is currently subject to consultation, also includes specific requirements that all providers do not unlawfully discriminate and use reasonable endeavours to assist the LSC to comply with its statutory obligations. The contract also includes an Equality and Diversity Annex setting out specific requirements including the need for contractors to have an equality and diversity policy which is actively monitored, an equality and diversity training plan and a communications plan.
16. The LSC will expand its internal resource and expertise in this area so that it can monitor, assess and promote diversity in providers. The LSC has set up a Supplier Diversity Reference Group that includes a wide range of representative and practitioner based groups, including the Commission for Racial Equality, Bar Council and Law Society. The aim of the reference group is to help, advise and act as a critical friend to the LSC as it develops its vision and strategy for the promotion of diversity in all its forms amongst the providers and clients of legally aided services and in meeting its statutory duties.

#### **Financial Restructuring and business support**

17. The Government recognises that some providers may need to restructure to take up the opportunities following the introduction of the reforms to procurement and will require some form of business support. Lord Carter recommended that the Legal Services Commission should include the methods and timing of making payments to providers as factor when determining the length of contracts awarded under a best value tendering process. The LSC will develop optimum methods and timings of payments to support the move to contracts awarded under a best value tendering process. This will be best achieved by working closely with providers of legal services.
18. The LSC is also setting up a financial advisory group to act as a regular forum in which the DCA, providers and bankers can discuss how best to promote the availability of loan and equity finance for providers and support them in the transition to best value competition.
19. Lord Carter recommended that there should be a match-funded grant programme (totalling £10 million over 2 years) through a growth and consolidation fund and information technology modernisation challenge fund. Although the majority of respondents supported transitional funding, there was no consensus on the best way ahead and many suggested that increasing the level of fees would be a better use of this funding. Given the pressures faced

by the legal aid budget, this £10m could only be afforded at the cost of fee reductions or bringing forward the introduction of fixed and graduated fees, giving firms less time to adapt. The Government and the LSC have therefore taken the view that the wider interest is not served in allocating money to these grant schemes. But we will keep this issue under review as the reforms come into effect.

### Wider Justice System Efficiency

20. The changes in legal aid procurement will promote greater efficiency in the wider justice system, especially in the Criminal Justice System. In return there are significant improvements that can be made in the justice system to remove inefficiencies that can impose substantial costs on providers. This links very strongly with the work that the DCA and the Legal Services Commission are doing on the new stakeholder arrangements (see paras 30 – 33 below).
21. The nature of an adversarial system means that none of the active parties has any responsibility for an overall view of the best possible allocation of resources. Lord Carter suggested that the judiciary would be best placed to bring overall accountability as it remains above the adversarial process. We are therefore working to develop and implement internal judicial training, through the Judicial Studies Board, so it is in place by April 2007. This should ensure that the appropriate use of resources by all participants in the Criminal Justice System is enforced by the judiciary in their management of cases. We will also provide support to the member of the senior judiciary asked to review the effectiveness of judicial, prosecution and defence adherence to the principles set out in the disclosure protocol conducted by the High Cost Cases Review Board. We are currently working with the judiciary to establish the parameters of this review.
22. The DCA are also working with the judiciary to review the criteria and regulations that allow for the appointment of two counsel. The guidance should be issued and necessary changes made before the revised advocacy graduated fee scheme is introduced. Work is on track, in consultation with the judiciary, to consider and prepare implementation of any necessary regulations or revised guidance in advance of the introduction of the revised advocates Graduated Fee.

## External Engagement

23. Lord Carter made a number of recommendations about how the new legal aid procurement schemes should be monitored and made transparent, so that risks could be shared fairly and openly by all sides, and the majority of respondents who provided comments supported the recommendations. We agree with the recommendations made by Lord Carter, and the DCA and the Legal Services Commission will be implementing them in line with Lord Carter's proposals as closely as possible, although subject to minor changes where the original proposals could be improved or where there are links with the wider reform implementation programme. Better management information and stakeholder engagement will bring benefits to the overall legal aid system through greater understanding of the pressures and risks on legal aid and how this may have an impact on the efficiency of the wider justice system.

## **Better information and sharing the risks**

24. Lord Carter recommended that the LSC should immediately move to set up dynamic management information systems by December 2006. The majority of respondents to this question supported the improved collection of management information. The LSC is developing a new management information system to monitor key performance indicators relevant to the successful delivery of the new legal aid procurement schemes, and these are currently being consulted on as part of the consultation on the Unified Contract.
25. The new management information system is being taken forward and developed as part of the LSC's overall transformation programme. The LSC has already developed a new contract management system. The system is fully e-enabled and will soon allow providers to see performance data and management information held by the LSC. The new system will be operational from April 2007 onwards, and functions will be added as the systems develop.
26. The LSC will use its new management information system to identify upward movements in unit cost and use it help secure agreement to an adjustment down in price or other measures to bring unit cost back under control. This information is likely to be shared with key stakeholders through the new multilateral stakeholder arrangements being put in place by the Government

and LSC. This should promote an improved understanding by all parties of the causes of the increase in legal aid costs and help address cost drivers in the wider justice system.

27. Unplanned and unbudgeted increases in volume of cases put pressures on the legal aid budget. There needs to be greater awareness of the implications for legal aid expenditure through volume changes. Lord Carter acknowledged that the Legal Aid Impact Test is a good approach to ensuring that the volume implications of legislation are understood and quantified.
28. Work is under way to expand the current guidance on the Legal Aid Impact Test to include instructions for policy makers on how to also measure the impact of their policy proposals on courts, tribunals and the judiciary. Work is also under way to improve the current referral system within the DCA, to ensure that we are better aware of developing policy initiatives and their possible impacts on legal aid as early as possible, which should help discussions with other government departments on cost sharing or cost recovery.
29. The DCA is also working closely with the Better Regulation Executive in the Cabinet Office and other government departments, on the re-design of the Regulatory Impact Assessment process so that costs and benefits information is presented in a more transparent way. The Legal Aid Impact Test will be part of this new assessment process.

### Stakeholder arrangements

30. The DCA and the Legal Services Commission want a new positive relationship with its key legal aid stakeholders at both national and local level. Lord Carter recommended that mechanisms for local information sharing and problem-solving on legal aid should be established by the LSC by April 2007. Respondents to this question supported the idea of local sharing of information on causes of inefficiency and providing an effective forum for local problems to be highlighted. We agree and the DCA and the LSC are in discussion with the Office of Criminal Justice Reform and their partners in other government departments to ensure the new legal aid stakeholder arrangements are linked into existing national and local stakeholder mechanisms, especially in the criminal justice system.

31. The LSC has been actively engaging with Local Criminal Justice Boards (LCJBs) to ensure they have a voice in local decision-making, and LSC regional staff are increasingly supported in the LCJBs by local senior managers of Her Majesty's Court Service. The LSC is represented on 80% of the 42 LCJBs at full board or sub-committee level and has informal engagement with all the others. The LSC will achieve 100% coverage in 2007. The LSC will also:
- € Use its position on the LCJBs to raise cost issues with Criminal Justice System partners, with the aim of resolving issues locally where possible;
  - € Brief national stakeholder meetings on local developments; and
  - € Identify best practice for involving local defence lawyers with the LCJBs and make greater use of defence engagement meetings to discover what costs issues are impacting on legal aid providers.
32. At a national level, the DCA and the LSC will establish improved stakeholder engagements through regular stakeholder update meetings and an annual roundtable chaired by the Lord Chancellor. The new framework will enable DCA and the LSC to meet with the Bar Council and Law Society, the CPS, other government departments and other key players to update one another on legal aid related issues. The new stakeholder arrangements will help promote greater openness through dialogue and problem-solving at regular, multilateral meetings, and help address the unintended consequences of changes on legal aid, identify opportunities for improvement, and highlight future volume related or other associated risks to legal aid expenditure. We intend to hold the first stakeholder update meeting in early 2007.
33. Legal aid is an integral part of the justice system, and it should support the most efficient and effective outcomes and best use of resources across the system. DCA is therefore in discussion with the Office of Criminal Justice Reform and other partners to identify the most appropriate way of developing better links with existing criminal justice governance structures and programmes. This should ensure that legal aid concerns are properly taken into account, and where possible, we promote direct, regular dialogue at a national level with representatives of defence practitioners, which complements dialogue with local defence practitioners.

## Conclusion

1. The proposed new fixed and graduated fee schemes are significant, partly as a way to ensure that the legal aid system is financially sustainable and fair to the taxpayer over the next few years. They are also important in paving the way to a market-based system.
2. We are grateful for the high quality of consultation responses received, and for the engagement shown by legal aid professionals throughout the consultation process. As outlined in the preceding chapters, we have made some modifications to the detail and sequencing of the new schemes. We have accepted that the professions need a slightly longer timeframe than that proposed by Lord Carter to adapt *before* the new standard fees are introduced, at least for most of the schemes. However, from what firms have told us, there will be advantages for many providers in a quicker move to competition, than that envisaged by Lord Carter. Therefore we will be introducing best-value competition, based on quality and price, for the Criminal lower schemes in major conurbations, from October 2008.
3. There are a number of steps that we will need to take to achieve this, and the wider roll-out of the full market-based system. These include making the necessary arrangements for quality assurance, various further consultation exercises (for example on the boundary areas for the new police station schemes), as well as contractual and legislative changes. An outline of some of these changes can be found at Annex B.
4. The Government views these changes as part of a wider programme of reform across the justice system, and wider reform is crucial to making the changes to legal aid procurement work. We are looking forward to a new working relationship with all stakeholders, in which legal aid providers come together with counterparts from across the justice system to generate a shared understanding of the reasons for upwards pressure on legal aid volumes and unit costs. At the same time, we want legal aid practitioners to do what they can to aid the efficient running of the wider justice system, so that legal aid is recognised as an integral element to it. Increased co-operation, as well as sophisticated monitoring of the nascent legal aid market, will be vital in actively managing this process of change in the coming years, in order to ensure a sustainable, best-value system. We have a clear way ahead. We are aiming for

## **Legal Aid Reform: the Way Ahead**

a system that is fair to those who use it, run it and pay for it. We want a system that will flourish in the coming years. We look forward to delivering this system in full partnership with you..

## Annex A - Tailored Fixed Fee replacement, fees to apply from 1 October 2007

### Notes

- 1 The fees are set out in the table below. They are based on the data set of solicitor and NfP costs per case from 2005/06. The fees are shown exclusive of VAT and do not include disbursements.
- 2 The fees are national.
- 3 Separate fees are payable for contracted and tolerance work –based on the averages of the two types of work.
- 4 Exceptional cases will be paid at hourly rates – the escape into hourly rates is at three times the fee.
- 5 The fees have been increased in housing and welfare benefits. This is partly because of pattern of cost distribution in those cases. In housing, the LSC is concerned to build upon the increase in supply achieved over the last year. In welfare benefits the LSC also wants to promote the focus of this category of work on legal issues such as disputes and appeals.
- 6 As a result of amendments made to the proposed scheme in response to issues raised in the consultation, the rates set out below have changed from those published in the consultation paper. As with the previous rates, the LSC will be reviewing the data on which the new rates were calculated with the Law Society and other representative bodies.

Legal Aid Reform: the Way Ahead

Category	Contracted		Tolerance	
	Fixed Fee	Exceptional threshold	Fixed Fee	Exceptional threshold
Actions Against the Police	£261	£783	£151	£453
Clinical Negligence	£213	£639	-	-
Community Care	£290	£870	£175	£525
Consumer General Contract	£174	£522	£146	£438
Debt	£196	£588	£121	£363
Education	£296	£888	£149	£447
Employment	£225	£675	£147	£441
Housing	£171	£513	£135	£405
Miscellaneous	£86	£258	-	-
Personal Injury	£204	£612	-	-
Public Law	£282	£846	£203	£609
Welfare Benefits	£164	£492	£133	£399

**Annex B – Timetable for reforms**

<b>When</b>	<b>Crime</b>	<b>Civil, Family &amp; Immigration</b>
<b>November 2006</b>	€ LSC to issue consultation paper on market stability measures	
<b>December 2006</b>	€ LSC to announce detailed arrangements for revised magistrates' court standard fees	€ LSC to issue draft unified contract for final consultation, until the end of January
<b>Late 2006 / early 2007</b>		€ DCA to consult professional bodies on revisions to CLS regulations to implement the changes planned for April 2007

When	Crime	Civil, Family & Immigration
<p><b>Early 2007</b></p>	<ul style="list-style-type: none"> <li>€ LSC to publish consultation paper on:               <ul style="list-style-type: none"> <li>4 Local boundary areas</li> <li>4 New working arrangements</li> <li>4 Level of fixed fees for police station work at a local level</li> </ul> </li> <li>€ LSC to publish outcome from Market Stability consultation</li> <li>€ LSC to publish VHCC consultation paper on:               <ul style="list-style-type: none"> <li>4 New VHCC contract</li> <li>4 Expressions of Interest criteria, and panel exclusion criteria.</li> <li>4 Best Value Protocol</li> </ul> </li> <li>€ Consultation on new VHCC regulations (including amendment to CDS Funding Order), and new regulations for the Advocates' Graduated Fee Scheme in the Crown Court</li> </ul>	<ul style="list-style-type: none"> <li>€ LSC to issue further paper on fee scheme for mental health</li> <li>€ LSC to issue further paper on fee scheme for immigration and asylum</li> <li>€ LSC to issue revised fee scheme for child care work, with elements for further consultation over a limited period</li> <li>€ LSC to issue revised fee scheme for family help – private work, with elements for further consultation over a limited period</li> </ul>

When	Crime	Civil, Family & Immigration
<p><b>April 2007</b></p>	<ul style="list-style-type: none"> <li>€ Introduction of revised standard fees for magistrate's court work (larger conurbations)</li> <li>€ Implementation of Market Stability Measures (subject to consultation)</li> <li>€ Introduction on new arrangements for Advocates' Graduated Fee</li> <li>€ Consultation on new regulations to establish the Litigators Fee Scheme</li> </ul>	<ul style="list-style-type: none"> <li>€ Introduce the Unified Contract to replace the existing General Civil and Not-for-Profit contracts</li> <li>€ Introduce harmonised rates across the Family Proceedings Courts and county courts for private family representation</li> <li>€ Introduce measures to provide more pre-proceeding Legal Help</li> </ul>
<p><b>Early Summer 2007</b></p>	<ul style="list-style-type: none"> <li>€ LSC to publish outcome from Police Station consultation</li> <li>€ LSC to publish consultation on Best Value Tendering</li> </ul>	<ul style="list-style-type: none"> <li>€ LSC to consult on proposals for fixed fees for advocacy for solicitors and counsel in family cases, including full representation in family – private (for implementation in April 2008)</li> <li>€ LSC to consult on criteria for setting TFF contract level from April 2008</li> <li>€ DCA to consult professional bodies on revisions to CLS regulations and LSC Funding Code to implement the changes planned for October 2007</li> </ul>

Legal Aid Reform: the Way Ahead

When	Crime	Civil, Family & Immigration
<b>Late Summer 2007</b>	<ul style="list-style-type: none"> <li>€ LSC to publish consultation response on Best Value Tendering</li> </ul>	
<b>October 2007</b>	<ul style="list-style-type: none"> <li>€ Introduction of a new litigators GFS</li> <li>€ Implement Police Station fixed fees, new working arrangements and revised boundary areas</li> <li>€ Launch of the new VHCCC supplier panel.</li> </ul>	<ul style="list-style-type: none"> <li>€ Introduce replacement for Tailored Fixed Fee Scheme for civil and family controlled work</li> <li>€ Introduce fee scheme for child care work, other than advocacy</li> <li>€ Introduce fee scheme for family help -private work, up to Level 3 (excluding representation at the final contested hearing and than advocacy)</li> <li>€ Introduce fee scheme for mental health</li> <li>€ Introduce fee scheme for immigration and asylum</li> </ul>
<b>Late 2007</b>		<ul style="list-style-type: none"> <li>€ DCA to consult professional bodies on revisions to CLS regulations to implement the changes planned for April 2008</li> </ul>
<b>April 2008</b>		<ul style="list-style-type: none"> <li>€ Introduce fixed fees for</li> </ul>

Legal Aid Reform: the Way Ahead

When	Crime	Civil, Family & Immigration
		advocacy for solicitors and counsel in family cases, including full representation in family – private
<b>July 2008</b>		€ DCA and LSC to report on possible changes to civil representation remuneration (Carter recommendation 4.30)
<b>October 2008</b>	€ Rollout of Best Value Tendering	

## Annex C – Outline of Government Responses to Lord Carter’s proposals for Legal Aid Procurement

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter’s Proposals
Recommendation 3.1 – Roll out of Peer Review	Accept	
Recommendation 3.2 – Development and introduction of Best Value Tendering	Accept (see comments)	Best Value Tendering will be introduced by October 2008. Consultation paper to be issued on the detail of best value tendering
Recommendation 3.3 – Consideration of the retention of niche services in new General Criminal Contract arrangements	Accept	
Recommendation 3.4 – LSC to explore possibility of firms and NfP agencies expanding areas of civil and family law	Accept	

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
Recommendations 3.5 - Development of CLACs to be flexible and targeted at local client base	Accept	
Recommendation 3.6 – LSC to evaluate impact of transition to CLACs	Accept	
Recommendation 3.7 – Development of CLANs to be flexible and targeted at local client base	Accept	
Recommendation 3.8 – CLS Strategy to provide framework for other funders of legal advice services	Accept	
Recommendation 4.1 – New Boundary Areas	Accept	
Recommendation 4.2 – Market Fragmentation	Accept (see	The consultation paper <i>Legal Aid: Market Stability Measures</i> has been published simultaneously with this document and can be found on the

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
	comments)	DCA/LSC websites. This will lead to a slightly delayed implementation timetable than that suggested by Lord Carter
Recommendation 4.3 – Developing early identification of VHCCs	Accept	
Recommendation 4.4 – New GCC working arrangements	Accept (see comments)	A consultation paper on the detail of these proposals will follow in early 2007 – the final policy will therefore be subject to change as a result of this consultation
Recommendation 4.5 – Monitoring of DSCC and CDS Direct	Accept (see comments)	See recommendation 4.4 above
Recommendation 4.6 – Allocation of work under new working arrangements	Accept (see comments)	See recommendation 4.4 above
Recommendation 4.7 – New police station scheme	Accept	
Recommendation 4.8 – Revised Magistrate Courts Scheme	Accept	
Recommendation 4.9 – Develop a new magistrates' court Graduated Fee Scheme	Not Accepted	Subject to resolving scheduling fit with competition, it is yet to be decided whether this proposal will be accepted – however, there will be consultation if this recommendation is taken forward.

Carter Recommendation	DC/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
Recommendation 4.10 – Review of assigned counsel in magistrate's courts	Accept	
Recommendation 4.11 – Ring fenced and capped budgets for Crown Court advocacy ancillary payments	Accept	
Recommendation 4.12 – Review of changes to advocacy cracks and guilties scheme	Accept	
Recommendation 4.13 – Introduction of a revised advocacy GFS	Accept	
Recommendation 4.14 – Early identification of the trial advocate	Accept	
Recommendation 4.15 - Introduction of a new litigators GFS	Accept – see comments	This will be moved to October 2007. Consultation will also follow on the consolidated Funding Order.
Recommendation 4.16 – Harmonisation of the separate litigator and advocacy GFS	Accept	
Recommendation 4.17 – New specialist panel for VHCC's	Accept	
Recommendation 4.18 – Introduction of a	Accept	

Carter Recommendation	DC/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
best value tendering panel for VHCC's		
Recommendation 4.19 – Early notification by the defence and prosecution of cases over 25 days and contracting for cases over 41 days	Accept	
Recommendation 4.20 – Design of a pro-forma notification document for VHCC's	Accept	
Recommendation 4.21 – Development of a robust trial estimate procedure by the High Cost Case Review Board	Accept	
Recommendation 4.22 – Improved case management by the Complex Crime Unit	Accept	
Recommendation 4.23 – Consideration of ability to make additional savings in complex crime cases	Accept	

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
Recommendation 4.24 – LSC to ensure fixed fees for legal help are sustainable within budget and maintain supplier base.	Accept	
Recommendation 4.29 – Move of budget allocations for social welfare law with minimal disruption to services	Accept	
Recommendation 4.30 - No major changes in the current civil representation ex post facto remuneration scheme for the time being	Accept	
Recommendation 4.31- LSC to keep procurement and remuneration of mental health under close review.	Accept	
Recommendations 4.32 – New private law family fee levels to be sustainable within budget and maintain supplier base.	Accept	
Recommendation 4.33 – Move to Family Help scheme from April 2007 and final hearing	Accept – see comments	Family Help -Private Fee Scheme – for implementation October 2007 , with advocacy in April 2008.

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
scheme from autumn 2007		
Recommendation 4.34 – Current public law children ex post facto scheme to be replaced with a graduated fee scheme aligned with Protocol.	Accept	
Recommendation 4.35 – New fee levels for public law children to be sustainable within budget and maintain supplier base	Accept	
Recommendation 5.1 - Responsibility for quality assurance for solicitors should transfer to the Law Society	Accept	
Recommendation 5.2 - Peer Review scheme should be assessed prior to transfer	Accept	
Recommendation 5.3 - A system of quality assurance should be developed for all advocates	Accept	
Recommendation 5.4 - The LSC and DCA should help sustain a diverse supply base for	Accept	

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
legal aid services		
Recommendation 5.5 - The LSC should maintain resource to monitor, assess and promote diversity within its providers.	Accept	
Recommendation 5.6 - The LSC should include the methods and timing of making payments to suppliers as a factor when determining the length of contracts awarded under a best value tendering process.	Accept – see comments	The LSC will include, as part of its 'Organisational Transformation Project', the development of optimum methods and timings of payments to support the move to contracts awarded under a best value tendering process.
Recommendation 5.7 - The LSC should set up a financial advisory forum group as regular in which DCA, suppliers and bankers can discuss how best to promote the availability of loan and equity finance for the sector.	Accept	
Recommendations 5.8 and 5.9 - There should be established a match-funded grant programme through a growth and consolidated fund, lasting from April 2007 to March 2009.	Not Accept – see comments	Although the majority of respondents supported transitional funding, there was no consensus on the best way ahead and many suggested that increasing the level of fees would be a better use of this funding. Given the pressures faced by the legal aid budget, this £10m could only be afforded at the cost of fee reductions or bringing forward the introduction of standard fees, giving firms less time to adapt. The Government and LSC have therefore taken the view that the wider interest is not served in allocating money to these grant schemes. But we will keep this issue under review as the reforms come into

**Carter Recommendation**      **DC/LSC Response**      **Notes & Detail of any Changes to Lord Carter’s Proposals**

Carter Recommendation	DC/LSC Response	Notes & Detail of any Changes to Lord Carter’s Proposals
<p>Recommendation 5.10 – Internal judicial training, through the Judicial Studies Board, should be expressly developed – the relevant judicial training should be in place for all Circuit and High Court judges by April 2007.</p>	<p>Accept</p>	<p>effect.</p>
<p>Recommendation 5.11 – A review of the effectiveness of judicial, prosecution and defence adherence to the principles set out in the disclosure protocol.</p>	<p>Accept</p>	
<p>Recommendation 5.12 – DCA and the judiciary should review the criteria and regulations that allow for the appointment of two counsel.</p>	<p>Accept</p>	
<p>Recommendation 6.1 – The LSC should immediately move to set up dynamic management information systems by December 2006.</p>	<p>Accept</p>	
<p>Recommendation 6.2 – The LSC should identify significant upward movements in unit cost and bring together all parties to secure shared understanding of the position and</p>	<p>Accept</p>	

Carter Recommendation	DCA/LSC Response	Notes & Detail of any Changes to Lord Carter's Proposals
agreement to an adjustment down in price or other measures to bring unit cost back with the projected totals.		
Recommendation 6.3 – The DCA and its partners in the justice system should develop systems for ensuring a full understanding of volume pressures.	Accept	
Recommendation 6.4 – Mechanisms for local information sharing and problem solving on legal aid should be established by the Legal Services Commission by April 2007.	Accept	
Recommendation 6.5 – The DCA and the Legal Services Commission should establish improved stakeholder engagement arrangements.	Accept	





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