

Interim summary report on ‘The Use of Experts, Quality, Price and procedures in publicly funded cases’. June 2005

This document is a brief post-consultation summary for the consultation paper “The Use of Experts: Quality, price and procedures in publicly funded cases” issued by the Legal Services Commission in November 2004. The full report and detail of the responses will be published end of September 2005

The consultation period closed on 25th February 2005. The proposals addressed the following three main areas: quality assurance, fees and procedures.

1. The paper stated the Commission’s long-term aim: - to arrive at a position where all experts, who are regularly instructed in Commission-funded cases, are accredited and the Commission “endorses” those accredited experts who agree to work as part of the Community Legal Service (CLS) and Criminal Defence Service (CDS).
2. The paper proposed publishing guideline payment rates, divided into three bands, for experts working as part of the CLS and, similarly, dividing the current guideline rates for experts working as part of the CDS - published in Appendix 2 to the Costs in Criminal Cases (General) Regulations 1986 (as amended).
3. The paper also proposed moving away from the current individual, case-by-case, payments on account in civil certificated cases to annual, or bi-annual, contract-by-contract payments on account. It also proposed abolishing prior authorities for experts and that the terms of business between solicitors and experts should include terms covering the timing of payment and the allocation of risk, in the event fees were reduced on assessment.

The Commission believes that the benefits of the proposals will be:

- ✓ Raising the standard of forensic expert services by encouraging the use of accredited (quality assured) experts;
- ✓ Clear terms of appointment (with faster payment and clear allocation of risk), avoiding delays, misunderstandings and consequent disputes;
- ✓ Simpler administration and procedures, reducing bureaucracy and saving costs;
- ✓ Greater clarity - particularly when guideline rates are followed - over when fees may be reduced on assessment; and
- ✓ Greater control over rising experts’ fees.

A total of 169 responses plus an additional 16 individual expert responses from the UK Register of Expert Witnesses were received. Of these 66 were

from representative bodies and practitioner groups, 46 from suppliers, 66 from individual experts, 6 from the Not for Profit sector and one from a member of the public.

The majority of responses focused on the proposals for accreditation and the proposed guideline fees.

Some responses to the accreditation question assumed that we were proposing compulsory accreditation by the Council for the Registration of Forensic Practitioners (CRFP). We did not propose, and are not in favour of, compulsory accreditation. However, we remain of the view that accreditation holds benefits as it creates a panel of currently competent experts which, in our view, would be a valuable resource.

Many respondents said that the guideline fees were too low and also a large majority of those who responded to the question, "whether the prosecution and defence should work to the same guideline fees", believed that they should. Our view is that the rates published in Appendix 2 to the Costs in Criminal Cases (General) Regulations 1986 (as amended) should continue to apply, as they stand (without the proposed division into bands), and that further guidance should be in conjunction with the Crown Prosecution Service.

Some respondents interpreted the proposal to make annual (or biannual) payments on account of disbursements as suggesting that payment in respect of experts services would be made in arrears, whereas they would be made on the basis of "as good or better" than current cash flows, with provision for adjustments. This affected their view of the proposals. Other respondents said that they would support the proposal provided that it covered all disbursements, not merely experts' fees, and we have accepted that point.

It was suggested that the Commission could look on all expenditure on excessive/unnecessary experts' fees as a supplier contract performance issue, instead of on a case-by-case basis (except in exceptional circumstances). We intend to consult further on this as it offers another possibility to reduce bureaucracy.

The consultation paper also proposed that the Commission might contract directly with experts or organisations providing expert services e.g. computer experts, mobile phone experts and NHS Trusts. We intend to pursue this and are pleased that the paper has prompted responses from experts and bodies interested in taking this forward with us.

Having considered the responses to all our proposals, we believe that they create the right framework, but that we should engage in more detailed consultation, with key respondents, before reaching final views in a number of areas. The full consultation summary report will be published by 30th September 2005.