

In addition to the Law Society's proposed judicial review on the removal of travel and waiting from the fees paid for Magistrates Court work in urban areas, action has also now been brought by firms in Hull.

The Law Society's claim

In an earlier email, we advised that Bindman and Partners (solicitors acting for the Law Society) had sent a pre-action protocol letter to the LSC on 20th April 2007 on behalf of the Law Society challenging the LSC's Notice of Amendment to the General Criminal Contract of 26 February 2007 and which came in to force on 16 April.

The substance of the amendments is that 16 areas around the country are designated (as urban areas) and that firms within those areas will be able to claim a new range of revised standard and non standard fees for Magistrates' Court and within those fees is a notional, fixed sum said to be paid in respect of travel and waiting (and which are weighted in favour of certain categories of work). Firms outside those areas will be able to claim the old range of standard and non standard fee and in addition, travel and waiting at an hourly rate to be assessed when payment is claimed. The Law Society challenged this amendment on a number of grounds including:

(1) The LSC's decision is inconsistent and irrational as regards the treatment of firms based in designated urban areas.

The Society claim that the decision involves a mismatch between, on one hand, the LSC's policy aim behind making different arrangements for rural, non-designated areas and, on the other, the solution adopted to the problems of ensuring an adequate supply of representation in non-designated areas; that is to maintain rural based suppliers in a position of significant advantage in comparison to urban suppliers (by permitting the former to continue to claim travel and waiting on an hourly rate). They use Kingston upon Hull as an example which is a unitary authority and also a designated area. There is a reasonably diverse range of firms with General Criminal Contracts based there, some of which have concentrated primarily on work at Hull Magistrates Court and others which have provided a much more comprehensive service to the surrounding rural areas. However, there are very few firms based in Beverley, Goole and Bridlington and fewer still with criminal contracts. Each of the individual Hull firms that have historically serviced those magistrates' courts has now individually decided it is uneconomic to do so on the basis of the new arrangements so that there is now inadequate CDS cover at each of those three courts (action has now been brought by firms in Hull, see below). The Law Society claims that this is not an isolated example.

(2) The decision fails to take into account relevant evidence and/or is made on an inadequate, or no, evidential basis; and

(3) The decision is unfair and raises competition law issues (in particular, that they quite possibly breach the Public Contracts Regulations 2006 which require advertising, transparency and non-discrimination in the way state bodies purchase services).

The LSC's response

The LSC responded on 9th May rejecting the claims in their entirety.

Firstly, the LSC state that they will contend that permission to claim Judicial Review should be refused on the grounds of the Law Society's alleged delay in issuing its claim (the Society did not challenge the scheme until after the implementation date).

The LSC also deny that there has been an irrational treatment of firms in designated/non-designated areas. The LSC states that it stands by the basic principle of encouraging local provision of services which Carter highlighted as an important means of increasing efficiency and lowering cost to the taxpayer within the legal aid budget. If firms in designate areas were entitled to claim separately for travel and waiting time on cases taking place in non-designated areas, the LSC say that it would provide an unwelcome incentive to take on cases of that description which would run counter to the LSC's aim of encouraging local service provision. Similarly, if firms in non-designated areas were able to avoid the new all-inclusive fees by taking on work in distant designated areas. The LSC claim that it was also concerned that firms based in designated areas would be at an unfair advantage when competing with rural firms for work in their areas.

The LSC does not accept the allegations of breach of common law/convention rights saying it is not aware of any case in which a defendant has been unable to have access to a lawyer as a result of the fee changes which have been introduced. If such a case was to arise in the Hull area, the LSC claim that the responsibility would lie with the solicitors who have chosen to withdraw their services rather than the LSC.

The LSC also does not accept that any issues arises under the Public Contracts Regulations 2006 and will rely on points it has made in the judicial review recently issued in respect of the Unified Contract for civil work.

A copy of this letter can be viewed at:

http://www.lawsociety.org.uk/documents/downloads/dynamic/travelwait_lspreactprotlettertolsc200407.pdf

Proposed judicial review action by seven law firms in Kingston upon Hull

Bindman and Partners, referring and relying on the points raised in its letter of 20th April on behalf of the Law Society (who are an interested party in this new action), on 21st May, served a further letter before claim to the LSC on behalf of seven firms based in Kingston upon Hull who had historically provided services at various Magistrates courts close to, but outside, the designated area of Hull, in particular Beverley, Goole and Bridlington. These firms are now only entitled to the revised standard and non-standard fees, and may no longer be reimbursed separately for travel and waiting time in connection with work undertaken in Magistrates courts within or outside the Hull designated area and consider it uneconomic to carry out work in those non-designated areas. Those areas are now critically left without sufficient criminal defence cover.

In a number of meetings, the Hull firms have been in discussions with LSC's regional officers (including the Regional Director for Yorkshire and Humberside, Mr Peter Nelson). Proposals were discussed to make minor amendments to the scheme for this region to alleviate the situation (i.e. continuing to be reimbursed on the old range of fees for work at rural courts and prisons and entitled to claim revised court fees for work carried out within the Hull designate area). However, despite the apparent recommendation of Mr Nelson, the LSC has refused to agree to this, possibly because of the fact that the legality of the entire scheme has been questioned by the Law Society (almost certainly, they wouldn't want to jeopardize their position as regards the Law Society's claim).

Bindman and Partners have advised these Hull firms that the LSC's decision to include Hull as a designated area and its subsequent refusal to adjust the scheme so as to take account of the particular situation in Hull are amenable to challenge by a claim for judicial review.

The issues raised in this claim by the Hull firms are related to those raised in the letter sent on behalf of the Law Society on 20th April. Whilst not backing down from their threatened action about the scheme as a whole, the Law Society feel that as Hull and Humberside is the area of the country that appears to be the most severely affected by the changes and requires urgent consideration. The Law Society's position is that should the LSC take the opportunity to reconsider the position in relation to Hull and to engage in a meaningful discussion (or independent mediation) with the Hull firms and to show an open mind about the situation in Humberside, it would go some way to alleviating the Law Society's serious concerns about the overall scheme.

A response from the LSC is awaited.

Links to the LSC's response and the claim by the Hull firms are set out below:

<http://www.lawsociety.org.uk/documents/downloads/dynamic/lscresponsepreactiontravel090507.pdf>
<http://www.lawsociety.org.uk/documents/downloads/dynamic/lscresponsehull210507.pdf>

Further information can be found on the Law Society 'Defending Legal Aid' site, a link to which is set out below.

<http://www.lawsociety.org.uk/newsandevents/news/majorcampaigns/view=newsarticle.law?CAMPAIGNSID=247074>

Action brought by David Burrows in relation to the unified Contract

Finally, the LSC had also been facing a Judicial Review from David Burrows, a family solicitor from Bristol, who instituted his proceedings early in the hope of stopping the contracting process. He was denied interim relief, and he has now been refused permission to proceed with his claim for judicial review the contract. Mr Justice Gibbs, a High Court judge, took the decision on 21 May 2007 commenting: "*The Claimant expresses general dissatisfaction with the unified contract being offered. But he does not come close to establishing an arguable ground for judicial review.*"