

# **Quality Relationships Delivering Quality Outcomes**

## **The Preferred Supplier Scheme:**

### **A Consultation Paper**

*This paper addresses the issues of -  
consistently higher quality services for clients,  
better value for taxpayers, and  
simpler and clearer relationships with legal service providers.*

## Foreword

Developing good relationships with providers of legal aid services is of critical importance to the Legal Services Commission and I believe that the future sustainability of the legal aid system is dependent upon us doing so successfully.

The Commission's relationship with legal aid providers has not always been as constructive as it could be. Our focus on ensuring quality services and value for money has been absolutely right but we recognise that the emphasis on checking and auditing has concentrated our limited resources on those with whom we have quality and cost concerns, rather than on the firms and agencies providing a good quality, value for money service.



The proposals in this consultation paper seek to transform this relationship.

Our proposals are simple: we want to focus on the providers we know we can trust and to forge a new, more mutually beneficial relationship with them. This will require us all to change.

From providers, we will expect consistently good quality advice to clients that offers the taxpayer value for money.

In return, we will provide 'Preferred Suppliers' with greater autonomy, simpler processes and lower transaction costs.

We will be asking providers to improve their performance and we know that we must improve ours too. We are reducing our application processing times by more than half and improving our customer service. A Relationship Manager will be directly responsible for each Preferred Supplier account and will work closely with providers to identify improved ways of working, give better information and greater certainty about the future, and help providers to develop their businesses. We want a proper business-to-business relationship.

We know Relationship Management works well for providers because we tested it, with excellent results and feedback, during the Preferred Supplier pilot established in 2004. Of course, there is a difference between running a pilot involving 25 firms and a national scheme and we are making significant changes to our organisation to ensure that Relationship Management works on a national scale.

Lord Carter's Review of Legal Aid Procurement clearly sets the context for the proposals in this consultation paper. We have worked closely with Lord Carter and his team and believe that the Preferred Supplier approach will provide a platform for the delivery of the changes recommended by the review.

I believe that our proposals set out in this paper will enable us to build quality relationships with providers that will deliver quality outcomes for clients. I welcome your thoughts about how we can move from where we are now to a relationship based on partnership and I certainly hope that it is in the spirit of genuine partnership that we engage with you on this initiative.

A handwritten signature in black ink, appearing to read "Michael Bichard". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

**Sir Michael Bichard**  
Chair, Legal Services Commission

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# 1. Introduction and Objectives

## Scope of the paper

- 1.1 This consultation paper is primarily about the business relationship between the Commission and the frontline providers of legal aid services: solicitor firms and advice agencies. However, it should be read in the context of other reforms and initiatives currently in progress, including the independent review of legal aid procurement by Lord Carter of Coles.
- 1.2 The paper does not address the relationship between the Commission and advocacy specialists, primarily barristers, carrying out work on referral. The current arrangements in place in respect of this key group of legal aid service providers are not changed by our Preferred Supplier proposals. However, we will take account of changes emerging from the government's White Paper "The Future of Legal Services: Putting Consumers First" (Cm 6679 – October 2005) enabling advocacy specialists to enter alternative business structures with solicitors and would expect to apply the same standards to any undertaking which carries out publicly funded legal work, including the defence teams proposed by Lord Carter for Very High Cost Cases (VHCCs). We will also look to extend the scheme to future new entrants to the market (such as firms not owned by lawyers) who are able to meet our quality and contracting standards following implementation of the relevant legislation.
- 1.3 We are working closely with Lord Carter's independent review to ensure that the Preferred Supplier system is consistent with any wider procurement reforms proposed. We believe that the new approach we are proposing here can underpin any such procurement reforms and is a necessary prerequisite for changes resulting from the Procurement of Criminal Defence Services Interim Report published by Lord Carter on 9 February 2006 ([http://www.legalaidprocurementreview.gov.uk/docs/carter\\_review.pdf](http://www.legalaidprocurementreview.gov.uk/docs/carter_review.pdf)). We recognise that our proposals may need to be refined once Lord Carter's final report covering both the criminal and civil schemes is published later this spring and the Government has responded.

## Objectives for legal aid

- 1.4 The Commission has the responsibility to establish, maintain and develop the Community Legal Service (CLS) and the Criminal Defence Service (CDS). In doing this, our objectives are to:
  - ensure that people have access to quality legal services that meet their needs
  - work only with legal service providers who deliver quality, value for money and client focused services, and support those providers with whom we contract by simplifying our processes and reducing transaction costs
  - deliver a sustainable scheme within the resources available and demonstrate real value to government in terms of effective cash control, improved value for money and positive outcomes for clients

- transform the Commission itself to enable it to deliver these objectives and excellence in all it does.
- 1.5 The proposals set out in this paper make a key contribution to delivering these objectives. These proposals will play a central part in delivering the reformed legal aid scheme that most stakeholders believe to be necessary. They will underpin the three phases of reform proposed in Lord Carter's Interim Report on the Procurement of Criminal Defence Services:
- (i) fixed pricing for defence services where it does not already exist and re-balancing inequalities in current fixed price schemes;
  - (ii) promoting a managed market by guaranteeing access to volume for those preferred suppliers with sufficient capacity and quality, and providing support services to aid transition; and
  - (iii) introducing managed competition where a healthy market has developed based on quality, volume and price so that the most efficient, good quality providers can grow and thrive.
- 1.6 Through these proposals we aim to be working exclusively with legal aid service providers who meet the Preferred Supplier standard by the point at which Lord Carter's proposals are fully implemented, and by 2009 at the latest. Together with a number of other reforms we believe this will deliver:
- an overall improvement in the quality and value of legal advice and outcomes for clients
  - a more constructive, genuine partnership relationship between the Commission and legal aid service providers which will enable us to develop and improve the legal aid scheme for the benefit of clients
  - a management relationship that enables providers to focus on delivery for clients yet also provides the Commission with the information it needs to ensure quality, value for money and propriety of expenditure - with the simplest processes and lowest possible transaction costs on both sides.

## Timing

- 1.7 The Commission recognises that these proposals are being made at a time when all involved in legal aid face real challenges to meet client needs through a sustainable scheme which can be managed within the resources available. However, we believe that the proposals will move both the Commission and service providers towards solutions to a number of these challenges and will create a strong platform for the reforms in Lord Carter's Review of Legal Aid Procurement. We are committed to working with providers and their representative bodies to move the proposals forward as speedily as practicable and in line with the agreed timetable for the implementation of Lord Carter's Review.

## 2. A New Relationship

- 2.1 The legal aid system involves a range of relationships between individuals and bodies. These include the person receiving legal advice, legal service providers, the Commission, the courts, the government and the taxpayer. Each of these stakeholders has their own particular interest in legal aid. A key starting point for any discussion about legal aid or, indeed, for it to be managed effectively and based on constructive working relationships between the stakeholders, is to recognise that these interests can differ and sometimes compete.
- 2.2 Within the legal aid system the primary relationship is, and always will be, between the legally aided individual and their legal adviser. However, the relationship between the Commission and legal service providers is fundamental to the effective operation of the legal aid system as a whole, and to an individual's ability to access good quality legal advice that meets their needs.
- 2.3 Improving this relationship is a key aim for these proposals.
- 2.4 The Commission wants to work in partnership with legal service providers so that we are delivering a common goal, namely, access for clients to good quality, value for money legal services. At its very simplest, the role of solicitors and advice agencies is to provide the legal services; the Commission's is to provide the funding. However, to make the business relationship operate effectively we need to be more explicit about what lies underneath these roles.
- 2.5 Whether traditional solicitors' firms, other for profit providers or not for profit agencies, we understand that legal service providers seek:
- clarity about the services that can be provided to clients through the legal aid scheme and the rules governing the system
  - the simplest processes and the lowest transaction costs consistent with the scheme involving large amounts of public funding
  - income at levels sufficient to recruit, develop and retain staff with the necessary skills and competence to deliver a sustainable quality service
  - sufficient certainty about the future availability of work to make informed business decisions on investment
  - an excellent partnership relationship with the Commission.
- 2.6 As the public body responsible for managing the legal aid system the Commission needs:
- to ensure that eligible members of the public have access to the legal services that meet their needs in accordance with clear and transparent priorities

- to ensure that all services and its own administration provide quality and value for money
  - to deliver, and be able to demonstrate, accountability, propriety and control over expenditure
  - an excellent partnership relationship with legal service providers.
- 2.7 The current relationship between the Commission and legal service providers is not functioning as effectively as it could. This is hampering both the good quality, value for money legal service providers with whom the future of legal aid rests, and the Commission. Our objective is to move away from a system that has relatively low up-front entry criteria but then relies heavily on intrusive checking and audit. We recognise that this has also become a system where we have traditionally set up management systems to address the problems caused by those legal service providers who do not provide good quality and value for money services, do not comply with legal aid rules and do not provide good services for clients. It then applies these rules to all of our providers. However, this has not wholly addressed the issue of the poorest performers whilst alienating and getting in the way of a constructive and effective relationship with the best.
- 2.8 This paper sets out proposals to change this relationship and the ways in which we work together. We want to put in place a business relationship with well-managed, efficient legal service providers that can provide good quality and value for money services to clients within a clear framework. We want light-touch management and control by the Commission as long as performance is strong, with sanctions only where identified problems have not been resolved. This mirrors the approach for VHCC defence teams set out in Lord Carter's Interim Report (paragraphs 234 – 236). This will require change on both sides of the relationship.
- 2.9 We want to provide:
- simpler processes
  - greater devolution of decision-making
  - lower transaction costs
  - more constructive and risk-based performance management
  - improved customer service
  - better and clearer information to facilitate service delivery and planning
  - partnership working which is open, innovative and responsive.
- 2.10 We need from legal service providers:
- consistently good quality and value for money services, which meet the needs of legally aided clients

- compliance with the rules and guidance governing the provision of services
- accuracy in the management and other information required by the Commission
- the ownership and effective management of the systems necessary to deliver these requirements
- an ability to work with the Commission through e-business
- partnership working which is open, innovative and responsive.

2.11 We know from the Preferred Supplier pilot and other work that a substantial number of providers are already performing (or are ready to perform) in this way and we want to encourage others to achieve the same standard.

### **Where have the proposals come from?**

2.12 The Commission has been working with legal service providers and their representative bodies since the early 1990s to ensure that good quality and value for money services are provided to clients.

2.13 Franchising in 1994, contracting in 2000, and the Specialist Quality Mark (SQM) in 2002 established organisational standards and introduced proxies to ensure the delivery of competent quality of advice. On-site audit was developed to inform providers, and us, where compliance existed and where it did not. These approaches have improved and assured the quality of service provided to clients. We recognise the significant achievements of legal aid providers, both in working with us to make these changes, and in responding to these challenges at times when they have also had many other pressures to contend with.

2.14 In 2003 we began to move on from an audit approach, where the same level of scrutiny was applied to all providers, regardless of their performance and risk. Whilst for some poorly performing providers the audit approach was essential, it relied on resource-heavy and intrusive audit techniques. Also, it did not effectively support the development of those that were performing well.

2.15 The Preferred Supplier pilot was designed collaboratively with a group of committed legal aid providers to develop a better approach. It explored some of the criteria, mechanisms and relationships that needed to be tested in order to realise our aim of working more closely with providers performing at the higher end of the spectrum - our Preferred Suppliers.

2.16 The pilot was supported by the development of new tools to assess and assure the quality of advice: Quality Profiles, File Assessment and Peer Review. A summary of each tool is set out at Appendix A with an explanation of how we intend to use them in the future and in the context of the roll out of a full Preferred Supplier scheme.

**Q1 Do you consider that the quality of advice tools in Appendix A are proportionate? If not, please explain why, and indicate the changes you would propose.**

**What have we learnt from the Preferred Supplier pilot?**

- 2.17 We began the Preferred Supplier pilot in 2004 with 24 solicitors' firms and one not for profit organisation in five of our regions. The principal aim of the pilot was to test a new working relationship with high performing legal service providers. The pilot found that the process of identifying Preferred Suppliers and working with them in a new and innovative way to build trust, streamline business processes on both sides and improve services for clients, presented a much greater opportunity than had originally been anticipated. We have now evaluated the pilot and have published details of the evaluation, available at: [www.legalservices.gov.uk/civil/preferred\\_supplier/pilot.asp](http://www.legalservices.gov.uk/civil/preferred_supplier/pilot.asp).
- 2.18 The pilot also showed how a Relationship Management approach could provide a framework in which we could devolve a significant amount of decision-making to legal service providers. We aim to allow providers, wherever possible, to start and progress work for clients without recourse to the Commission. As well as offering obvious benefits for clients, this also reduces transaction costs between the Commission and our providers and allows them to streamline their processes for dealing with all cases, regardless of how the case is funded.
- 2.19 Across other areas of operational business processing, such as bill assessment, we have looked at how procedures and processes can be dramatically simplified. This offers potentially significant savings in transaction costs for both providers and the Commission, particularly when properly supported by appropriate technology.
- 2.20 The pilot was able to test key issues about the nature of the working relationship between legal service providers and the Commission. However, it was not possible to test some aspects of the full business relationship that our discussions with pilot firms revealed were highly important to them. These centred on business certainty and stability and the need to deliver services at a volume that enabled firms to achieve economies of scale. Feedback confirmed that these are critical to our better providers in delivering an effective operational Preferred Supplier scheme.
- 2.21 The proposals set out in Section 3 of this paper will provide the structural framework within which this new relationship can exist. Changing the structures which define our relationship will be a major step but we also need to work together to achieve the necessary change in the culture of the relationship in order to support and further the interests of legally aided clients.

### 3. Preferred Supplier – Key Features and Benefits

3.1 The structure of the new – Preferred Supplier – relationship has been developed in the light of the lessons learnt in the pilot. It relies on the up-front assessment of the legal service provider's status as a well-managed and effective business capable of delivering good quality and value for money services to clients. Allied to this is a consequent reduction in checking and auditing by the Commission and a simplification of processes. The key features of the new scheme will be:

- Implementation of key proposals from Lord Carter's Interim Report which states that firms must demonstrate that they meet the following criteria in order to be awarded contracts to provide legal services and be of Preferred Supplier status:
  - o a good history of compliance with existing legal aid requirements such as contract compliance, cost control, compliance with the SQM, etc.
  - o value for money criteria based on the procurement regime established after the Carter Review
  - o a soundly financed and sustainable business
  - o a good quality of legal advice as measured by Peer Review and File Assessment.

Once awarded, Preferred Supplier status will normally only be reviewed on contract renewal.

- Preferred Supplier status, and therefore contracts, will be awarded to organisations and not individual offices and we will manage the relationship with the organisation as a whole
- Preferred Suppliers will need to have in place the key internal systems and controls that ensure the delivery of quality, value for money services to clients
- the lead responsibility for the management of our relationship with each Preferred Supplier will rest with a Relationship Manager, working within the appropriate regional office
- Preferred Suppliers will exercise a greater range of devolved decision-making and benefit from much quicker decision-making by the Commission on non-devolved decisions
- there will be simplified billing and claiming processes for Preferred Suppliers
- there will be reduced inspection and auditing, which will be replaced by remote monitoring of management information and performance data. This will be robust and the Relationship Manager will discuss issues arising whenever necessary and agree further action

- eventually business between the Commission and Preferred Suppliers will be transacted using e-business.

### Entry criteria

- 3.2 In Section 4 of this paper we set out in detail the assessment process for Preferred Supplier status leading to the award of contracts and the phased process through which we plan to introduce this. Subject to what is set out in Section 4, all organisations, solicitor firms and agencies providing legally aided advice, assistance and representation to clients will be able to seek this status. Preferred Supplier does not apply to advocacy specialists undertaking work on referral but will take account of changes emerging from the government's White Paper "The Future of Legal Services: Putting Consumers First" (Cm 6679 – October 2005). This will enable advocacy specialists to enter alternative business structures with solicitors and we would expect to apply the same standards to any undertaking which carries out publicly funded legal work. We will also look to extend the scheme to future new entrants to the market (such as firms not owned by lawyers) who are able to meet our quality and contracting standards following implementation of the relevant legislation.
- 3.3 Once awarded, the Preferred Supplier quality standard will cover all legal aid work delivered by the firm or agency.
- 3.4 Once awarded, we will monitor performance through a light touch though rigorous process as set out at paragraphs 3.27 to 3.34 below and periodically review the status more formally (probably at contract renewal). Continuation as a Preferred Supplier will be dependent on maintaining a level of performance consistent with the new standard. Peer Review will be necessary at least every three years to validate that the organisation is conducting work of the required quality. Peer Review may be undertaken more frequently if there are concerns about quality.

### Contracting with organisations

- 3.5 It is proposed that Preferred Supplier status will be awarded to organisations (and not offices). This could include consortia or lead supplier models. We expect to make greater use in future of a commissioning approach to legal aid services – building on previous bid rounds we have run for the provision of CLS Legal Help and on Lord Carter's procurement principles – through which we will seek the delivery of specific legal services to client groups in specified geographic areas. However, subject to such future developments, we will not restrict the number or locations of offices, providing that common corporate governance and consistent quality management can be demonstrated across all offices. A single Relationship Manager will be appointed to the organisation to cover all offices and sites.
- 3.6 This approach will benefit Preferred Suppliers and the Commission by minimising duplication of effort in the management process, improving consistency of approach across all of a provider's offices and allowing greater innovation and flexibility in service delivery – to the benefit of clients. It will also provide the Commission with a better understanding of the provider's business.

## Internal management systems

3.7 The responsibility for delivering good quality, value for money legal services to clients in accordance with the legal aid rules and regulations, and the business relationship established with the Commission, will lie with the Preferred Supplier. It follows that the establishment and maintenance of the management systems and procedures necessary to assure the delivery of services in this way also lies with the Preferred Supplier. These systems must not only assure quality of advice to clients but also ensure compliance with the necessary rules of undertaking legal aid business, including billing.

3.8 The assurance provided by Peer Review and other qualifying criteria will enable the Commission to take a new approach to quality assurance.

3.9 We will maintain the SQM standard for three main purposes:

- it will continue to be used and applied as now for non-Preferred Suppliers until we reach the stage when we are only working with Preferred Suppliers
- it will be used as a standard against which we will judge the extent to which new providers of legal aid services (or existing providers seeking contracts in additional contract categories) have in place the management systems and procedures to ensure that they deliver good quality, value for money services to clients
- as best practice guidance for Preferred Suppliers.

However, when we have reached the position where all providers meet the Preferred Supplier standard we will not “award” the SQM to organisations - there will be one new standard, that of Preferred Supplier. It will be for individual Preferred Suppliers to determine whether to apply the detailed requirements and definitions set out in the SQM, or replace them with tailor-made processes and procedures, equally able to assure compliance.

3.10 Relationship Managers will discuss Preferred Suppliers’ quality management systems and will need to be satisfied that they are in place and in effective operation, but will only exceptionally (see paragraph 3.32 below) use formal on-site audit activity to do so. They will seek assurance that effective systems are in operation in all seven of the quality areas in the SQM (known as the Quality Framework) and will expect Preferred Suppliers to demonstrate excellent management control and processes whether the organisation is based at a single site or at several sites.

3.11 Relationship Managers will pay particular attention to providers’ arrangements for ensuring effective supervision, individual competence and file management and internal quality control through file review. Evidence from Peer Review and feedback from the indemnity insurance industry show that poor adherence to these areas is likely to be mirrored by poor quality advice and a poor service to the client. Therefore, should performance concerns be identified through any of the monitoring arrangements in place, Relationship Managers will review systems in these areas to ensure that quality of advice is maintained at preferred status levels.

## Relationship Management

- 3.12 In the pilot, a key change in the Commission's approach was Relationship Management. This relies on a skilled and trained Relationship Manager who works in partnership with the Preferred Supplier to ensure that it has the necessary support to deliver good quality, value for money services that meet client needs. Evaluation of the pilot strongly supported this approach, indicating confidence in its ability to deliver constructive, effective and influential two-way relationships. Therefore we will make Relationship Management a key feature of the Preferred Supplier system.
- 3.13 This approach facilitates much less direct intervention than traditional on-site audit. Instead it relies on the use of remote techniques and ongoing monitoring to manage risk. It also presents providers with the opportunity for much greater flexibility in self-managing performance.
- 3.14 Each Preferred Supplier will be allocated a Relationship Manager who will be responsible for the contract management of all publicly funded work with that provider. They will act as the single point of contact in communicating the Commission's plans and priorities so that providers can plan and develop services appropriately. They will agree and monitor performance in respect of the quality and cost of services provided and, where necessary, agree improvements and timescales where issues and concerns are identified. This will be done in partnership, with open and honest agreement being reached on the Commission's expectations and the Preferred Supplier's plans to achieve these.
- 3.15 Through the Relationship Manager working in partnership with the Preferred Supplier, we will:
- work together to identify opportunities to develop and deliver services that meet clients' needs whilst achieving economies of scale and reduced transaction costs
  - monitor Preferred Supplier performance and identify and agree any action needed to improve performance
  - work with the provider to identify operating efficiencies and best practice to improve the efficiency and reduce the transaction costs of both Preferred Suppliers and the Commission
  - communicate and advise on changes in the legal aid system and help providers implement the necessary changes
  - establish a more effective dialogue on the development of publicly funded services and facilitate Preferred Supplier involvement in these discussions
  - help providers to identify opportunities to develop their business in the provision of publicly funded services
  - help Preferred Suppliers to monitor their own systems, processes and outputs to ensure sustained quality and value for money

- support other LSC units to ensure that all parts of the Commission deliver excellent customer service to legal service providers.
- 3.16 Our aim is to change the relationship from one of inspection and audit to one of collaboration and partnership, in order to deliver better services for clients and a more efficient system with lower transaction costs.

### Devolved powers

- 3.17 In time, all decisions that can be devolved without loss of control or unacceptable risk to the legal aid fund will be devolved to Preferred Suppliers. This will be supported by non-intrusive monitoring systems and clear feedback. The extension of the powers devolved to providers will link to simplified business processes and will therefore reduce transaction costs and any delays previously experienced by practitioners and clients.
- 3.18 Success in this process is fundamental to delivering the potential benefits of the Preferred Supplier approach. We recognise that for some providers this will require a cultural shift in their approach to legal aid, but it is one which must be achieved. The legal aid system can only exist with rules about when advice may be provided, when cases may be taken for individuals, and about when cases should be continued or specific steps taken. Increasing devolved powers in these areas is key to improving services to clients, simplifying processes and reducing transaction costs. However, the corollary is that Preferred Suppliers must follow the rules and guidance in these areas and exercise effective and appropriate control over legal aid funding. Both sides of the Commission/provider relationship have to take responsibility and deliver this in order to break out of the cycle of some providers stretching the boundaries and rules inappropriately and the Commission responding with more onerous systems and checking.
- 3.19 Family cases form our largest area of civil work, with over 130,000 certificates issued in 2004/5. Some elements are also relatively low-risk in terms of decision-making, given the average case cost and its priority in terms of funding. Given this, we plan to devolve most decisions in respect of family proceedings on grant and amendment to Preferred Suppliers, up to specified financial limits. The intention is that it should therefore be possible for most family proceedings to be conducted via the use of devolved powers. Final levels of devolved powers will be settled after the publication of Lord Carter's final report which will include his recommendations for civil and family legal aid procurement, however illustrative figures to show the sorts of levels we are considering are shown at Appendix D.
- 3.20 Once we have had the opportunity to properly monitor the effect of increased devolved powers, and provided that there is no adverse implication for case costs or outcomes, it is our intention to devolve decision-making in other low risk areas. We will adopt an incremental approach by devolving additional powers once a provider demonstrates that it is able to manage existing powers competently. If devolved powers are exercised inappropriately and the provider fails to take the required corrective action we will apply a range of measures including requiring the provider to bear the financial consequences of the inappropriate decision, reducing or removing devolved powers or terminating a provider's contract altogether where there is

evidence of systematic misuse of such powers. In the longer term, subject to changes to be outlined in Lord Carter's final report, we will look at the feasibility of devolving other areas of business. For instance, collection of client contributions and the statutory charge could be devolved to providers, although we would need to look carefully at the administration associated with such activities and the extent to which these could be streamlined with private client processes or we could remunerate providers for undertaking them.

**Q2 Do our proposals for extending devolved powers strike the right balance between maintaining fund control and reducing the administrative burden for providers? If not, please explain why and provide any alternative suggestions.**

### **Improving Commission decision-making**

- 3.21 It will not be possible to devolve all decisions to Preferred Suppliers. For instance, the Commission would wish to retain decision-making powers in particularly high value cases. This means that there will still be a range of decisions on individual cases made by the Commission. Where this is the case we are determined to ensure that our decision-making is accurate, consistent, speedy, well explained and structured in a way to minimise transaction costs. We believe we have made improvements in all these areas in recent years, but there is more for us to do.
- 3.22 To capitalise on the benefits to be gained from the streamlining of existing operational processes we will consolidate our business delivery functions to a limited number of sites. At the same time, we will maintain our regional presence, focused on understanding client needs, engaging with stakeholders and managing our local relationships and contracts with providers within each existing region.
- 3.23 There will be a significantly reduced turnaround time for work submitted (eventually all electronically) to a processing centre in relation to a funding decision (new application or amendment/authority to existing funding certificate). Where devolved powers have not been exercised, work will be dealt with within five working days or less. In the pilot, the turnaround target was 48 hours. Our aim will be to continue to meet this in a high proportion of instances. However, it is likely that given the proposed extension of devolved powers, decisions requiring our intervention would be those involving particular complexity, hence the five working days proposal.

### **Simplified billing and claiming**

- 3.24 Simplifying payment systems and the processes for producing, assessing and paying claims is key to our objectives of reducing the administrative burden and transaction costs. Again, as with the increased use of devolved powers, success in this area will depend on all Preferred Suppliers taking responsibility to ensure accuracy and compliance with the rules in this area.

- 3.25 Lord Carter's proposals for the Criminal Defence Service include using fixed fee systems to pay for a greater proportion of legal aid work. Such schemes can deliver significant business benefits for both legal service providers and the Commission. We believe that this approach could also support Lord Carter's forthcoming civil proposals. Exceptionally some work may, however, still be paid through different mechanisms which will be very tightly managed, and, where this is the case, we will work with providers to make such systems as simple as possible.
- 3.26 Alongside the assurance provided by the Preferred Supplier approach this will enable us to introduce a simplified process for payment for the great majority of all claims. This will be managed internally using non-intrusive monitoring systems with control being exercised through the management relationship between the Relationship Manager and the Preferred Supplier.

**Q3 Which of the proposed key features and benefits offer most benefit? What other key features and benefits do you see as a priority for future development?**

### Monitoring performance

- 3.27 The primary responsibility for managing and maintaining the quality of advice and compliance with contractual requirements, for example in respect of devolved powers and billing, will lie with Preferred Suppliers. Lord Carter's Interim Report proposes that quality assurance will eventually be a task primarily for professional regulators, in this case the Law Society. However, it also recognises that the participation of the Commission, as the procurer, is essential to ensure that there is compliance with contractual requirements.
- 3.28 The Commission's role will be to discharge its responsibilities as a public authority to be accountable and ensure propriety of legal aid expenditure, quality of advice to clients and value for money. We will also seek to help Preferred Suppliers improve their services and efficiency. We will aim to discharge these functions with as little intervention as is consistent with meeting our obligations and with the simplest processes and the lowest transaction costs, on both sides, as feasible.
- 3.29 We will monitor performance remotely through the analysis of data submitted to the Commission and, in particular, look to identify trends and changes that may indicate underlying changes in behaviour.
- 3.30 In addition we will continue to discharge our statutory duty to ensure that services purchased are of the appropriate quality and represent value for money through the File Assessment process which we have set out in Appendix A. This will ensure compliance with the contract and Funding Code, value for money on non-fixed fee cases and monitor accuracy of data, especially case outcomes and case type. In civil non-family cases we will look at success rates as part of case outcomes, including looking at issues such as the appropriate use of alternative dispute resolution.

- 3.31 File Assessment has been developed to meet our obligations as a public accounting body and yet be as unobtrusive as possible for providers. Relationship Managers will supervise this process to ensure that it is as seamless as possible. Performance strengths as well as any areas for development identified by the process will feed into the ongoing management relationship.
- 3.32 Any further monitoring activity will be determined by the results and findings of File Assessment. Results will be quickly and openly discussed and performance improvement swiftly put in place. If serious issues are identified, a more rigorous inspection such as Peer Review or a Contract Compliance Audit may be undertaken. Peer Review or File Assessment might also be necessary if there is a significant change in fee-earning personnel in any category of law or any other evidence to suggest a decline in the provider's performance. All of this activity will be undertaken on a risk basis so that providers with strong performance will be subject to a "light-touch" approach. Lord Carter's proposals for transferring responsibility for Peer Review to the regulator i.e. the Law Society, would not change our reliance on Peer Review as a major and final arbiter of quality of work as we would still set the quality standards and, where necessary, refer the firm to the regulator for Peer Review.
- 3.33 Alongside the arrangements for routine and ongoing monitoring detailed above, the Relationship Manager will produce an annual Supplier Performance Evaluation, summarising key findings arising out of the managed relationship and from data reviewed in the previous 12 months, identifying positive trends as well as any concerns. This will be used as a historical review, but also as a starting point for planning performance management with the provider for the coming year.
- 3.34 Until we reach the position where all providers meet the Preferred Supplier standard, we will continue to use quality of advice and audit assessment tools, where appropriate, to ensure ongoing maintenance of quality and contractual performance. This will include providers who have not yet undergone Preferred Supplier assessment or who are not intending to participate in the Preferred Supplier scheme or bid for a contract.

**Q4 Is the proposed performance management framework for Preferred Suppliers set at the right level? If not, please explain why and provide any alternative suggestions.**

### **E-business**

- 3.35 Over time we aim to move towards an e-business approach. To improve customer service and reduce transaction costs for legal service providers and the Commission, we want all Preferred Suppliers to operate and report work conducted under their contract electronically. All contract holders will use our current electronic facilities (i.e. SPOCC and SPAN including bulk upload) and commit to using the more comprehensive e-business systems which we will be implementing over the next few years. Criminal defence providers may be required to participate in wider criminal justice system IT initiatives.

3.36 Our plans for the future e-business approach are that Preferred Suppliers will need to operate a case management system that enables them to collect data on the type and value of work undertaken. The system used will be entirely at the provider's discretion – we do not propose to deliver or specify use of specific software. Instead we will specify the data we need and require it to be transmitted to us electronically. If possible, Preferred Suppliers will have a broadband Internet connection and the relevant software capability to undertake this electronic transmission. It will not require investment in a unique Commission software package, though a conversion feature, provided by existing software suppliers may be beneficial. We believe that software suppliers are willing and able to do this based on experience from the insurance industry.

3.37 Access to case files for monitoring purposes may also be requested electronically.

**Q5 Are there other ways in which the Commission could reduce bureaucracy for providers without compromising our duty to secure quality and value for money services?**



## 4. Putting the New Structures and Relationships in Place

- 4.1 We propose a structured and progressive implementation of the Preferred Supplier arrangements with an objective of having all legal aid services provided by Preferred Suppliers by no later than 2009 or the completion of Lord Carter's procurement reforms. The precise method of roll out is subject to the implementation of Lord Carter's recommendations.
- 4.2 At each stage we will ensure that the greatest number of legally aided clients receive services from Preferred Suppliers as rapidly as possible. The approach will also facilitate the most rapid change of processes within the Commission to support the new way of working.
- 4.3 Below, we set out details of how we currently propose to phase the implementation process. This will need to be co-ordinated with a number of other developments in the provision of legal aid services including the implementation of the CLS Strategy and, fundamentally, the outcome of Lord Carter's Review of Legal Aid Procurement. Because of this we will keep the planned Preferred Supplier implementation programme under review, discuss it regularly with providers' representative bodies and keep providers well informed about progress and any changes to our plans.

### Phased implementation

- 4.4 All proposals in Lord Carter's Interim Report are underpinned by a minimum quality standard that all firms must reach in order to be granted a contract. It is proposed to set this quality level using the Peer Review assessment system. The appropriate quality level will be set with three factors in mind:
- ensuring appropriate professional quality of service for customers
  - the current quality level of providers – the threshold will stretch providers but will have regard to maintaining continuing supply of service
  - going forward the minimum quality threshold is very likely to increase from Threshold Competence (Peer Review level 3).

We accept that initially the current minimum of level 3 at Peer Review is necessary to provide sufficient coverage, but over time we intend to raise the threshold so that in due course all providers are operating at levels 1 or 2. Full Preferred Supplier status will not be awarded until a provider achieves a Peer Review rating of 1 or 2 in all the major categories in which they undertake work.

- 4.5 The Commission will be starting to conduct Peer Reviews immediately and progressing as quickly as possible in order to make sure that the maximum number of firms have been reviewed before the first wave of contracts are awarded under the scheme proposed by Lord Carter. However, we recognise that this is a very tight schedule and that it is possible that not all firms will have been reviewed by that point. All firms awarded contracts will have either received a rating of 3 or higher at Peer Review or a

Pass at File Assessment by initial contract award.

- 4.6 Phase 1 of Lord Carter's crime proposals, as set out in his Interim Report, will be a move to fixed pricing and preparation for the new market conditions. The Preferred Supplier approach will be introduced and prices will be fixed across police station, magistrates' court and Crown Court work. The first round of contracts will be tendered on quality and capacity. Price competition for VHCC will be introduced.
- 4.7 Phase 2 of implementation will be to further the establishment of a sustainable market by rewarding efficiency. There may be re-tendering for contracts in order to reward providers that have increased capacity through efficiency gains.
- 4.8 The final phase of the reforms will be a move to managed competition. It is hoped that fewer, larger, more efficient firms will be delivering contracts to supply good quality defence services. Price competition will be introduced to police station, magistrates' court and Crown Court work.
- 4.9 Ultimately, VHCC Panel membership will be conditional on a Peer Review score of 1 or 2 being attained in all applicable categories of law for which panel membership is held. Our initial priority may include assessing those organisations which are potential bidders for crime VHCC panel membership. These are likely to be larger or highly specialised firms.
- 4.10 Bearing in mind Lord Carter's proposals for crime contracts to be awarded initially on the basis of quality, capacity and financial viability, we will also focus on firms likely to be bidding for work in the first phase of roll out of his proposals. If these firms also have civil contracts we will expect to Peer Review this work at the same time. The order in which areas or regions will move to the new procurement arrangements has not yet been decided, and will not be determined until after Lord Carter's final report has been published. Further roll out of the Preferred Supplier initiative will mirror the implementation of Lord Carter's procurement proposals.
- 4.11 We recognise that some providers may need time to improve the quality of some categories of work to that of their best, so will award "designate" status to providers with strict time limits for improvement to confirm the Preferred Supplier status (see paragraph 4.4).
- 4.12 Once invited, the decision to apply for Preferred Supplier status will be voluntary. However, providers will need to note our intention to work exclusively with Preferred Suppliers to deliver legally aided services for both crime and civil and that all firms awarded contracts under the procurement arrangements introduced by Lord Carter must be at, or attain, Preferred Supplier status.

### **The application process**

- 4.13 Application will be by written submission on a template set by the Commission. Full details of the application and assessment process are set out in Appendices B and C to this consultation paper. We will give a named contact to help providers through the application process and we may want to discuss the content of the application with the provider.

- 4.14 There will be no discrete Preferred Supplier appeal process. Existing appeals processes will be retained only where they form part of another process, such as that in operation for Peer Review. We will review the data relied upon when making a decision where providers can show that our records are wrong. However, where providers have misreported information to us (such as case outcomes) no right of appeal will exist, as correct reporting of information is a current contractual requirement.
- 4.15 We want providers to pass the assessment process. Therefore, we will allow a period of time for rectification of any areas of under performance or misreporting, and re-application will be possible after a minimum period of between 6 and 12 months depending on the performance issue identified. For example, where a provider is below the required quality threshold on their first attempt, the timetabling of the re-assessment against File Assessment or Peer Review will be dependent on available resources.

**Q6 What improvements, if any, might you suggest to the proposed process for the award of Preferred Supplier status (Appendices B and C)?**

**Q7 What additions or deletions would you make to the proposed selection criteria to identify Preferred Suppliers and do you have any comments or concerns about specific criteria?**

#### **Award of Preferred Supplier status and transitional contract arrangements**

- 4.16 As soon as a provider has successfully completed the assessment process we will work with that Preferred Supplier to put in place the new relationship. We will not withdraw existing contracts or issue wholly new ones immediately simply due to Preferred Supplier status, rather we will issue new contracts when existing contracts come to an end or to fit with Lord Carter's proposals. For example, for crime providers we will expect all firms awarded contracts from April 2007 to be at or committed to reach the standard within 12 months or by the date of price competition. The Preferred Supplier contract will consist primarily of a new set of terms and conditions defining the terms of the relationship between the Preferred Supplier and the Commission.
- 4.17 By no later than 2009 we expect to be working solely with Preferred Suppliers. Once this has been achieved we expect to move to a system of longer term contracts to provide contract holders with the level of business certainty they will need to invest in and develop their services for clients.
- 4.18 Current civil contracts run until the end of March 2007 and it is our intention to introduce a new contract based on one set of standard terms covering all our contractual relationships for the delivery of legally aided advice and representation. The contract specifications will, as they do now, set out in detail the work to be provided and the payment regime. It is our intention that this new contract and any revised specification will come into force, following consultation, from 1 April 2007. The position for holders of the current General Criminal Contract will be slightly different. We will be writing to all General Criminal Contract holders very shortly to confirm future contractual arrangements to enable the roll out of Lord Carter's

proposed changes to the procurement of criminal defence services. Once a group of providers is affected directly by the Carter proposals and is awarded a new contract, this will be the new form of contract but with a specification covering the new arrangements for the provision of CDS work. The new contract will apply to both Preferred and non-Preferred Suppliers by incorporating additional terms, conditions and benefits that only apply to Preferred Suppliers.

- 4.19 We intend that these contracts will run until 2009 when we expect to move to a wholly Preferred Supplier system, but our approach may need to be modified to take account of Lord Carter's recommendations. Any firms or agencies that have begun the application process but have not completed it by the date when we move to an exclusive Preferred Supplier scheme will be given a temporary contract pending the outcome of the process. Within this broad intention there will be some specific variations. As a part of this, flowing in particular from the proposals set out in the CLS Strategy, it is likely that we will be rolling out new contracts for asylum and immigration work and for mental health work before that point. New contracts will replace existing contracts in these areas. These will incorporate the move to Preferred Supplier status as well as the introduction of new work specifications and remuneration arrangements following Lord Carter's final recommendations. We will also be introducing Community Legal Advice Centres (CLACs) and Networks (CLANs) as set out in the CLS strategy.

### **Moving to larger contracts**

- 4.20 Initially, certainly for crime, there will effectively be a minimum contract size set at the level of the smallest block of police station work on offer. This will vary by location and is likely to increase over time. There is likely to be a similar situation for civil work.
- 4.21 In line with Lord Carter's proposals we want to talk to providers and representative bodies about larger proportions of work being offered as the basis for a contract. The provision of a greater proportion of legal aid services through larger contracts (i.e. contracts for larger numbers of cases) has potential benefits to clients and to the system overall. These larger contracts could be delivered by providers with the capacity to deliver them themselves, or with "lead" suppliers working with networks of other providers. The latter will be an effective way of maintaining diversity in the provider community and in ensuring adequate rural coverage.
- 4.22 We believe that providers with larger volumes of work would have a greater ability to organise themselves more efficiently, provide a wider range of legal aid services (and therefore a more holistic service to clients), be more able to work with block contract systems, more able to invest in the development of future generations of legal aid lawyers and enable the Commission to operate more efficiently. However, we recognise that such an approach might give rise to issues around geographic access and diversity within the supplier base that would need to be considered carefully.
- 4.23 One approach to addressing such issues would be to consider whether Preferred Suppliers could enter into arrangements with other legal service providers in the role of a "lead" supplier – delivering services that they have contracted with the Commission to provide through other providers or form a consortium. In some circumstances these could be models through which we take forward the concept of Community Legal

Advice Networks (CLANs) on which we have consulted as part of the CLS Strategy. It could also be a mechanism through which, by contracting with providers in urban areas where there is a high volume of demand, we could ensure the delivery of services in less populous areas. In such circumstances the Commission's relationship would lie solely with the lead Preferred Supplier who would be accountable for the delivery of good quality, value for money services by the other providers. In any such arrangement involving a number of organisations combining in some way to form a consortium, a legitimate Peer Review rating would need to be held for each constituent part (e.g. if a consortium of four organisations formed, each would need to be rated at the appropriate level).

- 4.24 Operating within a wider network might well be an appropriate business choice for new or small providers wishing to grow and develop as a legal aid business. It would also help to maintain diversity in the supplier base and provide coverage in rural areas.
- 4.25 The implementation of an exclusively Preferred Supplier base will inevitably concentrate the provision of legal aid services in fewer organisations as not all current providers deliver services at the preferred standard. Alongside the development of new service delivery mechanisms, such as Community Legal Service Direct, we would expect Preferred Suppliers to expand to ensure that there is no reduction in the availability of services to the public.

**Q8 Are there any specific considerations that you feel we have not fully addressed that relate to the impact that the proposals would have on your business, on the area(s) of law you deliver, or on the clients you serve?**

**Q9 Do you agree with the draft Impact Assessment (Appendix E)? If not, please explain why.**



## 5. Summary of Consultation Questions

- Q1. Do you consider that the quality of advice tools in Appendix A are proportionate? If not, please explain why, and indicate the changes you would propose.
- Q2. Do our proposals for extending devolved powers strike the right balance between maintaining fund control and reducing the administrative burden for providers? If not, please explain why and provide any alternative suggestions.
- Q3. Which of the proposed key features and benefits offer most benefit? What other key features and benefits do you see as a priority for future development?
- Q4. Is the proposed performance management framework for Preferred Suppliers set at the right level? If not, please explain why and provide any alternative suggestions.
- Q5. Are there other ways in which the Commission could reduce bureaucracy for providers without compromising our duty to secure quality and value for money services?
- Q6. What improvements, if any, might you suggest to the proposed process for the award of Preferred Supplier status (Appendices B and C)?
- Q7. What additions or deletions would you make to the proposed selection criteria to identify Preferred Suppliers and do you have any comments or concerns about specific criteria?
- Q8. Are there any specific considerations that you feel we have not fully addressed that relate to the impact that the proposals would have on your business, on the area(s) of law you deliver, or on the clients you serve?
- Q9. Do you agree with the draft Impact Assessment (Appendix E)? If not, please explain why.



## 6. How to Respond

- 6.1 The closing date for consultation is 12 June 2006. Please send responses by e-mail, post or fax at the earliest opportunity to:

Preferred Supplier Consultation Response  
Legal Services Commission  
Head Office  
85 Gray's Inn Road  
London WC1X 8TX  
DX 450 Lon/Chancery Lane  
Fax number: 020 7759 0534  
E-mail: [preferred.supplier@legalservices.gov.uk](mailto:preferred.supplier@legalservices.gov.uk)

**If you e-mail your response to us, which we would encourage, please put the words 'Consultation Response' in the subject heading of the e-mail.**

**Could we please also ask that you send your consultation response to us once only, as this will make it easier for us to compile and monitor responses. We will acknowledge receipt of all responses by e-mail or post within one week.**

- 6.2 In accordance with the Freedom of Information Act 2000, the Legal Services Commission may publish your name and contents of your response unless you provide sufficient reasons for asking us not to. Please ensure that your response is marked clearly if you wish your response or your name to be kept confidential. In any event, confidential responses may still be disclosed in a summarised or anonymous format, and will be included in the statistical summary of the comments received and the views expressed.
- 6.3 While we welcome constructive comment on any aspect of the proposals and information presented, it would help us to identify improvements if you could provide responses to the specific consultation questions. It would also help us if, wherever possible, you could provide evidence to support your comments.
- 6.4 When responding, please state whether you are responding as an individual, as a provider or representing the views of an organisation, and please state which region you are based in. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
- 6.5 Finally, we will be running a series of Preferred Supplier consultation events, led by members of the Commission's Executive Team, during the consultation period. These will be for providers interested in discussing the proposals and learning more about the scheme. There will also be an opportunity to provide feedback. Details of these workshops will be publicised through your Regional Office and on the Commission's website at [http://www.legalservices.gov.uk/civil/preferred\\_supplier/consultation.asp](http://www.legalservices.gov.uk/civil/preferred_supplier/consultation.asp).

6.6 Additional copies of this consultation paper can be obtained by e-mailing [preferred.supplier@legalservices.gov.uk](mailto:preferred.supplier@legalservices.gov.uk). The consultation paper is also available on the Commission's website: [www.legalservices.gov.uk](http://www.legalservices.gov.uk).

6.7 If you have a general enquiry about the consultation, please:

E-mail: [preferred.supplier@legalservices.gov.uk](mailto:preferred.supplier@legalservices.gov.uk)  
(please put the word 'Query' in the subject heading)

Mail or DX: Preferred Supplier Consultation Query  
Legal Services Commission  
Head Office  
85 Gray's Inn Road  
London WC1X 8TX  
DX 450 Lon/Chancery Lane

Phone: Emily Paddy  
020 7759 0443

6.8 If you have a specific query concerning your firm or agency in relation to the Preferred Supplier proposals, we encourage you to contact your Account Manager at the Commission.

## Appendix A

### Quality of Advice Tools

1. To enable the effective maintenance of the Preferred Supplier relationship, we will use three monitoring and assessment tools – Peer Review, Quality Profiles and File Assessment.

#### Peer Review

2. Peer Review is an independent assessment of the quality of advice and legal work of an organisation and is endorsed by the Law Society. An experienced practitioner who meets stringent criteria conducts it; the most important being that their own work has been Peer Reviewed and rated at 1 or 2 (Excellence or Competence Plus).
3. Reviewers are trained and managed by the Institute of Advanced Legal Studies, which monitors consistency. Peer Reviewers examine a minimum of 15 randomly selected closed files and then produce a report and give a rating on a scale of 1 to 5<sup>1</sup>. A rating of 1 or 2 will be required eventually for confirmed Preferred Supplier status. A rating of 3 is Threshold Competence, which equates to the minimum standard in the current contract and will be the minimum required in the initial stages of transition to Preferred Supplier status. A rating of 4 or 5 identifies that the organisation is not meeting the current contract minimum requirement, and providers rated at this level need to improve or cease to undertake legal aid work.
4. Peer Review ratings are valid for up to three years providing there is no information to indicate an adverse change in performance (through monitoring of Quality Profiles or from File Assessment) or any significant change in personnel. In addition to the rating, the output of a Peer Review is a detailed report of the reviewer's findings. It has been designed specifically to assist all providers (especially those rated at 3 and 4) to identify areas for improvement or corrective action. If a Peer Review has been undertaken since April 2005 at firm or organisation rather than individual office level and there have been no significant changes to personnel or other issues with the firm's or organisation's ability to maintain appropriate quality standards then the result will be valid for the purposes of the Peer Review stage of the application process, provided that the validity period has not expired.
5. In his Interim Report, Lord Carter has proposed moving the Peer Review function to the regulator i.e. the Law Society. Until the time of such a transfer we will continue to manage the Peer Review process and following any transfer of responsibility we would still expect to rely on the results of Peer Review to judge the quality of organisations' work.

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<sup>1</sup> Peer Reviews are scored as follows: Excellence (1); Competence Plus (2); Threshold Competence (3); Below Competence (4); and Failure in Performance (5)

## Quality Profiles

6. The Quality Profile of a particular provider gives an indication of their performance on key category specific criteria set against the picture of performance for all providers nationally. It is also a mechanism to identify changes and trends in a provider's behaviour or performance.
7. It uses data supplied by the provider or collected and held by the Commission. Data of particular significance is case matter type and end code i.e. the type of case and the result on completion. This covers the vast majority of crime and civil cases and is non-intrusive for providers (i.e. it can be monitored remotely). We will monitor the profile and attempt to understand the underlying causes of any significant changes, in conjunction with the firm or organisation. If concerns are not resolved, a File Assessment or a Peer Review may be undertaken.

## File Assessment

8. File Assessment is a process to monitor or assess a number of key performance criteria using closed case files. The criteria are:
  - contract compliance
  - value for money
  - data integrity
  - quality of advice.
9. To undertake this process, a number of closed files from each provider are randomly selected and assessed. Our aim is to do this alongside the proposed monitoring arrangements for sample bill assessment as many of the requirements can be completed in a selection of the same files as those sent to us for bill assessment purposes. Monitoring would therefore be a continuous process throughout the year.

## Contract compliance and value for money

10. Monitoring in this area is necessary to provide assurance that legal aid funds are being used in accordance with contract conditions and the Funding Code. It provides the Commission, Department for Constitutional Affairs (DCA), Treasury and the National Audit Office (NAO) with assurance that legal aid funds are being properly managed and demonstrate value for money services for the client, government and the taxpayer.
11. File Assessment will need to be undertaken on all types of closed files including legal help and crime files, in addition to those currently assessed as part of bill assessment. It may therefore be necessary to require additional files from the provider. If Lord Carter's proposal to transfer oversight of quality to the regulator is adopted, we would refer any issues identified to the regulator as well as taking the appropriate action under our contractual powers.

### Data integrity

12. Monitoring performance through the use of Quality Profile information will only be possible if the provider's data is correct, especially case outcomes and case type. Checking closed files on an on-going basis will determine if the provider is supplying the Commission with accurate case outcome information.

### Quality of advice

13. Ultimately, the criterion to determine whether a provider has achieved the quality of advice standard required of a Preferred Supplier will have regard to three factors (see paragraph 4.4), and Preferred Supplier "designate" status will be conferred on those providers who need to improve their Peer Review rating.
14. For smaller categories and providers' minor categories, we have developed sets of questions, specific to each law category, that provide an assessment that advice is being provided at a level at least equivalent to Peer Review level 3. The process will be undertaken by the Commission's Senior Caseworkers, trained by Peer Reviewers.
15. The process is not equivalent to Peer Review, as practitioners do not undertake it. However, it is intended to mirror the Peer Review output as closely as possible. A Pass at File Assessment will be required to satisfy the initial Preferred Supplier entry criteria. The output of the process will be a report expressly designed to assist providers to identify areas for improvement so that when a Peer Review is completed they should achieve a rating of 1 or 2.
16. It is not planned to routinely undertake this element of the File Assessment process following Preferred Supplier selection. So long as the provider maintains performance, as monitored through Quality Profiles and other routine data and there are no other risk concerns such as changes in personnel (especially the supervisor), we will rely on the three yearly Peer Review cycle to assure quality of advice. However, we may undertake this element of the File Assessment process at any time should any concerns be identified.



## Appendix B

### Preferred Supplier Assessment Process - Solicitor Providers

1. It is proposed that the assessment process for solicitor providers will have three stages. In each stage we will examine a number of things. We recognise that many of the criteria below are not applicable to the not for profit sector and have developed a separate assessment process for not for profit providers set out in Appendix C. The various stages may be undertaken in a different order to that set out here to accommodate the phased implementation of Lord Carter's proposals. The financial assessment stage could take place either as part of the early application process or immediately before contract award. There are advantages to both, and we welcome views on which would be the better approach.

#### Stage One – Eligibility criteria

- Prioritisation of firms based on the phased implementation of Carter (this could be based on value or type of work undertaken or geographic criteria or a combination of both and will not be determined until after Lord Carter's final report has been published)
- Generic eligibility criteria
- Specific eligibility criteria by category (as appropriate)

#### Stage Two – Financial assessment

- Full final accounts for the three most recent financial periods
- Evidence of compliance with Law Society financial regulations
- A copy of firm's latest tax return
- Analysis of firm's borrowings
- Satisfactory credit reference check of firm or organisation and equity partners (LSC optional)
- Acceptable bank reference (LSC optional)
- Future capacity including detailed profit and cash flow forecasts and detailed business plans

#### Stage Three – Quality of advice and bill assessment

- Peer Review at appropriate quality standards which will eventually be Excellence (1) or Competence Plus (2) in specified major categories for confirmed Preferred Supplier status, and
- File Assessment Pass at all remaining minor categories
- Satisfactory bill assessment rates

#### Eligibility criteria - Stage One

2. Eligibility criteria will reflect the prioritisation required for the phased implementation of Lord Carter's recommendations which are yet to be defined; generic criteria (that apply to all providers) and criteria that apply according to the categories of law covered by the application. These are shown below:

### Generic Criteria

- **Contract management 1** - Provider has a CCA rating of 1 or 2 across all General Civil and Criminal Contracts held.
- **Contract management 2** - Provider has not been issued with a Contract Termination Notice (even if subject to appeal).
- **Cost management/value for money** - Criteria based on the procurement regime established after the Carter Review.
- **Quality assurance** - Provider must have no outstanding (i.e. not signed off by the Account Manager) Critical Quality Concerns as a result of their last SQM audit.
- **Provider history** – Self-declaration by provider that they have had no adverse OSS or SDT findings against their firm or solicitors in their firm in the previous 3 years or been subject to any ongoing official investigation (unless the Commission accepts that the findings are not material).
- **E-business** - Provider is already using our electronic facilities (SPOCC or SPAN) where appropriate and agrees to deliver all data, including case file information, electronically as facilities become available.

### Additional Category-Specific Criteria

#### Crime

- **Supervisor** – Provider has a supervisor who is a member of CLAS (Law Society Criminal Law Accreditation Scheme).
- **Quality assurance 1** - Self-declaration by provider that at least 80% of the instances of police station advice and assistance (both attendances and telephone advice) are conducted by designated fee-earners.
- **Quality assurance 2** - Self-declaration by provider that at least 80% of the instances of advocacy at the magistrates' court are conducted by designated fee earners.
- **VHCC criteria** - to be defined in the light of the Carter recommendations.

#### Family

- **Best practice** – All work must comply with the Law Society Family Law protocol for private law cases or the Law Society Good Practice Guide in Child Care cases.
- **FAInS** – All requirements agreed following the evaluation of the current FAInS pilot (Spring 2006), including any requirements for supervisors and/or fee-earners (as apply presently in the pilot).

#### Immigration and Asylum

- **Success rates** – Provider has devolved powers for Immigration Asylum or can demonstrate devolved powers criteria including at least a 40% + success rate for Controlled Legal Representation.

**Clinical Negligence and other Damages Cases**

- **Panel membership** – The existing requirements for Clinical Negligence work to be supervised by a member of the Law Society or AvMA specialist panels will remain.
- **Success rates** – Provider has a demonstrable record of achieving 50% + success rate on certificated cases where proceedings are issued.

**Financial assessment - Stage Two**

3. In a situation where a smaller number of larger providers are delivering legal aid services, it is important that exposure to financial failure is minimised to ensure continuity of service. Therefore providers who meet the initial eligibility requirements will be asked to submit key financial information for analysis for three purposes (though the timing of this stage is to be decided – see paragraph 1 above). The first is an analysis conducted by a team from the Commission, which will be material in determining whether or not preferred status is awarded. For this purpose, we also require authority to obtain at our discretion, a credit reference from the provider’s bank. The relevant requirements and criteria are shown below:

<b>Financial Performance 1</b>
<p><b>Requirements</b></p> <ul style="list-style-type: none"> <li>• Full final accounts for the 3 most recent financial periods (including as a minimum, profit and loss account, detailed income and expenditure statement and balance sheet). The latest set of accounts must be for a period ended no more than 10 months prior to application date.</li> <li>• A written statement from the firm’s accountant verifying the accuracy of the accounts supplied.</li> <li>• Copy of last 3 years accountant’s reports (to demonstrate compliance with solicitors’ accounts rules).</li> <li>• A copy of the firm’s latest tax return.</li> <li>• Completed pro forma detailing numbers of fee earners, chargeable hours and details of income and expenditure segregated into public and private work and income.</li> <li>• Financial information from the most recently completed accounting period, including:             <ul style="list-style-type: none"> <li>○ A copy of the current annual budget and full details of how performance has varied against this</li> <li>○ Current cash flow forecast</li> <li>○ Analysis of working capital.</li> </ul> </li> <li>• A copy of the current business plan.</li> <li>• Analysis of firm’s borrowings including the following:             <ul style="list-style-type: none"> <li>○ Explanation for purpose of borrowings</li> <li>○ Explanation for any increase in borrowings over last 3 years</li> <li>○ Details of security provided for borrowings</li> <li>○ Details of scheduled repayment dates for borrowings.</li> </ul> </li> <li>• Satisfactory credit check of the firm and its equity partners (LSC optional).</li> <li>• If 3 years of accounts are not available because the firm has not been established long enough, then a bank reference will be required in addition to compliance with Law Society financial regulations and satisfactory credit checks.</li> </ul>

**Criteria**

The firm must demonstrate that:

- It is a profitable going concern based on both historic data and forecasts; or has a credible business plan to become one.
- There is no evidence that the firm has failed to comply with Law Society financial regulations.
- That any credit checks or the bank reference do not reveal financial problems or unmet financial commitments.
- If any questions arise as to whether the firm meets the above criteria, further financial data will be requested from the firm which will then be analysed to confirm that the firm is a viable going concern before the Preferred Supplier relationship can be initiated.

Note: Volume of private work will only be recognised in as much as it contributes to the overall financial stability of the business.

4. The key financial information above is used together with the information provided in Financial Performance 2, by the Relationship Manager to help build a profile of the provider that will be necessary to initiate the new relationship and seek areas for exploration as that relationship develops. One of the key elements of the Preferred Supplier relationship is the development of an open relationship between the Commission and our service providers where all issues that impact on providers can be raised. Therefore, as well as viewing financial data at the outset, the requirements also provide for the Relationship Manager to see on a confidential basis current financial information or the provider’s current business plan, as a basis for discussion at any point. When determining applications from consortia we will want to see this information for all member organisations, whereas if a “lead” supplier model is adopted we will only require the lead supplier to provide this.

<b>Financial Performance 2</b>
<p><b>Requirements</b></p> <ul style="list-style-type: none"> <li>• Submission of key financial information to include profit per equity partner, work in progress, staff gearing etc.</li> <li>• Ongoing commitment to an open book approach on current financial data and business plans on a confidential basis with the appointed Relationship Manager, once preferred status has been awarded.</li> </ul> <p><b>Criteria</b></p> <p>There are no criteria for these requirements, as the information is primarily to be used by the Relationship Manager, together with the information in Financial Performance 1 to initiate and then maintain the relationship.</p>

5. The third stage of the financial assessment process is likely to involve an assessment of the future capacity of a firm to bid for larger contracts based on historic turnover and performance or equivalent proxies, and future business plans. The development of these criteria is linked to the outcome of Lord Carter’s Review.

## Quality of advice and bill assessment - Stage Three

6. Providers will undergo a review of their quality of advice and an analysis of their claiming patterns. Peer Review will be conducted (in the first instance) on the basis of priority categories and risk (see below). For remaining categories we will conduct File Assessment. This is an interim quality measure, as in the longer term we aim to carry out Peer Reviews for all categories of work. We will also use a sample of the files submitted for Peer Review and File Assessment purposes to obtain an overall bill assessment rate for the provider. If a Peer Review has been undertaken since April 2005 at firm rather than individual office level and there have been no significant changes to personnel or other issues with the firm's ability to maintain appropriate quality standards then the result will be valid for the purposes of the Peer Review stage of the application process provided that the three year period of validity has not expired. In such circumstances, we would still want to undertake the bill assessment.
  
7. We anticipate that contracts relating to Lord Carter's proposals will be introduced and awarded prior to the award of contracts for those providers that have achieved full Preferred Supplier status across all categories of work. Whilst both types of contract will eventually require the same level of quality of advice (namely level 1 or 2 at Peer Review), we recognise that the time to the award of the first Carter contracts may be insufficient for providers performing at the equivalent of Peer Review rating 3 to enhance their performance. Therefore, although we ultimately will move to contracting only with providers who attain a 1 or 2 rating, as a minimum, a Peer Review rating of at least 3 or a Pass at File Assessment will be required initially for a contract award.

<b>Quality of Advice and Bill Assessment</b>
<p><b>Major categories</b>                      All categories in which the total value of legal aid work undertaken by the firm or organisation in the previous financial year exceeds £50,000 will be Peer Reviewed. A rating of 1 or 2 is required for the categories of family, crime, immigration, mental health and clinical negligence.</p> <p>If the firm's largest category of law by value is not one of those listed in the preceding paragraph, that category would also need to achieve a 1 or 2 at Peer Review to have full Preferred Supplier status confirmed. All other major categories i.e. those exceeding £50,000 in value annually which are not one of the five categories specified above or the firm's largest category by value need to achieve a Peer Review rating of 1, 2 or 3. If the rating is 3, it will be reassessed at a later date, and Preferred Supplier designate status will be awarded on condition that all major categories achieve a Peer Review rating of 1 or 2 by the point of exclusivity i.e. 2009.</p> <p><b>Remaining categories</b>                      All those not meeting the criteria above for major categories must achieve a File Assessment rating of Pass.</p> <p><b>Bill assessment rate for all categories</b>                      5% or less for civil bills                      8% or less for criminal bills i.e. non standard fee claims                      (the above figures represent the current national average assessment rate)</p>



## Appendix C

### Preferred Supplier Assessment Process – Not for Profit Providers

1. It is proposed that the assessment process for not for profit providers will have three stages. In each stage we will examine a number of things. These proposals mirror the criteria for solicitor providers as far as possible. The various elements may be subject to change once Lord Carter's proposals for civil procurement are published.

#### Stage One – Eligibility criteria

- Prioritisation of organisations (subject to Lord Carter's proposals)
- Generic eligibility criteria
- Specific eligibility criteria by category (as appropriate)

#### Stage Two – Financial assessment

- Full final accounts for the three most recent financial periods
- Evidence of compliance with Charities Commission/network bodies' requirements
- Financial information from the most recently completed accounting period
- A copy of the current business plan
- Details of sources of other funding
- Future capacity (by reference to historic turnover and performance or equivalent proxies) and detailed business plans

#### Stage Three – Quality of advice and bill assessment

- Peer Review at appropriate quality standards which will eventually be Excellence (1) or Competence Plus (2) in specified major categories for confirmed Preferred Supplier status, and
- File Assessment Pass at all remaining minor categories
- Satisfactory bill assessment rates (where a solicitor is employed)

#### Eligibility criteria – Stage One

2. Eligibility criteria will reflect any prioritisation linked to Lord Carter's recommendations and the CLS strategy; generic criteria (that apply to all providers) and criteria that apply according to the categories of law covered by application. These are shown below:

### Generic Criteria

- **Contract management 1** - The organisation has met performance targets (hours delivered) within the previous financial year. [Targets to be determined - currently 95%]
- **Contract management 2** - Provider has not been issued with a Contract Termination Notice (even if subject to appeal).
- **Cost management/value for money** - Criteria based on the procurement regime established after the Carter Review.
- **Quality assurance** - Provider must have no outstanding (i.e. not signed off by the Account Manager) Critical Quality Concerns as a result of their last SQM audit.
- **Provider history** – Self-declaration by provider that they have had no adverse findings against their organisation or solicitors (where employed) in their organisation in the previous 3 years or been subject to any ongoing official investigation by the OSS, SDT or network body (unless the Commission accepts that the findings are not material).
- **E-business** - Provider is already using our electronic facilities (SPAN) where appropriate and agrees to deliver all data, including case file information, electronically as the facility becomes available.

### Additional Category-Specific Criteria

Not for profit organisations with contracts in family, immigration asylum, clinical negligence or other damages cases will be required to meet the same category specific criteria as solicitor providers (as set out in Appendix B).

### Financial assessment – Stage Two

3. Providers who meet the initial eligibility requirements will be asked to submit key financial information for analysis for three purposes. The first is an analysis conducted by a team from the Commission, which will be material in determining whether or not preferred status is awarded. The relevant requirements and criteria are shown below:

## Financial Performance 1

### Requirements

- Full final accounts for the 3 most recent financial periods (including as a minimum, detailed income and expenditure statement and balance sheet). The latest set of accounts must be for a period ended no more than 10 months prior to application date.
- If accounts not audited a written statement from the organisation's accountant verifying the accuracy of the accounts supplied.
- Evidence of compliance with Charities Commission/network bodies' requirements.
- Financial information from the most recently completed accounting period, including:
  - A copy of the current annual budget and full details of how performance has varied against this
  - Current cash flow forecast
  - Analysis of working capital.
- A copy of the current business plan.
- Analysis of borrowings including the following:
  - Explanation for purpose of borrowings
  - Explanation for any increase in borrowings over last 3 years
  - Details of security provided for borrowings
  - Details of scheduled repayment dates for borrowings.
- Details of sources of other funding, including amount of annual funding streams.

### Criteria

#### 1. Provision of all the above information

All the information above would be considered an essential requirement for obtaining preferred status although clearly consideration would be taken into account in cases where an organisation had only recently been set up and therefore could not provide a full history.

#### 2. Going concern

Both the historical and forecast information would be used to assess the position of the provider as a going concern i.e. a soundly financed, sustainable business and to highlight providers where further review may be necessary due to concerns over issues such as high administrative costs, financial gearing, solvency, funding issues etc.

#### 3. Compliance with Charities Commission/network bodies recommendations and financial regulations

There is no evidence that the organisation has failed to comply with any recommendations/regulations of their relevant governing body.

4. The key financial information above is used together with the information provided in Financial Performance 2, by the Relationship Manager to help build a profile of the provider that will be necessary to initiate the new relationship and seek areas for exploration as that relationship develops. One of the key elements of the Preferred Supplier relationship is the development of an open relationship between the Commission and our service providers where all issues that impact on providers can be raised. Therefore, as well as viewing financial data at the outset, the requirements also provide for the Relationship Manager to see on a confidential basis current financial information or the provider's current business plan, as a basis for discussion at any point. When determining applications from consortia we will want to see this information for all member organisations, whereas if a "lead" supplier model is adopted we will only require the lead supplier to provide this.

<b>Financial Performance 2</b>
<p><b>Requirements</b> Ongoing commitment to an open book approach on current financial data and business plans on a confidential basis with the appointed Relationship Manager, once preferred status has been awarded.</p> <p><b>Criteria</b> There are no criteria for these requirements, as the information is primarily to be used by the Relationship Manager, together with the information in Financial Performance 1 to initiate and then maintain the relationship.</p>

5. The third stage of the financial assessment process is likely to involve an assessment of the future capacity of an organisation to bid for larger contracts based on historic performance or equivalent proxies, and future business plans. The development of these criteria is linked to the outcome of Lord Carter's Review.

### Quality of advice and bill assessment - Stage Three

6. Providers will undergo a review of their quality of advice and an analysis of their claiming patterns. Peer Review will be conducted (in the first instance) on the basis of priority categories and risk (see below). For remaining categories we will conduct File Assessment. This is an interim quality measure, as in the longer term we aim to carry out Peer Reviews for all categories of work. We will also use a sample of the files submitted for Peer Review and File Assessment purposes to obtain an overall bill assessment rate for the provider. If a Peer Review has been undertaken since April 2005 at organisation rather than individual office level and there have been no significant changes to personnel or other issues with the organisation's ability to maintain appropriate quality standards then the result will be valid for the purposes of the Peer Review stage of the application process provided that the three year period of validity has not expired. In such circumstances, we would still want to undertake the bill assessment.

## Quality of Advice and Bill Assessment

### **Major categories**

All categories in which the organisation is funded to deliver 1100 hours or more annually undertaken by the organisation in the previous financial year will be Peer Reviewed. A rating of 1 or 2 is required for the categories of family, immigration, mental health and clinical negligence.

If the organisation's largest category of law by contracted hours is not one of those listed in the preceding paragraph, that category would also need to achieve a 1 or 2 at Peer Review to have full Preferred Supplier status confirmed. All other major categories i.e. those exceeding 1100 hours annually which are not one of the categories specified above or the organisation's largest category by value need to achieve a Peer Review rating of 1, 2 or 3. If the rating is 3, it will be reassessed at a later date, and Preferred Supplier designate status will be awarded on condition that all major categories achieve a Peer Review rating of 1 or 2 by the point of exclusivity i.e. 2009.

### **Remaining categories**

All those not meeting the criteria above for major categories must achieve a File Assessment rating of Pass.

### **Bill assessment rate for all categories (organisations with solicitors only)**

5% or less for civil bills

(the above figure represents the current national average assessment rate).



## Appendix D

### Devolved Power Levels – illustrative pending Lord Carter's final report

Category of case	Certificates Issued 2004/05	Average cost 2004/05	Initial grant type/limit	Maximum on amendment
Special Children Act proceedings	26,822	£5,827	Legal representation £5,000	No devolved power
Other public law children	8,516	£3,587	Legal representation £1,500	£3,000
Private law children	45,014	£2,654	(General) Family Help £1,500	To be confirmed
Domestic violence	18,732	£2,287	Legal representation £1,500	£3,000
Financial provision	24,096	£2,919	(General) Family Help £1,500	To be confirmed
Other family proceedings, excluding child abduction and Brussels II	897	£4,401	Likely to be legal representation £1,500	£3,000
Help with mediation	4,958	£363	No change to current arrangements, £150-350	No devolved power

#### Notes

1. Figures for certificates and average cost are taken from the LSC Annual Report 2004/05.
2. The above arrangements apply where the prediction of the final costs of the case are up to the maximum allowed on amendment. If the costs are in excess of this amount, the application must be made to the Commission in the usual way.
3. In addition to making the initial grant, Preferred Suppliers will be able to amend certificates both in terms of scope and cost up to the maximum indicated and limited to first instance proceedings (not appeals). The figures have been set with average costs in mind and should therefore account for the vast majority of family proceedings.
4. A new level of service is planned for this work from April 2007. The Family Help pilot will provide data to support the upper limit, which is unlikely to be set until late 2006/early 2007.



## Appendix E

### Draft Impact Assessment Regulatory, Equality, Rural and Competition

#### Introduction

1. The proposals are designed to alter the business relationship between the Commission and legal service providers, and to restructure the national legal service provider network for the Community Legal Service (CLS) and Criminal Defence Service (CDS).
2. We expect the implementation of an exclusively Preferred Supplier base will mean that a greater proportion of legal aid services will be delivered by fewer, larger organisations. We expect Preferred Suppliers to expand, and/or develop consortia arrangements to ensure that there is no reduction in the availability of services to the public. At the same time, we will also improve the way in which we specify the services to be provided to clients, and how we set prices and structure payment systems to reflect proposals put forward by Lord Carter's review and to ensure that services are targeted more effectively to meet client needs.
3. Any organisation, solicitor firm or agency, providing legally aided advice, assistance and representation to clients that meets the entry criteria may be invited to apply for Preferred Supplier status. The Commission will issue invitations to apply in a series of waves, based on the phased implementation of Lord Carter's proposals (this could be based on value or type of work undertaken or geographic criteria or a combination of both and will not be determined until after Lord Carter's final report has been published).
4. Organisations will be awarded Preferred Supplier status provided that they meet the criteria for selection, details of which have yet to be finalised pending the outcome of this consultation.
5. Although the decision to apply for Preferred Supplier status will be voluntary, providers will need to have regard to our intention to work exclusively with Preferred Suppliers.
6. Detailed modelling will be required to assess the likely impact of the criteria for Preferred Supplier status on access to client services and the composition of the provider base. Our preliminary views on the likely impacts are set out from paragraph 28 below onwards.

#### Title of proposal

7. The title of the proposal is 'Quality Relationships Delivering Quality Outcomes - The Preferred Supplier Scheme: A Consultation Paper'.

## Purpose and intended effect of measures proposed

### Objectives

8. The Commission has the following objectives:
  - to ensure that people have access to quality legal services that meet their needs
  - to work only with legal service providers who deliver quality, value for money and client focused services, and support those providers with whom we contract by simplifying our processes and reducing transaction costs
  - to deliver a sustainable scheme within the resources available and demonstrate real value to government in terms of effective cash control, improved value for money and positive outcomes for clients
  - to transform the Commission itself to enable it to deliver these objectives and excellence in all it does.

### Background

9. We believe that, in some respects, the current Commission/legal service provider relationship is not functioning effectively. This paper sets out proposals to improve this relationship and the ways in which we work together. This will require change on both sides of the relationship.
10. We want to provide:
  - simpler processes
  - greater devolution of decision-making
  - lower transaction costs
  - more constructive and risk-based performance management
  - improved customer service
  - better and clearer information to facilitate service delivery and planning
  - partnership working which is open, innovative and responsive.

11. We need from legal service providers:
- consistently good quality and value for money services which meet the needs of legally aided clients
  - compliance with the rules and guidance governing the provision of services
  - accuracy in the management and other information required by the Commission
  - the ownership and effective management of the systems necessary to deliver these requirements
  - an ability to work with the Commission through e-business
  - partnership working which is open, innovative and responsive.
12. We know from the Preferred Supplier pilot and other work that a substantial number of providers are already performing in this way and we want to encourage others to achieve the same standard.

### Consultation

13. We will consult with key stakeholders for 12 weeks, in accordance with the LSC Code of Practice on Consultation (available at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)). This consultation will include a series of consultation events for providers, headed by the Commission's Executive Team.

### Options

#### Option 1: Do nothing

14. We could continue to contract with providers on the same basis as now. However, to do so would not address the risks or achieve the benefits necessary to improve the operation of the legal aid scheme (see below).

#### Option 2: Invite all providers to apply for Preferred Supplier status from the outset

15. It would in theory be possible to process applications from all providers on a first come first served basis. However, this would not allow us to prioritise applications in line with Lord Carter's proposals. We would not be able to resource processing a very high volume of applications at the same time, there would be less time for providers to expand to provide additional services and there would be fewer opportunities to learn from the roll out of the process.

#### Option 3: Staged approach (waves)

16. We could take a managed approach to awarding Preferred Supplier status, to ensure that we can handle the process effectively, and to preserve access for clients. Roll out

will operate in phases, with progress and learning points being reviewed after each wave. The first phase will target providers identified as priorities by Lord Carter (this could be based on value or type of work undertaken or geographic criteria or a combination of both and will not be determined until after Lord Carter's final report has been published.) Our aim is to be working exclusively with Preferred Suppliers by 2009.

## Benefits

### Option 1: Do nothing

17. There are no apparent benefits to doing nothing. If the risks identified below are not addressed, transaction costs for the Commission and providers will continue to rise, the quality of services provided will not be assured by the most effective means available and ultimately client services will suffer.

### Option 2: Invite all providers to apply for Preferred Supplier status from the outset

18. A possible advantage of this approach would be that all eligible organisations would be given equal priority (on a first come, first served basis). However, for practical reasons this is not considered to be a viable or desirable approach since it would not allow us to target assessments to priority areas of work/providers.

### Option 3: Staged approach (waves)

19. The benefits of taking a staged approach are that it will allow us to target resources to consider the application of those providers identified as priorities first. It will enable us to learn from and refine the process between stages, and will ensure that access for clients is preserved whilst the process is rolled out.
20. The benefits of introducing Preferred Suppliers (as part of a wider programme of reform) include:
  - an overall improvement in the quality and value of legal advice and outcomes for clients
  - a more constructive, genuine partnership relationship between the Commission and legal aid service providers which will enable us to develop and improve the legal aid scheme for the benefit of clients
  - a management relationship that enables providers to focus on delivery for clients yet also provides the Commission with the information it needs to ensure quality, value for money and propriety of expenditure – with the simplest processes and lowest possible transaction costs on both sides.

## Risks

21. The risks that the proposals are intended to address include:
- failure to ensure that eligible members of the public have access to legal aid services that meet their needs, in accordance with clear and transparent priorities
  - failure to demonstrate that services provided represent value for money, at an acceptable level of quality.

## Costs

### Option 1: Do nothing

22. If the proposals are not implemented, both the Commission and providers will continue to incur transaction costs associated with managing the current contracts for legally aided services. In addition, we will continue to pay for work done below acceptable quality standards (as assessed by Peer Review), which may lead to rework and duplication of costs and does not represent good use of public money or service to clients.

### Option 2: Invite all providers to apply for Preferred Supplier status from the outset

23. We consider that the likely resources required for this option would be prohibitive.

### Option 3: Staged approach (waves)

24. The cost to the Commission of a staged approach is likely to be significant, but manageable if spread over several financial years.
25. The cost to providers is being assessed, but would include work required to meet the quality and other criteria for Preferred Supplier status, together with a commitment to moving to e-business transactions with the Commission. This will need to be offset against projected reductions in transaction costs.

## Business sectors affected

26. The legal services sector is affected by the proposals, which will apply to organisations supplying legally aided services under contract with the Commission. These providers are predominantly privately owned, for profit partnerships, but also include not for profit organisations such as Law Centres and advice agencies.
27. The proposals will only indirectly affect barristers and experts sub-contracted to provide services to providers. However, we will take account of changes emerging from the government's White Paper "The Future of Legal Services: Putting Consumers First" (Cm 6679 – October 2005) enabling advocacy specialists to enter alternative business structures with solicitors and would expect to apply the same standards to any undertaking which carries out publicly funded legal work, including the defence teams proposed by Lord Carter for Very High Cost Cases (VHCCs).

### Small firms impact test

28. Many providers of legal and advice services are small businesses. Their interests will be represented by the Law Society, the Legal Aid Practitioners' Group, the Advice Services Alliance and other representative bodies with whom we will consult in respect of these proposals.
29. We anticipate that the proposals, when linked to Lord Carter's reforms, will offer both challenges and opportunities for small firms. Phase 1 of Lord Carter's crime proposals will move criminal defence work to fewer, larger providers. Contract awards will be on the basis of quality rating and capacity first and foremost in any defined location. Previous turnover will also be taken into account as a criterion.
30. Our initial priority may include assessing those firms who are potential bidders for crime VHCC panel membership. These are likely to be larger or highly specialised firms. This will mean that those organisations that have a smaller value of legal aid work (irrespective of overall size of organisation) may not be assessed until later in the roll out of the scheme. However, we will also be willing to consider applications from consortia or other combinations.

### Equality Impact Assessment

31. Our initial assessment of the impact of the proposals on access to legally aided services by different client groups is that they have the potential to improve the quality of services provided, through the use of Peer Review and File Assessment, and the efficiency of services delivered through simplified processes and a greater range of devolved powers.
32. Our preliminary assessment of the impact of the proposals on different provider groups is that, based on research undertaken by the Legal Services Research Centre (LSRC) in their Fifth Annual Diversity Report (LSRC (2005) Diversity Report 2005, London, Legal Services Commission, LSRC Research Paper No. 13; [www.lsrc.org.uk/publications.htm](http://www.lsrc.org.uk/publications.htm)), BME and female majority managed providers are more likely to have smaller average values of legal aid work, which may mean that they are lower priorities for assessment. To the extent that Preferred Supplier status confers benefits to providers, delay in invitation may impact negatively on providers with smaller values of legal aid work. However, it could equally be argued that such providers will be able to benefit from any changes made to our approach as a result of our experience of implementing the scheme and will have more time to reach the required quality standard. We will also allow providers to apply as consortia or other combined business structures, which would increase the total value of legal aid work. We will also consider providers' capacity to expand, based on viability of business plans, to ensure that we do not exclude existing or potential entrants to the legal aid market that have the ability to deliver the volumes of work required. We are committed to ensuring that the selection process for providers is fair and transparent, and complies with the LSC Equality Scheme and our duties imposed by any relevant legislation.

33. The LSRC report also notes that BME majority managed providers are more likely to have received a category 3 rating for civil costs compliance audits (CCA), and would therefore potentially be less likely to satisfy the proposed requirement to hold a CCA rating of 1 or 2 across all General Civil and Criminal Contracts held. The number of providers with category 3 ratings is currently extremely low nationally, and little CCA audit activity is planned before the implementation of the scheme. If this criterion is retained following consultation, we will model the potential impact further using up to date audit information and will review whether use of the criterion may be justified, notwithstanding the differential impact.
34. The Independent Peer Review Final Equal Opportunities Impact Assessment published by us contained within the final Peer Review process in November 2005 [www.legalservices.gov.uk/civil/how/mq\\_peerreview.asp](http://www.legalservices.gov.uk/civil/how/mq_peerreview.asp) indicated that, on the limited sample obtained during a pilot, BME owned firms were significantly more likely than white British firms to achieve a rating of 3 or below at Peer Review. However, the sample size was small, the reviews were not conducted in line with the final process designed post consultation and many of the Peer Reviews were not random, possibly distorting the data. We are however concerned by these findings and will take steps to “equality proof” the Peer Review process, which are likely to include requiring firms that are Peer Reviewed to submit data on their ethnic profile, continuing to monitor the Peer Reviewer selection process, ensuring that reviewers are briefed as part of their training on the equality implications of their role, monitoring consistency and fairness of assessments where subjective judgments are required, and monitoring and reporting on the outcomes of Peer Review assessments.

### Equity and fairness

35. We are committed to ensuring that the selection process for providers is fair and transparent, and complies with the LSC Equality Scheme and our duties imposed by any relevant legislation.

### Rural Impact Assessment

36. Our draft assessment of the impact of the outline proposals is that access for clients in rural areas to legally aided services will be maintained and, in some cases improved, at no additional expense to them through a combination of measures. These include the invitation of applications from consortia, the development of new service delivery mechanisms such as Community Legal Service Direct, and the use of Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs).
37. Whilst we anticipate that the proposed policy will have some impact on providers based in rural areas or delivering services to clients in rural communities, it is not possible at this stage to identify whether that impact will be significant.

### Competition Assessment

38. Having applied the Cabinet Office's competition filter test to the market for legally aided services in England and Wales, we anticipate that the outline proposals, when considered in conjunction with Lord Carter's proposals if implemented, would have some effect on competition in the market - through a greater proportion of those

services being delivered by fewer, larger, providers. It will not be possible to estimate the full impact until Lord Carter's detailed proposals have been published.

39. When Lord Carter's final report is published, and as the outline Preferred Supplier proposals are developed through the consultation process, we will carry out an analysis of the likely effect of their implementation on competition in relevant sub-markets, those sub-markets to be defined by region and / or category of work. We anticipate that this analysis may show that any implementation of the proposals will cause a more significant effect on competition in certain sub-markets but, at this stage, we are not able to identify how significant that effect will be.

### **Legal Aid Impact Assessment**

40. Our draft assessment of the impact of the outline proposals is that there will be no negative impact on the fund. In fact, the platform for reform that the implementation of these proposals will provide, means potential savings against the fund in the future. Initially this will be through the implementation of fixed or standard fees. Fee levels may be set by a number of mechanisms including standard national rates and rates set as a result of managed competition within a particular market. Subject to the final recommendations of Lord Carter, competitive bid rounds are likely to improve market efficiency, providing savings against current average case expenditure.
41. However, these potential savings can only be realised as a result of contracting in larger volumes with fewer providers, whilst ensuring that quality standards are not only maintained, but also improved through the Preferred Supplier scheme.

### **Monitoring**

42. We are committed to monitoring the effect of proposals in this consultation paper when they are implemented in order to enable us to evaluate its impact.

### **Further data to be collected pre-implementation**

43. We plan to utilise the most up to date data that we have to model the impact of proposals as outlined in this paper to consider further their possible impact on access to services and the nature and composition of the provider base. We will share the results of our research with key stakeholders as part of the consultation process.
44. Once the proposals have been finalised following consultation, we will consider the most appropriate and cost effective mechanisms to monitor and evaluate implementation as against the proposals' stated objectives, and in line with the requirements of our Equality Scheme.

### **Summary and recommendation**

45. Our draft impact assessment has indicated that option 3 would deliver significant benefits to all stakeholders at optimal cost. We therefore recommend adopting option 3, subject to the outcome of consultation.

## Appendix F

### Government Code of Practice Criteria

The Commission abides by the Government Code of Practice on Consultation, which came into effect on 1 April 2004.

The six consultation criteria in the Code are:

- I. Consult widely throughout the process, allowing a minimum of 12 weeks consultation at least once during the development of the policy
- II. Be clear about who may be affected, what questions are being asked, and the timescale for responses
- III. Ensure that your consultation is clear, concise and widely accessible
- IV. Give feedback regarding the responses received and how the consultation process influenced the policy
- V. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator
- VI. Ensure that your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full text of the government code is available from the Cabinet Office website at: [www.cabinet-office.gov.uk/regulation/consultation/code.htm](http://www.cabinet-office.gov.uk/regulation/consultation/code.htm).