



Ministry of  
**JUSTICE**



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ASSOCIATION OF  
CHIEF POLICE OFFICERS



## **Flexible CJS – Q and A for defence practitioners**

### **What is the rationale behind Flexible CJS?**

The rationale for Flexible CJS comes from last summer's disturbances when the criminal justice system proved what can be done to respond to an unprecedented demand - within a week over 1,000 defendants were brought before the courts. It is clear that this was an exceptional circumstance; however there are lessons that can be learned from the way in which CJS partners worked closely together to operate the criminal justice system more swiftly and improve the court experience for users including victims and witnesses.

Ministers feel that the operation of the criminal justice system should not be dictated by the way in which criminal justice partners have always operated but should consider the needs of users and customers such as witnesses and victims.

Having a more flexible CJS can also benefit those working within the CJS. For too long now agencies have worked within the confines of the traditional court sitting hours, whether that suits their needs or not. Change needs to happen to increase the efficiency of the CJS as a whole – we aren't using the courts to their full capacity, nor are our working practices in alignment. Hearings at the weekend could shorten the time someone is unnecessarily held on remand, reduce the total time that it takes for a hearing to be held as well as improve the efficiency of courts held on Monday mornings.

### **Is this being run locally or nationally?**

The idea originally came from Ministers wanting to test the flexibility of the CJS after last summer's disturbances but it provides an opportunity for local partners to mould it to the local agenda and demands. The criminal justice system is not perfect and this is an opportunity to test models which not only better responds to the needs of users and provides a 21<sup>st</sup> century service to the public. It is in all our interests to work together to deliver a more efficient and responsive criminal justice system.

The decision on which Flexible CJS model to pilot has been made locally by CJS partners in response to local needs. We have tried to engage local defence practitioners in making the decision and work with them closely to implement the pilots.

### **What discussions have been had nationally with representative organisations?**

There have been a number of meetings at official and Ministerial level with the Law Society over the last few months relating to Flexible CJS. Officials have also engaged with the Criminal Law Solicitors' Association and the Crime Contracts Consultative Group on this work. There will be ongoing dialogue with these representative bodies as the pilots progress.

### **Has the impact on the defence community been fully considered?**

There has been consideration of the impact of the pilots on the defence community and this has been reflected in the Equality Impact Assessment which accompanies the Swift and Sure White Paper published on 13 July.

<http://www.justice.gov.uk/publications/policy/moj/swift-and-sure-the-governments-plans-for-reform-of-the-criminal-justice-system>).

The concept of Flexible CJS will be tested by the pilots that are designed to look at the impact on all practitioners including the defence. Until the pilots are implemented and evaluated we will not be able to fully consider the impact of them.

### **What changes will there be to legal aid fees to cover additional costs?**

There will be no change to the usual legal aid fees. There are existing mechanisms to pay duty solicitors working on weekends but there are no means of paying more than the standard fee legal aid payments for solicitors.

### **What duty solicitor fees will apply for work outside of normal 'Business days'?**

#### **Advice and Assistance and Advocacy Assistance by a court Duty Solicitor**

	<b>London</b>	<b>National</b>
Standard hourly rate (attendance and waiting at a magistrates' court)	£55.15	£53.85
Enhanced hourly rate (only payable in respect of work done on a day which is not a Business Day)	£68.90	£67.30
Travelling hourly rate (only payable where the Duty Solicitor is called out (including being called to return) to the court from the Office or attends on a day that is not a Business Day. Reasonable travel expenses may also be claimed (where relevant)).	£26.30	£26.30

### **Will travel costs be covered for duty solicitors on non-business days?**

Yes, travel costs will be covered. The applicable rates are covered in the table above.

### **How can overtime and other remuneration for CJS agencies be justified if there is no increase in legal aid fees?**

There is no additional central funding for the pilots. Any additional resource costs are being met from local agency budgets.

### **Will the duty solicitor rota be amended to provide sufficient cover for pilots?**

We are working with the LSC locally and nationally to reflect any necessary changes in the duty solicitor rota. Solicitors will be asked whether they are prepared to attend on a weekend and those that are will be allocated slots in the normal manner.

### **How will it be ensured that there are sufficient numbers of duty solicitors to cover extended hours and how will the allocation be fair?**

We are working with the LSC locally to ascertain the demand for duty solicitors on the weekend. Experience to date suggests that there will be a sufficient number of duty solicitors to operate the pilots. Solicitors will be asked whether they are prepared to attend on a weekend and those that are will be allocated slots in the normal manner.

**Will enhanced rates be paid for non-duty work outside ‘normal office hours’?**

No. There will be no changes to the legal aid fees paid for work for the pilots other than for duty solicitors on the weekend.

**Can attendance at court outside of ‘normal office hours’ be enforced or is it a voluntary basis?**

The Courts Act 2003 provides a power for the Lord Chancellor, following consultation with the Lord Chief Justice, to give directions as to the days on which and times that magistrates’ courts may sit. Cases will be listed for the pilots in the same way that is done so now and defence practitioners will be asked to attend court when their case is listed.

We hope that practitioners will take a constructive and co-operative approach to the pilots and attend court when their cases are listed. If a defence practitioner is not able to attend the court will consider all the circumstances and make a decision in the interests of justice. This would include taking a pragmatic approach to finding a solution. The court should be informed at the earliest opportunity if there are difficulties.

**The LSC contract stipulates that defence practitioners are not able to close their offices during the week so are not able to compensate staff for weekend work – will the LSC contract be varied for these pilots?**

The LSC contract requires solicitors firms to be accessible to the public on Monday to Friday. We appreciate that in some cases the Flexible CJS pilots will have some impact on the staffing of defence firms but expect this to be minimal for individual firms.

**Will there be compensation for necessary contractual changes for staff or payments for enhanced rates for staff to cover Flexible CJS pilots?**

There will be no additional money for the pilots.

**How will the evaluation cover the impact of the pilots on defence practitioners?**

As part of the evaluation we will seek to understand the impact of the pilots on the defence via case studies of the different pilots which will look at the impact on all practitioners.

**What are the benefits of Flexible CJS for the defence community?**

We anticipate that there will be benefits for defence practitioners, although this very much depends on the pilot being tested. The pilots will bring potentially swifter justice for clients who could have their cases dealt with in less time than currently. From weekend courts, there may also be a benefit for court listings on Monday mornings as a result of a reduced number of remand cases which have to be heard.

**How can you ensure that the pilots are in line with the necessary legal obligations (for example obligations under the Equality Act 2010)?**

The pilots have been developed in line with public law obligations.

**What is planned at the end of the pilots – has a decision been made to roll out Flexible CJS nationally?**

These are pilots to test the concept of flexible justice. No decision has been made on the whether to roll out the pilots out. The evaluation of the pilots will inform any future decision on next steps. What will happen next very much depends on how successful the pilots are shown to be. We expect this decision to be made once the pilots have run for the anticipated 6 month period and the impacts have been evaluation.

**If the Flexible CJS pilots are rolled out nationally will there be any amendment to the LSC's contract with the defence to reflect working additional hours and weekends?**

The defence community will be consulted if any decision is made in the future of Flexible CJS which would have an impact on the LSC's contract.