



The Law Society

From the President

The Rt Hon Lord Justice Fulford
The Investigation Powers Commissioner
Judge in charge of reform
Judiciary of England and Wales
Royal Courts of Justice
Strand
London WC2A 2LL

11 August 2017

Dear Lord Justice Fulford

I read with interest your letter on the Flexible Operating Hours (FOH) pilot which was published on the Courts and Tribunals Judiciary website.

As I am sure you are aware the Law Society and our members have long been advocates for a justice system which is efficient and works for all. However, as your letter acknowledges, the proposals for the FOH pilot have caused a good deal of concern amongst our members, about the impact on their ability to represent clients effectively. You may have seen my blog on the pilot which attempts to voice some of these concerns.

The Law Society welcomes the assurances you provide in your letter and those provided verbally at the recent London LIT meeting that this will be a genuine pilot, and that if the evaluation shows that any of the pilots have not succeeded or have had adverse impacts on diversity, they will not be rolled out.

As I am sure you can appreciate, these assurances do not mitigate the impact on our members and their clients in the pilot areas, who will be affected, regardless of whether it is abandoned or rolled out at the end of the pilot period.

It is important for me to reiterate, as my officials have throughout this process, that we are supportive of modernisation, we are not raising concerns for the sake of it. In this case the financial and equalities impacts on many firms of the proposed pilot hours could be significant.

To cite just one example from a firm impacted by the Newcastle pilot: *“Our head of Department, and ... the most senior Solicitor in the Department, is the mother of a 19 month old child. She would be unable to attend court for the extended hours and is therefore immediately discriminated against”*.

The assurances from HMCTS at the London LIT that solicitors will not be required to attend both the early morning and late evening courts were reassuring, but we would be grateful for confirmation that this exemption will also apply to those who due to caring or other responsibilities simply cannot work outside normal office hours at all.

The financial impacts on hard-pressed solicitors' firms are likely to be considerable. Fee-earners will still have to undertake other work outside any hearings in the pilot courts, such as duty attendances at the police station and work on other clients' files. Unlike others working within the court system, with the possible exception of solicitors in the very largest criminal defence firms, they do not have the benefit of being able to work shift patterns.

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In addition, when a case is listed for hearing, solicitors already work hours on that case that extend outside the normal court sitting hours. A solicitor would normally attend court at 9am for a hearing that starts at 10am, in order to deal with essential preparatory work, including speaking to the client, the prosecution, and any defence witnesses. Similarly there is always work to be done following the hearing: explaining the sentence to the client if necessary and undertaking follow-up paperwork. This means in practice that the proposed court hours are regularly extended by at least an hour at each end of the day, and will therefore extend even further into unsocial hours as a result of these pilots than the sitting times themselves would suggest.

The cost of paying overtime to the fee earners who will be working these additional hours will need to be covered by the firms themselves, given that the LAA has made it clear that there will be no additional payments for solicitors working in the pilot courts.

Legal aid firms are, as I'm sure you are aware, currently operating on very slim or zero profit margins, and we are concerned that anything which worsens the position still further could lead to more firms exiting the market either by choice or through insolvency. As we have highlighted in the past, the impact of the lack of legal advice has a hugely detrimental effect on access to justice and the strain of this is felt downstream across not just our courts, but the breadth of public and social services.

The Society has agreed to nominate representatives for the evaluation Selection Panel, and the Advisory Board, and we will try to support our members in the pilot areas as best we can, however I felt it was important to let you know of our ongoing concerns about the proposals.

We are keen to have an open and constructive discussion about the FOH and would welcome the opportunity to meet and discuss this in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joe Egan', written in a cursive style.

Joe Egan
President