



In the first of two articles, Adam Griffith, policy officer at the Advice Services Alliance (ASA), considers the updated procurement plans that form the basis of the invitations to tender in the bid round for social welfare law (SWL). The second article, which will consider the selection criteria used and the subsequent allocation of new matter starts (NMS), will appear in May 2010 *Legal Action*.

2010 social welfare law bid round: what is on offer?

The bid round for 2010 contracts in family and SWL from the Legal Services Commission (LSC) opened on 26 February 2010 and closes at 12 noon on 21 April 2010. This article is concerned only with SWL, as defined by the LSC, ie, debt, housing, welfare benefits, employment and community care.

Updated procurement plans

In summer 2009, the LSC published procurement plans (the 2009 plans) for those areas that would be subject to the 2010 bid round.¹ The LSC indicated its intention to provide updated plans before the bid round opened. These updated plans (the 2010 plans) were published in late January and early February 2010, and form the basis of the invitations to tender that have now been issued.

As expected, the updated plans:

- refer to updated figures showing the actual use of NMS in each procurement area. These are now given for the 12-month period September 2008 to August 2009, whereas the original plans referred to figures for the period April 2008 to March 2009;
- specify separately the numbers of NMS that will be available in debt, housing and welfare benefits in each procurement area and access point if appropriate (whereas the original plans had only provided composite figures); and
- contain revised proposals in relation to access points within procurement areas,

the number of which is reduced significantly, from 169 to 128 altogether.

As has been feared, however, the 2010 plans also reflect the increasing pressure on the Legal Help budget that became apparent in autumn 2009. This has resulted in a considerably reduced allocation of NMS, by comparison with the 2009 plans. This has in turn contributed to further problems. ASA has compared the 2010 plans with their 2009 predecessors and has published a summary of our main findings.²

The total allocation

On ASA's calculations, the total NMS in SWL (including the housing NMS in the 'family with housing' allocations) in the procurement plans has dropped from 422,992 in the 2009 plans to 351,610 in the 2010 plans, a drop of almost 17 per cent. The headline figures are set out in Table 1. We interpret them as follows:

The allocation in the 2009 plans reflected LSC policy to increase the coverage of SWL in areas where usage was lower than suggested by the LSC's indicative spend budget model,³ but without reducing NMS in other areas. This produced a total allocation of 422,992, a figure that was significantly higher (26 per cent) than the total actually used in April 2008/March 2009 of 335,451.

Actual usage figures were rising, however, producing a figure of 344,926 for the period September 2008/August 2009.

Table 1: NMS in SWL⁴

NMS used April 2008/ March 2009 (12 months)	335,451
NMS used September 2008/ August 2009 (12 months)	344,926
NMS allocated in 2009 plans	422,992
NMS allocated in 2010 plans	351,610

This increase was not confined to SWL and, along with other factors, was seen as presenting a threat to the Legal Help budget. The LSC launched a reconciliation exercise that reduced significantly the number of NMS available to providers in the 2009/10 financial year.

This cut was mirrored by the reduced allocation in the 2010 plans. At 351,610, it was almost 17 per cent less than the amount set out in the original plans, and only slightly more (two per cent) than the number actually used (344,926) in the period September 2008/August 2009.

It is unrealistic, however, to assume that the number of NMS allocated will translate into the same number of NMS actually used. Usage rates (the percentage of NMS allocated that are actually used) are in general significantly lower than allocations, to the extent that the LSC has introduced a Key Performance Indicator requiring providers to use 85 per cent of their allocation. On top of this, the

updated plans include significant allocations of additional NMS to some areas that may not be taken up or used.

The adequacy of the allocation will also of course depend on demand. If demand has stayed at the levels reached by August 2009, or indeed increased, the position will be even worse for clients.

Reallocation between areas that are 'overspent' and areas which are 'underspent'

In the 2009 plans, the LSC used its indicative spend budget model as a benchmark. Where areas were considered to be 'underspent', they were given an allocation that would bring them up to the appropriate level indicated by the model. Where they were considered to be "overspent", the allocation was capped at the level of current usage in April 2008/March 2009.

Given the pressure on the Legal Help budget, however, the LSC was unable to keep to this approach in the 2010 plans. The solution it adopted was to effect a limited transfer of NMS from 'overspent' to 'underspent' areas. This represents a clear change from the policy position it had previously announced.⁵ As far as we are aware, it represents the first occasion where the LSC has used its indicative spend budget model to take funding away from areas that it considers to be 'overspent'.

The LSC's statement on *Legal Help new matter starts 2010–11*, dated 29 January 2010, suggests that it was intending to increase NMS allocations in 'underspent' areas by up to ten per cent (as compared with usage in September 2008/August 2009), while reducing NMS in 'overspent' areas.⁶

ASA's analysis suggests that:

- 45 areas have had their total allocation reduced so that it is less than the number of NMS used between September 2008 and August 2009;
- the regions particularly hit are London (where 16 out of 29 areas had such a reduction), Wales (4 out of 8), the North East (5 out of 11) and the North West (9 out of 19);
- of the 45 areas affected, 24 had reductions of up to 7.5 per cent, while 21 had reductions of 7.5–10 per cent;
- 9 areas faced a cut of 9–10 per cent: Birmingham, Bristol, Liverpool, Salford, Sheffield, and the London Boroughs of Brent, Hackney, Newham and Tower Hamlets;
- 80 areas received an allocation that was more than their usage in September 2008/August 2009;

■ in 62 of these 80 areas, the allocation was more than 110 per cent of the number used during this period.

If demand remains relatively constant, in terms of its level and geographical distribution, the redistribution from 'overspent' to 'underspent' areas increases the likelihood of a reduced number of NMS being used.

Allocation between debt, housing and welfare benefits

The author's November 2009 *Legal Action* article highlighted the problem that the LSC faced in dividing the allocation for debt, housing and welfare benefits into its constituent parts.⁷ This problem has been compounded by the overall reduction in the number of NMS being allocated.

Currently, there are unequal patterns of supply in a number of areas, with the SWL provision in some areas made up largely of one or two categories. We understand that the LSC has taken a fairly pragmatic approach to making a more equitable distribution of NMS by:

- starting with the national distribution of matters started as a notional target between the SWL categories;
- using the additional NMS being allocated to 'underspent' areas to realign the distribution;
- accepting local distributions that are reasonably close to the national distribution;
- accepting distributions in London that are reasonably close to the overall London distribution; and
- where that still is not enough to provide sustainable contract volumes:
 - capping any category that has more than 50 per cent of the current allocation to 50 per cent of the total figure for the three categories;
 - making manual adjustments that take account of existing supply patterns and the location of clients.

The result has been that a large number of areas have received an allocation in debt, housing and/or welfare benefits which is less than the number of NMS used in September 2008/August 2009. ASA's analysis suggests that:

- 28 areas have received an allocation in one of the three categories that is less than the recent usage;
- 28 areas have received an allocation in two of the three categories that is less than the recent usage;
- 18 areas have received an allocation in all of the three categories that is less than the recent usage;
- there is considerable variation between

the regions in terms of the number of areas that have faced such a cut, and the categories of law concerned;⁸

■ housing in London has been particularly badly affected, with 20 out of 29 areas facing a cut in their allocation. The total housing allocation in London is 4,014 (11.6 per cent) less than the NMS used in September 2008/August 2009.

Conclusion

Whereas the 2009 plans proposed significant increases in NMS in some areas, without reducing NMS in others, the 2010 plans have produced lower increases in some areas, matched by decreases in others. The allocation of NMS between debt, housing and welfare benefits has crystallised the effect of the reductions in some 'overspent' areas, producing a situation in which it is very likely that providers will run out of NMS in some categories in some areas during the course of the year. How the LSC and the Ministry of Justice deal with this problem will provide an important test of their commitment to SWL in 2011.

- 1 For a discussion of the 2009 plans, see Adam Griffith, 'Procurement plans for social welfare law', November 2009 *Legal Action* 6.
- 2 See *Updated procurement plans in social welfare law*, available at: www.asauk.org.uk.
- 3 See *Indicative spend data – Mar 10*, available at: www.legalservices.gov.uk/docs/civil_contracting/IS_data_23Mar10.pdf, and *Indicative spend methodology – Mar 10*, available at: www.legalservices.gov.uk/docs/civil_contracting/IS_Methodology_23Mar10.pdf.
- 4 For the usage figures and the figures in the 2009 and 2010 plans, see note 2.
- 5 See paragraph 4.80 of *Civil bid rounds for 2010 contracts. A consultation response*, LSC, June 2009, available at: https://consult.legal-services.gov.uk/gf2.ti/f/137474/2789765.1/pdf/-/Consultresp_FINAL_.pdf.
- 6 Available at: www.legalservices.gov.uk/docs/civil_contracting/Statement_on_Legal_Help_New_Matter_Start_29_Jan_2010.pdf.
- 7 See note 1.
- 8 For further details of the areas and categories of law affected, see note 2.