

The Advice Services Alliance's response to the Legal Services Commission Consultation on Best Value Tendering of Criminal Defence Services

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1 About the Advice Services Alliance

- 1.1 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice services in the U.K.
- 1.2 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members are:
- Advice UK
 - Age Concern England
 - Citizens Advice
 - DIAL UK (the disability information and advice service)
 - Law Centres Federation
 - Shelter
 - Shelter Cymru
 - Youth Access
- 1.3 Our members represent over 2,000 organisations that provide a range of advice, legal and other services to members of the public.

2 Introduction

- 2.1 ASA and its members are primarily concerned with the provision of advice, assistance and representation in the civil law areas of social welfare law.
- 2.2 Our prime concerns are that BVT in crime may
- have a detrimental effect on civil legal aid
 - in due course be followed by BVT in civil.
- 2.3 On the first point, the paper states at para 2.18 that, if prices rise as a result of BVT, the LSC would consider the current scope of legal aid as a whole in order to keep within budget. This is contrary to all the assurances made recently that the legal aid reform programme aims to reduce the spend on crime in order to free up resources for civil.
- 2.4 If BVT is introduced, and prices rise during the first phase, then the LSC should halt the BVT process (and undo what was introduced in the first phase) rather than cut civil legal aid.
- 2.5 For the moment we confine our comments to
- General comments about BVT
 - Quality issues
- 2.6 As the focus of this consultation is criminal defence services, we will not at this stage comment on the issue of niche work. However, if BVT were introduced for civil work, we would be very concerned to ensure that mechanisms were put in place to protect certain specialist providers.
- 2.7 If BVT is introduced for civil work, we would also want to ensure that the issue of access to services was given significant weight in the tender specification.

3 BVT

3.1 Of the three options outlined our view is that

- BVT is too complicated and risky
- Expanding the PDS fails to ensure choice and is probably too expensive
- Administrative fees are the least bad option.

3.2 The paper indicates how difficult BVT would be to implement, and the difficulty in even establishing what providers would actually contract for. For example:

- Providers cannot quote on price unless they know how many cases they are bidding for. There does not seem to be any way that a volume of cases can be guaranteed under these proposals, particularly if providers are allowed to do 'out of area' work (which would seem to be necessary to enable providers to retain their client base).
- We agree that client choice is important. However this will have to be matched by provider choice – the opportunity for the provider to turn away certain types of cases in order to remain financially viable. Otherwise, a provider that gained a reputation for being good at dealing with difficult or complex cases could be driven out of business by its own success.
- To achieve coverage and choice you might have to accept several less cheap bids rather than one large cheaper bid – there may be a conflict between the values of choice and best value.
- Preserving part of the market for the PDS and for small firms adds to the complexity of the evaluation of the bids, assuming that it can be done lawfully.
- The paper recognises the wide variations in the market, which suggest that BVT would have to be implemented in different ways (or not at all) in different areas to reflect local conditions.
- While there are logical arguments for introducing minimum and/or maximum numbers of contracts in each area, the effect will be to distort the market in each area and raise problems in each area of how to match the bids with the minimum or maximum numbers prescribed.

3.3 If BVT is easiest to introduce in types of work most suitable for fixed fees, what is the point of introducing it? If it is more difficult for other types of work, such as Crown Court work, what is the justification for introducing it? We are not convinced that a case has been made.

4 Quality

4.1 If, despite these arguments, the LSC decides to go ahead with some form of BVT, we believe that quality must play a key role. Peer review should be the main way of determining whether providers are doing work of sufficiently high quality.

4.2 However, we do not feel that the existing proposals are stringent enough to ensure that high quality is maintained, nor that they give sufficient incentives to providers for doing high quality work.

4.3 In the past, we have seen anonymised peer review reports for civil areas of work. We have not seen criminal peer review reports but we assume that the ratings are equivalent. In our view the reports on work that was judged to be threshold competent indicated a level of quality that was barely acceptable.

- 4.4 Given the downward pressure on quality that the LSC acknowledges BVT is likely to bring about, we are not convinced that providers achieving peer review 3 should be allowed to tender at all. We are disappointed that the LSC has dropped the aspiration that all suppliers should achieve at least a 2 at peer review.
- 4.5 If this is not possible, there should at the very least be incentives built into the system to achieve higher quality. As currently proposed, there are no incentives to achieve anything above a 3.
- 4.6 You could do this by notionally reducing the tender price for bidders who have achieved a peer review score of 1 or 2.
- 4.7 For example, you might receive three bids of £100 per case. The first bidder has achieved a peer review 1. For the purpose of comparison with other bids, the price could be treated as 10% lower ie £90 per case. The second bidder has achieved a peer review 2 and its price could be treated as 5% lower ie £95 per case, when compared with other bids. The third bidder has achieved a peer review 3 and their bid will not be treated as reduced but will remain £100 for comparison purposes.
- 4.8 The contract price for the successful bidder can remain at £100.
- 4.9 The above is an artificial example but we hope that the principle of giving credit for higher quality by assuming a reduced price is clear.

Ongoing monitoring

- 4.10 We agree that ongoing monitoring after the introduction of BVT is essential but again feel that the proposals do not go far enough.
- 4.11 The LSC should carry out research into the relationship between price and quality by annually peer reviewing the work of a diverse group of providers. This group should include providers with a range of case prices, in different regions, rural and urban, large and small and of diverse ethnic composition.
- 4.12 This would allow the LSC to gain an understanding of the true cost of good quality work in different contexts.

Other quality measures

- 4.13 We agree that supervision arrangements will be very important under BVT and think that there should be a maximum number of supervisees per supervisor. We think that up to 5 supervisees is feasible assuming that some of those supervisees are more experienced and need less of the supervisor's attention.
- 4.14 However, we feel that the SQM requirements for supervisors are insufficient. We do not believe that length of practice is any guarantee of supervisory skill or of good quality work. We therefore think that supervisors should be tested for legal knowledge before being allowed to supervise.

New entrants

- 4.15 We agree that there should be quality requirements for new providers. Of those listed we think that provisional peer review is the most important. We do not see what relevance ISO 9000 has.