

The response of the Advice Services Alliance to the Legal Services Commission Consultation paper Managing Legal Aid Cases in Partnership - Delivery Transformation

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1 About Advice Services Alliance

- 1.1 The Advice Services Alliance (ASA) is the umbrella organisation for independent advice networks in the UK. Full membership of ASA is open to national networks of independent advice services in the UK. Current full members include:
- adviceuk
 - Age Concern Cymru
 - Age Concern England
 - Citizens Advice
 - DIAL UK
 - Law Centres Federation
 - Shelter
 - Shelter Cymru
 - Youth Access.
- 1.2 Our members represent over 2,000 organisations which provide a range of services, including advice, to diverse groups throughout the UK. About 400 of these organisations have contracts with the Legal Services Commission (LSC).
- 1.3 In preparing this response, we have consulted with those networks which represent organisations with LSC contracts.

2 Introductory comments

- 2.1 We appreciate the LSC's decision to consult on their Delivery Transformation (the Consultation) proposals.
- 2.2 However, it seems to us that many of the proposals are at a very early stage. We suggest that a further consultation will be needed once the proposals are clarified. For example, before making any final assessment of the impact of these proposals, it is important to know precisely what arrangements the LSC has been able to make with the DWP and the timetable for legislative amendments. Further, it will be essential to consult fully with software suppliers to ensure that anything that is developed by the LSC is compatible with systems used by practitioners.
- 2.3 Possibly because this Consultation reflects early LSC thinking, we found the document difficult and time-consuming to read and understand. It seems that the document has not been proof-read - the summary of consultation questions on pages 37/38 do not reflect those in the text. Further, terms such as "high-level legal aid history" are used without explanation and some sentences are simply unclear. In particular, after several attempts, we have been unable to fully understand paragraph 5.10.2.
- 2.4 The structure of the document contributes to these difficulties. For example, Chapter 4 deals with the proposal for a client database but makes no mention of Legal Help cases. The first we learn of the possibility of using the proposed client database for Legal Help cases is in the Annex (page 57, 6.2.19) where there is a discussion about the potential costs of doing this. For the NfP sector, the use of the client database for Legal Help cases makes it a significantly different proposal and should surely have been dealt with in the body of the text.

- 2.5 Further, as acknowledged in the Consultation itself, this isn't brilliant timing as the LSC's most recent IT initiative continues to cause problems. These problems have caused additional costs and uncertainty to providers, who have not been compensated for this. There is understandable scepticism about the ability of the LSC to deliver complex IT projects.
- 2.6 We hope that, as a result of the problems with the online system, the LSC has a greater appreciation of the risks involved with such projects. We urge that further IT developments are properly piloted and not rushed. Further, it is important to anticipate what might go wrong and to ensure that resources and arrangements are in place for dealing with problems.
- 2.7 Our response follows the paragraph structure in the Consultation.

3 Electronic working arrangements

1. Which of the minimum requirements do you think you will be able to meet in time for the implementation of Delivery Transformation in April 2010? What obstacles do you envisage in meeting these requirements?

- 3.1 This question is aimed at providers. We have not received feedback indicating that NfP agencies would find it difficult to meet these minimum requirements.

2. If the Legal Services Commission (LSC) has the ability to accept key supporting documentation electronically, would you use this facility?

- 3.2 Again, this question is aimed at providers.
- 3.3 Scanning documents can be time consuming and we would urge that the LSC should not increase its demands for supporting documentation just because they will be received by them electronically.
- 3.4 In view of our introductory comments, we welcome the proposal that contingency arrangements will be available if the LSC was unable to receive electronic submissions. Of course, such contingency arrangements must also be available where, for any reason, providers are temporarily unable to send electronic submissions. It will be necessary for the LSC to spell out these contingency arrangements in due course.

3. Are there additional activities the LSC can consider to improve the electronic working proposals?

- 3.5 We have no suggestions at this stage.

4 Client database

4. Do you believe that a client database is appropriate and would provide value as described in the proposal? Do you envisage any additional issues that would impede its introduction?

- 4.1 We understand that a client database would provide useful management information for the LSC. However, as recognised in the Consultation, the proposal raises important and topical issues of security and accuracy. Recent scandals involving poor data security in the public and private sector have led to a loss of confidence in this area. We therefore look forward to the LSC's proposals for ensuring data security.

- 4.2 We note that the "system would generate a unique client reference" and would like clarification about how this would happen. Will this be the same or a different reference from the one announced for legal help cases on the 2nd April 2008?
- 4.3 Further, we are unclear about what is meant by retaining "the data for as long as necessary" and would welcome clarity about this.
- 4.4 Our concern is that the Unique Reference Number system should not become another hurdle for the grant of legal representation certificates. Once the details are clarified, we suggest that a pilot is done to assess the additional work involved for providers.
- 4.5 As we have already mentioned, we are concerned about the lack of clarity about whether this proposal is for legal representation grants or legal help. As acknowledged in the impact assessment, a client database covering Legal Help cases would add significantly to the time taken on each legal help case - and would significantly affect the NfP sector. No reason is given for suggesting that the scheme might be extended to Legal Help cases.

5. Is it appropriate to extend the use of the client database to providers and at what stages of the application process could a Client Database add value? What are the barriers that could hinder the use of the database?

- 4.6 For reasons of client security and confidentiality, we strongly oppose the extension of access to the client database to all providers. Clients must be given a choice over what information about them is accessible to all providers. Further, they should exercise this choice only after they have received advice about the potential consequences. The time taken to give such advice should be funded by the LSC.
- 4.7 We are extremely concerned at the suggestion that access to the database should be restricted only in certain "sensitive" case types, presumably as determined by the LSC. Case type is not the only factor which determines whether client details should be secure, and bank statements are certainly not the only documents of concern.
- 4.8 There are, for example, many clients or potential clients for whom their address and "high-level legal aid history" (whatever that means) would be very sensitive. A number of clients, such as those who are fleeing domestic violence or persecution abroad, would be at risk of violence if their address details were easily accessible on any database. We understand that this is recognised by the DWP, who make special arrangements to limit their employees' access to information about certain claimants.
- 4.9 It is therefore our view that clients should be given a choice about whether their information is disclosed on a database that is accessible to providers. We anticipate that advising a client about the potential consequences of disclosure will take at least several minutes during the first interview. We further anticipate that many clients will have good reasons for not agreeing to their details being accessed in this way.
- 4.10 We acknowledge that the Consultation does indicate that clients might have to give "permission" for a provider to access their details (4.8). However, we are very unclear about how this would work and how abuse might be prevented.

6. What controls do you consider would be the most appropriate for protecting against inappropriate access? Are there any other data issues that you feel would need to be considered?

- 4.11 Please see our answer the question 5.

5 Application process (civil categories)

7. Do you think there are any additional categories of cases [for means assessments] that should be referred to the LSC? If so, please could you list what you think these are.

- 5.1 We anticipate that there will be occasions where electronic systems will break down. Further, there are occasions when the client has applied to the DWP, but an assessment of their entitlement has not yet been made.

8. Do you agree with the proposals on the handling of means testing? What changes to the process would you suggest?

- 5.2 The Consultation proposes that providers with "passported clients" will have direct access to the DWP database in order to establish entitlement.
- 5.3 Very little information is provided about how this will work in practice. Therefore, we have a number of questions.
- 5.4 Will providers have to establish eligibility through the DWP database even when clients have supporting evidence? When is it anticipated that appropriate legislation will be in place? Will the DWP require copies of client's or partner's written authorisation before checking their records (as they do currently)? What would happen if information on DWP database is incorrect or misleading?
- 5.5 In relation to non-passported clients, it is essential to check whether using the on-line tool takes more time than current system. We do not accept the assumption that electronic systems are necessarily more efficient.
- 5.6 Finally, we are unclear what is meant by requiring providers to corroborate the evidence provided (5.4.6)? Depending on what it means, it seems to us that this could significantly increase providers' workload.

9. Are there any additional activities the LSC could consider doing to achieve a more efficient and timely process with regards to applications?

- 5.7 The paragraph regarding re-assessments suggests that these would happen if "a significant amount of time has elapsed". It is difficult to comment further without some indication of how long this would be.

10. Do you agree with the proposals on the merits element of the application and amendment process? What changes would you suggest?

- 5.8 We find it very difficult to understand the benefits of what is being proposed as far as assessment of merits is concerned.
- 5.9 As we understand it, the proposals pull back from those envisaged by Preferred Supplier. Providers, as currently, will be required to send information to the LSC. The LSC caseworker will then decide whether or not to devolve the decision making to the provider. It seems that the caseworker decision, at least in part, will be based on the provider's record of success.
- 5.10 Our understanding of these proposals is that providers will be required to prepare and send the same paperwork as they do currently. Further, LSC caseworkers will consider all of these documents before making their decision whether or not to refer back to provider. This appears to be a case-by-case devolution of authority which, if anything, adds another stage (and therefore additional costs to both parties) to the process. We would welcome clarification.

6 Certificate Discharge

11. Do you think the circumstances where the provider would have the power to discharge certificates are reasonable? Are there any circumstances you would add or remove?

6.1 The proposals seem sensible.

7 Client contributions (civil)

12 or 14 (depending on which section of Consultation Paper you are look at) We believe that changes to the contribution process are essential, in order to be clearer, more transparent and equitable. This will also be a key element of simplifying other processes. Do you agree with our approach on this change? What changes would you suggest?

7.1 We note the proposal that where a client has more than one certificate their contribution payment would be allocated to the first live case only.

7.2 It seems to us that this proposal has the potential to cause significant financial disadvantage to individual clients. For example, a client might lose the first case (and thereby lose her financial contribution), but win the second case with costs (without recovering any contribution from the other side).

7.3 We therefore do not understand the conclusions of the impact assessment (7.6.2) that this would only affect 40-50% of clients to the tune of £200. Some clients are required to make significantly greater contribution than this and the change could cause them to lose that much money. We would welcome more information about how the potential loss has been calculated.

8 Electronic Billing (civil and crime)

13. What benefits or disbenefits do you perceive can be achieved from electronic billing?

8.1 This question is addressed to providers.

14. Do you agree with our approach to electronic working for advocates, including payment using BACS? What changes would you suggest?

8.2 We have no views on this issue.

9 Risk

15. Do you think the controls under consideration are sufficient to manage risks associated with these proposals? What additional controls would you suggest?

9.1 As we have already stated, there is a significant risk that some of the technology won't work and we are therefore strongly of the view that these proposals are properly piloted before being rolled out.

10 Supporting Providers Through the Transition

16. Do you agree that our transition proposals are appropriate? If not, what changes would you suggest?

- 10.1 In our view, the timetable appears over-ambitious. As we have already stated, the LSC should be very cautious about committing itself to a fixed timetable for developing new electronic processes.

17. Are there any other areas of support that you think would be beneficial?

- 10.2 The suggested support package is understandably general at this stage. Once detailed proposals have been finalised, it will be necessary for the LSC to discuss a detailed support package with ASA and our network members.

11 Annexes

18. Do you agree with the assessment of impact outlined in Annexes 1 and 2? Do you have any evidence of impacts that we have not yet considered?

- 11.1 We agree that IT has the potential to make processes more efficient. However, as our response above indicates, we don't believe that there is yet sufficient information on which to base an impact assessment. Important questions remain to be answered - see above.
- 11.2 We note that the impact assessment mentions additional costs for providers who run outreach sessions. This is particularly important factor in NfP agencies, where many agencies offer such a service. Indeed, LSC proposal to reduce number of contractors is likely to lead to increased provision through outreach sessions and therefore additional costs if everything has to be delivered electronically. Providers should be compensated for these additional costs.

19. Do you think the approach we have proposed makes for good policy on improving efficiency and experience for clients, providers and the LSC?

- 11.3 It is too early to answer this question.

20. Do you have any additional comments that are not covered in the questions asked in the consultation?

- 11.4 We have no further comments at this stage.

21. Would the proposals in the consultation paper have an impact on your use of IT as an organisation? Would you have to invest in further Information Technology?

- 11.5 This question is aimed at individual providers and we are not in a position to answer it.

22. What do you consider the impact of the client database to be on your business for both options?

- 11.6 Again, this question is aimed at individual providers and we are not in a position to answer it.

23. Do you consider the proposals for billing in the consultation to have an impact on the costs draftsmen sector? Will any parts of the sector need to invest to meet the IT requirements?

11.7 We are not able to respond to this.

24. Do you consider the proposals for billing in the consultation to have an impact on advocates? Will any investment in IT be needed?

11.8 We are not able to respond to this.

25-28. Questions relating to the equalities impact assessment

11.9 The initial statistical analysis of BME groups, disabled people, gender, disabled people and those working or living in rural communities indicates that some providers may suffer an adverse impact if these changes are introduced. We agree that the results of this analysis is not conclusive.

11.10 We therefore agree with the proposal that the LSC should further inform its understanding of the possible impacts of the proposed changes through further direct engagement with provider representatives and relevant providers.