

Issues facing the advice sector

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1 Introduction

- 1.1 Current proposals present a major challenge to the advice sector, and in particular that part of the advice sector that receives funding from the Legal Services Commission [LSC]. We believe that many of these changes will also impact on clients.
- 1.2 Change is proceeding on several fronts and it is not clear how some of the proposals relate to each other. Most important are
- The Carter review
 - The LSC's consultation on preferred supplier
 - The CLS Strategy
 - LSC proposals to introduce a new contract for solicitors firms and NfP agencies from April 2007
- 1.3 We are awaiting Lord Carter's second report, which will say something about civil work, but we do not know how much. The latest guess is that this will come out in July. It must be emphasised that all the other proposals are expressed to be subject to the recommendations that will emerge from the Carter review.
- 1.4 Lurking in the background is the Legal Services Bill, which, if implemented, may also bring about fundamental changes in the legal services market.
- 1.5 The key themes that are emerging seem to be as follows
- A move towards fixed (standard or graduated) fees and/or block contracts
 - The introduction of "managed competition", which will include price competition, which is expected to drive prices (fixed fees) down
 - The LSC proposes to contract only with 'preferred suppliers'
 - An intention to contract with a smaller number of larger suppliers, which will involve
 - Suppliers being assessed in relation to their capacity and ability to expand
 - Minimum contract sizes
 - A preference for suppliers operating in several categories of law
 - The expectation in some urban areas that the LSC will contract with suppliers that can cover all the core categories of social welfare law (community care, debt, employment, housing and welfare benefits).
 - CLACs and CLANs
 - The phasing out of the Quality Mark
- 1.6 We have concerns about all of these proposals.

2 Fixed fees and "managed competition"

- 2.1 A move towards fixed fees (or block contracts specifying the number of cases which suppliers are expected to handle) is likely to discourage suppliers from taking on many cases which are seen as likely to take longer than average.

- 2.2 ASA has recently produced a detailed analysis of average case lengths in the NfP sector in the categories of welfare benefits, debt, housing and employment. This shows that
- There are clear variations in average case lengths between the regions in each category of law.
 - There are substantial differences in average case lengths depending on the type of case within each category of law. Cases that take longer include benefit challenges and appeals, debt cases involving multiple debts, and employment cases involving unfair dismissal and, in particular, discrimination.
 - Cases for members of certain ethnic minority groups take longer.
 - Employment cases for clients with a disability take much longer than average.
 - Many cases that result in positive outcomes for clients take longer.
- 2.3 It seems inevitable to us that a move to fixed fees will result in suppliers cherry picking the easier cases, and the 'easier' clients, and that there will be pressures to complete difficult cases more quickly, with a reduction in the quality of service provided and the results achieved for clients.
- 2.4 It seems to us that the introduction of "managed competition", aimed at reducing the amount paid per case, will only reinforce such pressures.

3 'Preferred suppliers'

- 3.1 The LSC is proposing that, from 2009, it will contract only with 'preferred suppliers'. In order to achieve this status, agencies will need to achieve a rating of 1 (excellence) or 2 (competence plus) at peer review. They will also have to meet performance targets, which are "yet to be determined", but are "currently 95%" of the hours specified in their contracts.
- 3.2 We understand that about 42% of NfP suppliers that have been peer reviewed achieve a score of 1 or 2 and that about 43% achieve a score of 3 (threshold competence). Agencies will be given until 2009 to get their score up to 1 and 2. Whilst we are confident that a number of agencies will be able to improve to meet the quality criteria, many will not. This is likely to mean that a significant number of potential clients will be denied access to advice.
- 3.3 Given the proposal to move towards contracting with fewer, larger suppliers, agencies that do achieve preferred supplier status will not be guaranteed a contract.

4 Fewer, larger suppliers

- 4.1 We recognise that a concentration on fewer larger suppliers will have some advantages for clients, in terms of their ability to access a wider range of services, and possibly in terms of the quality of services being provided. On the other hand, it will reduce choice for clients, many of whom are likely to have established a relationship of trust with existing providers. It will remove a degree of healthy competition between providers that is likely to have a beneficial effect on the quality of services provided. It is also likely to cause access problems.
- 4.2 We do not believe that an emphasis on those providers with capacity and ability to expand is necessarily appropriate. Many providers may be the right size, in terms of

the level of demand placed upon them by eligible clients. Others may be unable to expand for practical reasons, or due to inability to recruit suitably qualified staff.

- 4.3 A move towards fewer, larger suppliers will have a very serious effect on the NfP sector. The latest information that we have in relation to NfP contracts with the LSC suggests that
- 34% of contracts are for work in one category of law only
 - 37% of contracts are for work in two categories of law only.
- 4.4 All of these contracts (and possibly some others) are potentially at risk if the LSC wishes to contract with providers that can provide cover in more than two categories of law.

5 The CLS Strategy

- 5.1 The proposals in the CLS Strategy for fewer, larger contracts, and CLACs especially, seem to us to carry a number of dangers. They rely on a number of assumptions that are unproven and come close to suggesting a “one size fits all” solution.
- 5.2 The CLS Strategy also represents a fundamental change from the LSC’s previous policy in relation to the CLS, which favoured solutions determined at a local level, based on co-operation between suppliers and funders and an assessment of need carried out at the local level. The new strategy suggests that decisions about the supply of services can be made centrally by the LSC, without consulting local suppliers, based on the assumption that the need for legal services is essentially uniform across the country. There is a real danger here that solutions will be proposed which are inflexible, and unable to respond to local factors, or to changes in need at the local level.

6 CLACs

- 6.1 The LSC’s proposal for CLACs also represent a high-risk strategy, about which we have a number of serious concerns.
- The LSC originally proposed to pilot CLACs, but is now suggesting that they will be rolled out across the country.
 - The LSC has confirmed that existing LSC contracts and local authority funding in areas covered by a CLAC will be removed from suppliers that are not involved in the CLAC.
 - The LSC is insisting on contracting with what it calls a ‘single legal entity’, which is likely to preclude co-operation between NfP and solicitor suppliers and put considerable pressure on NfP agencies to merge if they wish to bid successfully to run a CLAC.
 - The recently published specifications for the first two CLACs, in Leicester and Gateshead, contain such stringent targets for advice and casework that it is unlikely that these CLACs will be able to do anything else, such as tribunal representation, liaison with local groups, or any meaningful social policy work.
 - The proposal cuts across other government initiatives, such as the funding for debt advice by the DTI through the Financial Inclusion Fund, which is premised on the co-operation of multiple agencies rather than the creation of a local monopoly.

- It requires local authorities to put all their eggs in one basket, which they may not wish to do for good reasons.
- 6.2 The CLS Strategy suggests that the LSC will also develop CLANs, which are networks of local providers operating a consistent referral policy, but we have seen no evidence of movement in this direction. The LSC seems to be concentrating all its energies on the development of CLACs. We think that CLANs are in many ways a preferable model, which avoid many of the disadvantages of CLACs. The LSC should be devoting an equal amount of effort to developing CLANs, so that a comparison of the two models can be made before either is rolled out to any significant extent.

7 The phasing out of the Quality Mark

- 7.1 When it was first conceived, the CLS extended beyond suppliers with LSC contracts to agencies giving non-specialist advice. The introduction of the Quality Mark represented for many a serious attempt to create a national standard for all publicly-funded legal advice services. After initial resistance, many agencies attained the Quality Mark and have since benefited from working to its requirements. It has also been relied on by other funders as an indicator that an agency is a good quality provider.
- 7.2 However, the LSC has stopped auditing the Quality Mark at General Help level and it looks unlikely that it will ever resume. If this situation continues, neither the public nor funders will be able to rely on it as a badge of quality and it will become meaningless.