

Quality and Access

A brief summary

1 Introduction

- 1.1 This independent research report written by Richard Moorhead and Richard Harding of Cardiff Law School and Avrom Sherr of the Institute of Advanced Legal Studies has recently been published by The Stationery Office.
- 1.2 One of the key reasons for introducing the system of exclusive civil contracts for Legal Help was to enable the Legal Services Commission (LSC) to use quality assurance processes to select better-quality providers. However, because of concerns that the new regime of exclusive contracts would restrict access, the LSC permitted providers with contracts to carry out limited numbers of cases outside their specialist areas. These cases are known as tolerance cases.
- 1.3 The report focuses on tolerance work. It compares it to specialist work and uses this comparison to test the assumption that providers who meet the LSC's specialist contracting requirements do better-quality work than generalists. It also examines the way that contracted providers manage tolerance work and the extent to which particular geographical areas or work categories are served by tolerance rather than specialist work.
- 1.4 This is a brief summary of some of the findings but it is no substitute for reading the detailed commentary of the report.

2 Methodology

- 2.1 The researchers analysed five main kinds of data: contract matter reporting data (SPAN) on a sample of over 600,000 legal help cases with an indication of which were tolerance cases; LSC data on number, type and location of contracts nationally; survey data on attitude and approach to tolerance work from 156 suppliers carrying out larger volumes of tolerance cases; 12 interviews with a sample of those suppliers; and peer review of 643 randomly selected debt, housing and welfare benefits cases. Data collection and analysis was mostly conducted in 2001. The peer review fieldwork took place late in 2002.
- 2.2 The data were analysed as a whole and also separately by solicitor and NFP contract. Overall NFP suppliers do significantly less tolerance work than solicitors and of the 194 tolerance cases that were peer reviewed, only 14 were from NFP agencies.

3 Tolerance work – importance and attitudes

- 3.1 The research findings show that between April and December 2001, 13% of all cases were tolerance cases and these were most likely to be in the areas of housing, debt, consumer and general contract, welfare benefits or miscellaneous. In that period, over £8 million was spent on tolerance work.
- 3.2 Most of the suppliers surveyed held contracts in one area of law (usually family) or a small number of areas of law. Generally they confined their tolerance work to a small number of legal areas but a substantial number were prepared to do tolerance work in a wide range of areas with 29% doing tolerance work in 4-5 categories.
- 3.3 The survey asked suppliers in which areas of law they were most willing to provide tolerance work. Consumer and debt were particularly likely to be provided under

tolerance with 72% of survey respondents doing consumer cases and 61% doing debt.

- 3.4 The survey examined reasons why suppliers did not have contracts in particular areas. The most popular reason given was that there was insufficient volume to meet the supervisor standards.
- 3.5 The report examines suppliers' reasons for doing tolerance work. The survey results suggest that the desire to serve existing or previous clients is the most significant reason. However, the report also contains a number of interesting quotes from interviewees on this subject. They indicate that lack of access is an important issue and a number discuss the inability to refer clients on.

4 Is tolerance work different from contract work?

- 4.1 Some survey respondents indicated that they felt tolerance work was low-level compared to contract work. By analysing the SPAN data the report examines how true this is. Housing, employment and welfare benefits cases were similar whether they were contract or tolerance cases but debt cases were much more likely to involve multiple debts needing re-scheduling if they were contract cases. The report suggests that this may well reflect a difference in the way that cases are perceived by specialists and non-specialists rather than a difference in the nature of cases done under tolerance.
- 4.2 The report examines the differences in the cost of contract and tolerance cases. In welfare benefits and debt, costs are higher for tolerance cases (about £46 higher per case in welfare benefits and £48 higher in debt cases) suggesting that considerably more time is spent on tolerance cases in those areas of law. In other categories, significantly less is spent on tolerance cases, particularly mental health, community care, education and actions against the police. Housing is marginally more expensive under contract.
- 4.3 The report points out that where tolerance cases are more expensive, this may indicate that they are more complex. However, other data does not suggest this and therefore, the report concludes, it is more likely that tolerance advisers are less efficient.
- 4.4 This was borne out by an examination of how long cases took. Tolerance cases took slightly longer than contract cases in debt, employment, housing and welfare benefits. For those areas of work, the report compares the level at which cases were completed as recorded under SPAN: similar numbers of cases were dealt with at the first meeting under tolerance and contract, however, more tolerance cases involved further work after the first meeting and fewer tolerance cases proceeded to negotiation or representation. The report points out that these findings support the hypothesis that tolerance workers need to do more background work and research than specialist workers and feel less confident in taking cases forward via negotiation or representation.
- 4.5 The report also examines endpoint and outcome data. In debt, employment, housing and welfare benefits, tolerance cases were significantly less likely to complete than contract cases. This difference was quite modest however. Comparison of outcomes suggests that there are significantly higher levels of positive outcome for contract clients than tolerance clients. One example of this is that 29% of contract welfare benefits clients get lump sum or periodic payments whereas 13% of tolerance clients do. The results are similar for employment, debt and housing. There is little evidence

that this is down to the nature of the cases and the report suggests that it is more likely a result of the way the cases are handled.

- 4.6 One further finding of note, demonstrated through an examination of welfare benefits work, is that specialist NFP agencies get significantly better results than solicitors doing work under contracts and specialist solicitor suppliers got better results than those doing work under tolerance

5 How is tolerance work managed?

- 5.1 The report examines the level of advisers who generally do tolerance work: 14.7% of suppliers surveyed use trainees or unqualified paralegals only; 40.4% use both unqualified and qualified; and 34.6% use qualified staff only. Level of adviser did not appear to vary significantly for different work categories. However, some respondents commented that lower level welfare benefits, debt and consumer could typically be handled by non-qualified advisers whereas areas such as actions against the police and housing were more likely to be handled by solicitors or even partners.
- 5.2 Supervision of tolerance work is generally done by the franchise representative, another solicitor or a supervisor under the contract. Most often this person is also a partner. Supervision of tolerance work is usually done as part of the general procedure for file review. A substantial minority of 37% had special supervision arrangements for tolerance work.
- 5.3 Survey respondents reported that 79% of advisers had received specific training in the matter type in which they do tolerance work. However, in 47% of cases, this training was received as part of a law degree or legal practice course. In view of this finding, the report states that there may be a need to improve training in tolerance areas of law.

6 Access issues and tolerance work

- 6.1 The report examines how much work in each category was done under tolerance. In two categories, consumer and actions against the police, tolerance was the main way that clients access legal help. About one client in three was gaining legal advice on problems in employment, education, debt and community care under tolerance and one in five housing clients was getting advice under tolerance. The report states that these figures suggest that there is a substantial need for advice which is not being met by specialist contracts.
- 6.2 The report also examines the distribution of specialist contracts across bid zones. In 2001 42% of bid zones had no LSC contracts in welfare benefits; 40% had no debt contracts; 44% had no housing contracts and 63% had no employment contracts. Since 2001 the number of specialist contracts in these categories has decreased. Furthermore, about one in ten bid zones had more than 30% of legal help matters conducted under tolerance and about one in five bid zones had more than a quarter of legal help cases carried out under tolerance. The report concludes that this is further evidence that there is a substantial need for advice that is not being met by specialist contracts.

7 Peer review of tolerance and contract cases

- 7.1 Given that much of the data collected for the report suggested differences in quality between contract and tolerance work, the researchers decided to test these apparent differences by carrying out peer review of contract and tolerance files in the debt, housing and welfare benefits categories.
- 7.2 Files were given a score between 1 and 5 with 1 representing “very poor” and 5 representing “very good”. A score of 3 indicated satisfactory performance and a score of 2 or below therefore indicated that files were below competence.
- 7.3 For solicitors’ cases, 30% of contract files and 43% of tolerance files were marked at 2 or below. The report examines the differences between solicitors’ contract and tolerance work by area of law: 47% of welfare benefits tolerance cases scored 2 or below compared with 21% under contract. This difference is statistically significant. 46% of debt cases handled under tolerance scored 2 or below compared with 37% under contract. The result is not statistically significant but it does suggest a difference in quality between contract and tolerance work. In housing, tolerance and contract cases had similar rates of cases which scored 2 or lower (35% of contract cases and 32% of tolerance cases).
- 7.4 There were not enough NFP tolerance files to compare their contract and tolerance performance but their specialist contract files were significantly better than solicitors’ contract files with only 14% scoring 2 or below. The report concludes that one of the reasons for the difference in quality between solicitors and NFPs is probably the difference in the funding mechanisms applied to the contracts.
- 7.5 The report also considers how NFPs and solicitors score on each of the individual peer review criteria. NFPs score more highly than solicitors on every single criterion and all but one of these differences are statistically significant.
- 7.6 The report includes some interesting qualitative results of peer review, in particular the peer reviewers’ comments are very informative. The reviewers noted concerns about lack of advice, lack of basic understanding, wrong advice, lack of action and referral problems. These were more frequently identified on tolerance cases than on contract cases.
- 7.7 One of the most common problems noted by reviewers was the inadequate quality of solicitors’ debt work. This was in contrast to the work done by NFP agencies. The report suggests that encouragement of solicitors to change their approach to debt work could bring about considerable improvements in quality.

8 Analysis

- 8.1 The report concludes that the introduction of contracting has helped to ensure that legal help is provided by higher quality suppliers – specialist advice under contract appears to be of higher quality than generalist advice provided under tolerance. However, there are also considerable quality concerns about specialist level work done under contract and this suggests that the differences in quality between contract and tolerance work are a matter of degree.
- 8.2 The research suggests that contracting has also led to a reduction in access which has been partly mitigated by tolerance work. However, in the light of the quality concerns about tolerance work, the report concludes that whilst tolerance work alleviates one problem it creates another.

- 8.3 The report suggests that more work needs to be done to examine alternative methods of addressing access problems such as telephone advice. However, it points out that such alternative methods may not prevent the need for trade-offs between access and quality.