

## ASA Conference, 18<sup>th</sup> April 2008

### Plenary session - Richard Jenner

I will start with a brief mention of the settlement between the Legal Services Commission and the Law Society.

I should say that both sides kept us informed and sought our views informally throughout the negotiation process, and I am very grateful to them both for that courtesy. But that is not the same as being at the negotiation table. The advice sector is of course a not a party to the settlement, and is therefore not bound by it. But we have to live with the settlement's consequences and operate within the landscape that it creates.

From the point of view of an outside observer, the settlement negotiations looked like a classic stand-off. Had legal proceedings continued, the Law Society would probably (in my view almost certainly) have won, and the fixed fees regime would have fallen. However, the Ministry of Justice and the Commission would have then pushed the nuclear button, terminated all contracts and sped up the reform process. The result would have been chaos, which would have been very damaging to providers and clients alike.

In these circumstances, the settlement probably represents about the best deal that the Law Society could have got. And there are some positives, for example:

- the deferment of price competition in family or civil work until April 2013, and
- the Commission's renewed and welcome commitment to consult and engage with representative bodies.

However, I have to say that the settlement does not address ASA's fundamental criticisms of fixed fee system as it applies to social welfare law. I won't rehearse these criticisms again in detail - you can go to our website for this - but in essence we remain concerned that the fixed fee scheme risks dumbing down legal aid by incentivising providers to take on straightforward, quick-turnaround cases and to avoid taking on complex cases or complex clients. And, in the absence of an uplift in fees, we think that this is particularly an issue in London.

We also have concerns about the operation of the transitional payment arrangements for Not-for-Profit providers, which we know are already creating serious problems for some agencies. Following some constructive discussions with the Commission, we hope that these problems will be ameliorated at least in part, but we need to hear direct from you about this, whether today at the conference or through feedback to your network or direct to ASA. We will go back to Commission if necessary.

I want now to concentrate on the future, and in particular on 2010. Crispin Passmore has outlined the way ahead, which is essentially as previously set out by the Government.

In relation to social welfare law this means, from April 2010:

- fewer, larger contracts, preferably (from Commission's point of view) in the form of a single contract for each of the 120 or so procurement areas
- integrated social welfare law services, covering the 5 main categories (benefits, debt, housing, employment and community care) and providing both legal help and representation (certificated work)

- contracts awarded following an open and competitive bidding process, but no price competition at this stage.

Now, there are two routes to the establishment of integrated social welfare law services.

Route 1 is via Community Legal Advice Centres or Networks where the Commission and local authorities agree to jointly commission services. We can expect to see a dozen or so CLACs and CLANs open before April 2010. The settlement precludes further new services during the life of the current contract, but does not preclude additional services being planned in this period. So if the Commission can secure agreement with more local authorities, we could see another 10 or 20 or 50 CLACs or CLANs open their doors for business in 2010. Or none.

Route 2 is via the 2010 competitive bidding round for legal aid, and is for legal aid work only. I suspect that this will be the more common route given the relatively low level of local authority interest in CLACs and CLANs at the moment.

Either way, this represents a major challenge to the advice sector, and if you want to be part of the legal aid landscape from 2010, it is essential that you start planning for it now. Remember, you will need to bid in about a year or so. Most NfP agencies are relatively small, and if you do not start preparing now, you may well find yourself outflanked by private practice firms or new players such as A4E.

So what are your options?

First, withdraw from legal aid work, always assuming that you survive the current contract. This may turn out to be a most sensible option if you are struggling, if you are small or if you have a small contract and access to other funding. But for some agencies, withdrawal will be tantamount to closing down your service completely.

Second, think big, and plan to expand your services to cover all five categories, and to employ solicitors if you are not already doing so.

Third, think even bigger, and bid for contracts in other procurement areas. I do not say this flippantly, as it is more than possible that there will be some redistribution of funds between procurement areas, creating both threats and opportunities for providers.

Fourth, assuming that it is an available option, band together with others to form consortia. I will return to this in a moment.

As Crispin has said, the Commission will consult on the contract specification and bidding criteria this autumn. This consultation will provide an early litmus test of the Commission's renewed commitment to engaging with providers. I should add that it will be a definitive test of the commitment set out in the MoJ's third sector strategy to work in partnership with and take account of the needs of NfP organisations

Now we will need to talk to our members before responding in detail to the consultation, but our initial thoughts are as follows.

First, even if it is accepted that there will be fewer, larger contracts, is it really necessary to limit their number to one per procurement area? I am always surprised how sanguine the Commission appears to be about the risks of monopoly provision: undue provider power, the serious consequences of provider failure and the problem

of dealing with conflicts of interest. We will argue, at least in relation to larger or densely populated areas, for more than one contract.

Second, the Commission should recognise that in some areas, it may not be viable to offer services in employment and/or community care, simply because there is insufficient demand from financially eligible clients. Such services might have to be made available on a regional level, and this could be facilitated through consortium arrangements.

Third, we continue to believe that quality - measured by peer review - should be paramount in any tendering process. And the standard should be peer review level 1 or 2. We have concerns that the Commission may feel tempted to water down quality requirements in order to deliver greater volume, and we will continue to press on this issue.

Finally, the Commission must in our view allow consortium bids. Indeed this may be the only approach that can ensure a continuing significant involvement of the NfP sector in the provision of legal aid services. And it is an approach that will serve clients well, by drawing on the strengths of providers. In particular, it will allow NfP providers and private practice firms to collaborate, and in many areas, such collaboration will provide the best mix of services.

It seems likely that a viable consortium model will involve a lead agency and sub-contractors, as is the case in the Financial Exclusion Fund face-to-face money advice programme, but this needs to be discussed within the sector. I suspect that effective consortium bids will need to do more than repackage current services.

Building effective partnerships and consortia takes a lot of time and effort. ASA is currently leading a consortium that is channelling Big Lottery Fund funds to the networks to support their members. Building this partnership was, to put it mildly, challenging. Do not wait for the consultation. Start now.

Given current developments, I felt I had to concentrate today on NfP providers involved in legal aid. But many you are not, and I now want to say something about where all this leaves you - there is a workshop today that will look at the future of generalist advice in more detail.

If, in 2010, you are in a Route 2 area (legal aid only contracts), this will not in itself affect your funding. However, the likely transformation of the local legal aid landscape will have a major impact on the way you deliver your services, for example the type of case you deal with and how you refer cases. So you should be talking to your colleagues in contracted agencies and firms about how best to deal with this.

If you are in a Route 1 area (CLACs and CLANs), the position is far less clear. We have started to gather information on the impact of CLACs and CLANs on local authority advice provision. So far, we have details on just two areas. In one, it would appear that the establishment of a CLAC has left funding for generalist agencies largely untouched. In the other, generalist funding has been diverted to the CLAC. It seems likely that mainstream advice agencies such as CABx will be particularly vulnerable in the event of them not being included in a CLAC or CLAN. For a variety of reasons, community organisations providing some advice may slip under the wire or be afforded explicit protection. But there is no room for complacency. If a CLAC or CLAN is proposed in your area, you should be talking to other providers and your local authority.