

The Use of Experts

The Advice Services Alliance's response to the
Legal Services Commission's consultation paper

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. Our aims are to:
- Champion the development of high quality information, advice and legal services;
 - Ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
 - Encourage co-operation between organisations providing such services;
 - Provide a forum for the discussion of issues of common interest or concern to advice organisations.
- 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 (formerly Federation of Information and Advice Centres)
 - Age Concern England
 - Citizens Advice (formerly National Association of Citizens Advice Bureaux)
 - Citizens Advice Scotland
 - DIAL UK (the disability information and advice service)
 - Law Centres Federation
 - Scottish Association of Law Centres
 - 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. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising. With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care (now commonly referred to as 'social welfare law').

2 Introductory comments

- 2.1 The Advice Services Alliance welcomes the opportunity to respond to this consultation.
- 2.2 This response has been drafted following discussion and consultation with our full members. However, it may not reflect our members' views in their entirety and we are aware that some members will submit their own response. On some issues, our members may have differing views.
- 2.3 We have restricted our comments to those proposals about which we feel qualified to speak. There are some categories of law, such as crime and to a large extent, family, which are outside the experience of the advice sector. We have either given brief responses or made no comment on questions relating to these areas of law. Where

we make no comment, we hope the Commission will listen closely to the views of those who are qualified to speak on these subjects.

3 Consultation Questions

Q4.3 Do you consider that accreditation will generally raise the quality of forensic services provided by experts?

- 3.1 ASA is in favour of efforts to ensure that the work of interpreters and experts is of high quality. Given that experts are generally highly qualified, we are not convinced that accreditation will improve the quality of their work, however, the validation of professional qualifications by an external body, together with regular reviews of work by a peer are good ways of exercising quality control and will help suppliers to feel confident in their choice of expert.

Q4.4 Do you agree that the bodies identified by the Commission for the quality assurance function are the most appropriate? Are there any other bodies that should be considered as quality assurance bodies?

- 3.2 We do not have experience of the bodies in question and therefore do not feel able to comment.

Q4.6 Do you agree with the Commission's view that, even in the long term, compulsory accreditation is not practicable?

- 3.3 We agree that compulsory accreditation is not practicable. As the consultation paper points out at paragraph 6.13, in some areas there is a shortage of experts. Compulsory accreditation may further deter experts in these areas from undertaking forensic work. Our members share this concern.
- 3.4 An Education and Community Care lawyer in a Law Centre reported that the Educational Psychologists and Independent Social Workers they use are, "so busy that they could probably afford to turn away work if they had to go to the bother and expense of accrediting." The worker also commented that these experts are already regulated by their own professional bodies, "so I think they would be insulted by such an additional requirement." There is general concern that experts will no longer be willing to assist clients as illustrated by an additional comment from this Law Centre worker, "I fear that excellent people would no longer be available to our vulnerable clients."
- 3.5 In relation to interpreters, there are some minority languages for which it is difficult to find an interpreter. If suppliers have to look for interpreters in these languages who are also accredited, it may delay or hinder the progress of cases.

Q4.7 To what extent do you support the Commission's quality assurance proposals and are they equally applicable to all types of proceedings?

- 3.6 We are generally in favour of the proposals.
- 3.7 We do have some concerns about the cost of accreditation particularly for interpreters. Interpreters of certain languages may be recently arrived in the UK, some may have come here as refugees, and many will be members of BME groups. Paying for accreditation may be beyond their reach for some time. The Commission should bear this in mind when considering the impact of these proposals on its commitment to the promotion of equal opportunities and good race relations.

- 3.8 So long as the Council for the Registration of Forensic Practitioners (CRFP) is confident that it can ensure that the professional bodies are able to accredit properly and to a uniform standard, the proposals to involve them in the quality assurance process seem sensible.

Q4.8 Do you agree that experts' fees for services under the CLS and CDS should be lower than in privately-funded cases.

- 3.9 Whilst we recognise that there are limitations to the legal aid budget and a consequent need to control spending on experts' fees, the Commission must ensure that fees paid to experts are competitive. If they are not, there is a risk that the more highly qualified experts will only carry out privately-funded work, leaving those with lower qualifications or less experience to do publicly-funded cases. Experts are freelance after all and they cannot be compelled to carry out public work.
- 3.10 Furthermore, quality costs money. The proposals for accreditation will require financial and non-financial investment from experts. The Commission should therefore not be surprised if those costs are passed on in the fees that experts expect to receive. The Commission must decide whether it wants to prioritise quality or costs-saving. In our view, it is not possible to have both.

Q4.9 Do you agree that an expert should charge less in less serious crime cases?

- 3.11 No. If an expert's report is required to establish a defence and a certain amount of work goes into the production of the report, the expert should be paid the same amount for that work, whatever the seriousness of the charge.

Q4.10 Do you agree that "proportionality" of costs should affect experts' fees in civil cases?

- 3.12 We understand this question to be asking whether experts should charge less in lower value civil cases. Again our answer is no. As with criminal work, we believe that if a supplier has decided they need an expert, that expert should be paid the same amount for a unit of work, whatever the value of the case.
- 3.13 We accept that if the ratio of the cost of the expert to the value of the claim is high, this may affect the number of questions the supplier asks the expert to answer or the length of the report the supplier requests. In our view, it is the responsibility of the supplier to reflect the principle of proportionality in their use of experts in this way. However, the supplier should not expect the expert to charge less for the production of a full report just because the value of the claim is low.

Q4.11 What are your views on "proportionality" of costs in family cases?

- 3.14 We have no comment.

Q4.12 Do you agree that like lawyers, experts should keep a detailed record of the work they perform, (and of the time taken), and what do you think are the benefits and drawbacks of doing this?

- 3.15 In principle we agree that experts should be able to justify the amounts they charge for their work. However, given the proposals to pay all experts' fees that fall within the proposed guideline rates, it is not clear to us what benefit would be gained from them doing this. The proposals seem to remove bureaucracy on the one hand and add further bureaucracy with the other.

- 3.16 Furthermore, it is not clear to us who would be responsible for checking the experts' records. It might be useful for the CRFP to do random checks of experts' records to ensure that they are not charging more than they should, however we see no benefit in the Commission or the supplier doing this.

Q4.13 Do you appreciate the Commission's difficulties in dealing with applications for prior authorities in cases that are not managed under individual case contracts? If so, do you agree that abolishing prior authorities and publishing guideline fees is a reasonable way of dealing with this issue?

- 3.17 So long as suppliers can be sure that experts' fees that are reasonably incurred and that fall within the guidance rates, will be accepted, we are in favour of the abolition of prior authorities. Furthermore, we are in favour of the reduction in paperwork that this will mean for suppliers. Such a system already exists under the Not for Profit contract and works well.

- 3.18 However, we suggest that the Commission should retain a residual right to grant prior authorities. There are some difficult cases for which the supplier might not be able to decide whether or not it is appropriate to instruct an expert. For example, they might want to instruct an expert but be worried about proportionality issues. In such circumstances, and in order to avoid risk to themselves and the Commission, it would be useful to have the option to apply for a prior authority.

Q4.14 Do you agree that, for (a) civil and (b) family proceedings, the guideline rates for experts should have (i) a lower minimum and (ii) a higher maximum? And if not, why not?

- 3.19 We do not feel able to comment on this question. We believe that it is for experts and suppliers to comment on whether the proposed rates are adequate.

Q4.15 Which view of an expert's obligation to the court do you feel most accurately reflects the current position? If neither, please state your view of the obligation.

- 3.20 This is a complex ethical issue and we are not sure that it is appropriate for the Commission to be determining it nor that it is appropriate to have one statement for all cases. It is our view that this is probably an issue to be determined by judges through case law.

Q4.16 Do you agree, that in criminal proceedings, the prosecution and defence should work to the same guidelines for experts' fees?

- 3.21 This may be necessary for practical reasons; if rates for prosecution work are higher, it may become increasingly difficult to find experts to do defence work.

Q4.17 Do you agree, that given the width of crime guideline rate bands in the regulations, it is appropriate to introduce guidance on fees within the bands and to divide the bands?

- 3.22 No comment.

Q4.18 Do you consider that additional specialisms need to be included in the crime guideline bands? If so, what are they and what group do you consider they should be in?

- 3.23 No comment.

Q4.19 Do you agree that the number and cost of experts' reports in public law Children Act cases have increased significantly in recent years? Do you consider that the assessment work undertaken (or not) by local authorities and the approach of a local authority towards payment of experts' fees has a significant impact? If so, please explain by reference to examples.

3.24 No comment.

Q4.20 Do you consider that in public law Children Act cases, the court should pay for the expert services it approves/requires (in the same way the court pays for professional and expert witnesses attending court to give evidence in criminal cases)?

3.25 No comment.

Q 4.21 Should solicitors and experts be able to agree to disapply any of the proposed standard terms of instruction in cases under the CLS and CDS?

3.26 On the whole, the terms seem sensible and therefore we do not foresee a need to disapply them. However, the clause "If neither party has caused the cancellation, they shall share the loss equally and if both have caused the cancellation, they shall share it in proportion to their fault" is unnecessarily complicated and would probably create more disputes than it resolved. It would be simpler to say that they will share the loss equally.

Q 4.22 Do you consider that more detailed guidance than that proposed about fees is necessary and, if so, do you have any to suggest?

3.27 We do not think the guidance is clear enough on when A and C rates can and should be used. Some examples would make it clearer.

Q. 4.23 What are your views on the categories of expert proposed in the fees guidance? Have you others to suggest and, if so, in which group should they appear?

3.28 We have no comment.

Q4.24 To help experts with questions about Commission-funded legal services do you consider that the Commission's website could usefully include a section for experts.

3.29 That seems sensible.