

## **60 years of legal aid – next steps for reform**

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While thinking about what I would say today, I remembered a speech I gave almost exactly a year ago in which I said that my role as Chief Executive of the Legal Services Commission was unlikely to make me very popular. The events of the last year have only served to emphasise this.

This has been a noisy year both for legal aid and for the Commission. Perhaps that's only fitting for the year which marked the 60<sup>th</sup> anniversary of the introduction of legal aid. Whether or not the Commission continues to exist in its current form, it is quite clear that the direction of legal aid reform and the legal services market are at a crossroads.

While we have stabilised the amount spent annually on legal aid, many of the changes proposed or introduced have met with opposition from some providers. While this is often presented as blanket opposition by representative bodies, others, such as the Association of Lawyers for Children, have welcomed some of these changes, as have law firms across the country (although not always publicly), while remaining to be convinced about others. Others still disagree as to whether changes are too radical or do not go far enough, are moving too fast or not quickly enough.

This is, perhaps, unsurprising, given the pace and scale of reform. What is clear is that both the Commission and providers need to change. The LSC has been heavily criticised over the past six months for its management of the legal aid fund. In the first instance, we are setting out the detail of the urgent work already underway to address this in a joint response to Parliament with the Ministry of Justice. Along with other public services, the LSC needs to deliver more for less, demonstrating efficient use of taxpayers' money, while ensuring the quality of legal advice and representation for those who can least afford them. At least in the short term, this means more checks on claims for legal aid – and for those who would say that this is too draconian and bureaucratic, I would point out that we have already recovered more than £2.5m over the past six months from incorrect claims.

So, providers also need to change. Not only to the reality of a finite legal aid budget, but also to a legal services market which is opening up in response to the different needs and expectations of a wide range of consumers. The latter are, of course, less interested in how we arrange ourselves to deliver these services, than in the quality and convenience of the help they receive.

In the heat of debate about the future of legal aid, the rationale for reform can become obscured. The most meaningful measure of success is, of course, the range of problems being resolved, the number of people we're helping. This is not to be complacent; merely to redress some of the balance in judging progress to date – that is, to acknowledge successes as well as setbacks. So, while we hear about the crisis in the legal aid system, it is at least worth noting that:

- Legal aid funded a record 2.9 million new cases across England and Wales in 2008/09;
- An extra 277,000 civil cases were funded over the same period, a 25% increase over the previous year;

- Almost 34,000 Housing Possession Court Duty Schemes cases were funded last year, helping 76% of people to stay in their homes. This translates into 26,000 people and their families keeping a roof over their heads at a time when many are struggling with the effects of the recession;
- More than 330,000 people were helped via the Community Legal Advice telephone service, with 2.5 million visiting the website over the year.

It is surely also logical to concentrate more resource into prevention. This is a conclusion, it could be argued, which legal services have come to rather late in the day when compared with some other sectors. Early results from pilots of court-based mediation are promising, showing an overall success rate of 72% - that is, cases settled, disputes narrowed or further mediation pursued. In 44% of cases, clients hadn't even previously considered mediation as an alternative. The benefits are clear – not only in terms of costs, but also, and more importantly, in human terms.

Debt advice services for prisoners are another example of how we are funding services aimed at preventing recidivism and further pressure on the justice system. I recently visited Parc Prison in Brigend where the LSC, National Offender Management Service Cymru and a local provider, Ty Arian, have come together to offer debt advice to the 1200 offenders in prison and on remand. The service was developed following substantial research and evaluation by the Legal Services Research Centre highlighting the significant financial exclusion faced by people detained in prison.

A recent case demonstrates how a prisoner was helped with problems of debt. Due to be released in a few months time, he had a number of unpaid fines amounting to several hundred pounds and was concerned that he would be arrested at the prison gate on his release. The debt adviser contacted the magistrates' court, requesting that the fines be lodged against his sentence. This was agreed, so that he would be debt-free on his release, reducing the risk of his reoffending in order to pay off his debts.

Consumers expect quality, flexibility and convenience from the public services for which they pay. Legal aid is no exception to this and the inevitable pressure on public spending over the next few years presents a clear incentive to accelerate innovation, rather than slowing down. This entails providing services in a range of new and different ways to reflect the varied, often multiple, linked problems with which clients need help. For example, someone seeking help with an issue about their housing, may well also need support to deal with wider problems of debt, employment, family circumstances and ill-health. Complex needs such as these need an integrated service, tailored to individual circumstances, rather the client being pushed from pillar to post.

I have often described what I believe to be the direction in which legal services need to develop and the opportunities for providers in this changing landscape. This will certainly involve more partnerships than before across different professions and sectors (public, private and not for profit). We are also way past debating whether telephone and online services have a part to play. They are a fact of life and integral to delivering the flexible services and direct access which consumers expect. We were warned that clients would suffer if they did not receive face-to-face advice. In fact, clients have told us that they are 20% more satisfied with the Community Legal Advice telephone service than the face-to-face advice which had, prior to its introduction, been their only option.

The reasons for this are as varied as the people seeking help. For some, it's more convenient to phone or go online; for others, it's a question of accessibility: the

Community Legal Advice website is obviously available on a 24-hour basis and the telephone service runs from 9am to 8pm five days a week and on Saturday mornings; for yet others, the prospect of a face-to-face meeting can be too daunting, at least initially.

Take the case of a young woman who rang the Community Legal Advice telephone line recently. Having just given birth to twins, she was made homeless when her parents, with whom she had been living, were unable or unwilling to continue housing and supporting her. Designated as 'intentionally homeless' by her local authority, she faced the prospect of sleeping rough in London with her newborn children. After the intervention of the CLA Housing Team, the local authority agreed to provide emergency accommodation and to look again at her circumstances, ultimately agreeing that they did have a duty to house her. She now has her own home and has gone back to university.

Technology is also playing an important part in reducing the time defendants spend waiting for advice and representation, in detention and in the resolution of their cases. People detained at police stations for minor offences, such as shoplifting, can get advice over the phone; video links are enabling disciplinary and parole cases to be heard without the need for practitioners to travel to prisons and defendants to have their case heard in magistrates' courts from police stations. While these are all still being piloted and need to be evaluated rigorously, early indications are that they can help to deliver justice more quickly to the benefit of the client and the whole justice system. A virtual court scheme being piloted in London has shown that both custody and bail first hearings can take place in a single day in as little as three and a half hours. The first virtual hearing using the new system involved a defendant who needed a translator, having plead guilty to a drink driving charge. The case was completed – from charge to disposal – within four hours.

The LSC is changing to become a smaller organisation, focused above all on commissioning high-quality legal aid services. I firmly believe that these are most likely to be provided within a competitive market, in which existing providers not only work together in new ways, but also with new entrants. This means Legal Disciplinary Partnerships, where barristers and solicitors work together to bid for one legal aid contract, and alternative business structures where lawyers come together with other professions to provide the range of professional advice and representation which their clients need.

The interests of clients must, of course, be paramount in the development of these changes. Professional standards to assure the quality of the services they receive must be enshrined as a condition of legal aid contracts. Currently, the LSC measures the quality of legal aid advice delivered under contract by peer review, with more than 2600 such reviews having been completed over the past four years. While we will continue to carry out the necessary audits to assure quality, we need to reach the right balance in terms of value for money and the burden on providers. Peer review will, therefore, now be carried on a risk-based and random sampling basis.

I have been clear for some time that the responsibility for assuring the quality of legal services should sit with the regulators – that is, the Bar Standards Board and the Solicitors' Regulatory Authority – overseen, as from the beginning of the year, by the Legal Services Board. I am equally clear that the LSC, as a majority funder of legal aid services, has a central role in setting the standards by which we commission these services. This is why we are following up the pilot work already carried out by the Centre for Professional Legal Studies at Cardiff University Law School with a discussion paper about quality assurance for advocates to be launched next week. It

is certainly for the regulators to take the lead on this – indeed, we have been pushing this for some time – but our involvement should continue until we are confident that the necessary standards are in place to assure the quality of services on which clients depend.

This focus on clients' needs must, of course, be accompanied by a good understanding of how we can support providers. While we may not always agree, we work in close partnership with representative bodies to resolve issues raised by providers. In order to improve speed of decisions for clients and payments for providers, we are investing in a new electronic case management and billing system, which is scheduled to go live over the next two years, starting with electronic forms. In the meantime, we have moved to weekly payment runs and made £43 million of special payments to firms at the beginning of last year.

We hear predictions from representative bodies that young lawyers are not choosing a career in legal aid, either because they are uncertain about being able to make a living or because there will be too few firms willing to undertake legal aid work. Our experience, illustrated most recently by the tender process for asylum and immigration contracts, is that there are more firms than work available. This has been the case whenever we have tendered for work over the past year.

We have made 750 training grants – an investment of £18 million – for the most talented young lawyers specialising in legal aid. The next round of grants will be open to any provider awarded a contract for 2010.

I also want to come back to the warnings of a looming crisis in the legal professions. We are told, for example, that changes which would open up the legal services market to other providers to deliver more flexible services for clients at an improved cost for the taxpayer, threaten the future of the Bar. At the same time, we know that the Bar's vocation course was oversubscribed last year.

I began today by recognising that there are changes that we all need to make and I have set out where I think these need to take place.

At the same time, it is abundantly clear that we can and are already working together effectively, notably with local authorities. The five Community Legal Advice Centres in Derby, Gateshead, Hull, Leicester and Portsmouth, are testimony to this. We will be opening the first centre in London – in Barking & Dagenham – and a service in West Sussex later in the year. The client sees the direct benefit of this joint working.

While some developments, such as Crown Court Means Testing, are going ahead as planned, others, such as Best Value Tendering are currently being re-evaluated. I believe that we need to focus on maintaining the momentum and ambition of the reform programme, without which it is estimated the annual legal aid budget would already have reached £2.7 billion.

Self-evidently, the LSC and central Government neither can nor should deliver these changes alone. We all have tough challenges ahead and I look forward to further collaboration with representative bodies and all providers to deliver the standard of services we all want to see for clients.