



# Making Legal Rights a Reality for Children and Families

The Legal Services Commission's Strategy for Family Legal Aid

**Volume 1:** A Strategy Paper

Community  
Legal Service



March 2007



# **Making Legal Rights a Reality for Children and Families**

The Legal Services Commission's Strategy for Family Legal Aid

Volume One:

A Strategy Paper

March 2007



## Contents

|  |           |
|--|-----------|
| <b>Foreword</b>  | <b>5</b>  |
| <b>Executive Summary</b>                                     | <b>6</b>  |
| <b>Introduction</b>  | <b>7</b>  |
| <b>Section One: Context and Drivers for Strategic Action</b> | <b>9</b>  |
| The need for family legal advice                             | 9         |
| The supply of family legal aid services                      | 11        |
| Cost of family legal aid services                            | 12        |
| Impacts on the wider family justice system                   | 13        |
| <b>Section Two: Clients and Services</b>                     | <b>15</b> |
| Priority clients   | 15        |
| Services   | 17        |
| Specialist national / regional services                      | 17        |
| Mediation services   | 18        |
| Telephone services   | 18        |
| Quality  | 18        |
| <b>Section Three: Procurement</b>                            | <b>19</b> |
| Fixed fees   | 19        |
| The Funding Code   | 19        |
| Commissioning services                                       | 21        |
| <b>Section Four: Whole System Reform</b>                     | <b>22</b> |
| <b>Timetable for Action</b>                                  | <b>24</b> |

This strategy paper, which forms Volume 1 of the Legal Services Commission's strategy for family legal aid, is supported by a second volume, *An Overview of Family Legal Services*. Volume Two is available at the Commission's website at [www.legalservices.gov.uk](http://www.legalservices.gov.uk)



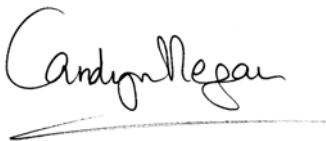
## **Foreword**

In our strategy for the Community Legal Service (CLS) – *Making Legal Rights a Reality* – we stressed the vital role the CLS plays in helping people to defend and advance their fundamental rights and to make real improvements in their lives. Since we published the strategy, the Government and the Legal Services Commission have set out how we intend to procure legal aid services in *Legal Aid Reform: the Way Ahead* and outlined our approach to ensuring quality for clients in *Quality Relationships Delivering Quality Outcomes*.

With this context now clear, the time is right to set out our strategy for family legal aid, putting it at the heart of the reform of the legal aid system. This is important not only because family legal aid comprises 58% of all civil legal aid expenditure, but because of the vital role it plays in helping families to deal with the problems they face. We need to be sure that they can get the help they need – whether it be to resolve disputes about contact arrangements between parents or to protect children at risk of neglect or women at risk of domestic abuse.

We recognise the excellent work being carried out by our wide range of providers in delivering services to help tackle these problems. However, those services are still not sufficiently joined-up. We know that family problems can both lead to and result from other civil problems and it is vital that people have access to integrated advice services that address the clusters of problems they experience. We also need to target resources where they can achieve the most benefit.

The Government's vision for the family justice system is to put children at the heart of the system, protect vulnerable people, ensure the system is accountable, and provide simple processes that prevent unnecessary delay. This strategy sets out the framework for how family legal aid can contribute to that vision.



**Carolyn Regan**  
Chief Executive  
Legal Services Commission

### **Executive Summary**

This strategy sets out the framework for the decisions to be taken by the Legal Services Commission for family legal aid, in England and Wales.

The key themes of this five year strategy are:

- The priorities for family legal aid funding
- Whole system reform

### **Priorities for funding**

We intend to target the resources of the legal aid budget where it can be most effective for priority clients.

This will mean:

- directing funding towards services for children and adults at risk of abuse and parents whose children are the subject of care proceedings
- providing further incentives for parents in private law proceedings to resolve cases without going to court
- increasing access to services for those at risk of domestic abuse
- piloting specialist family advice through CLS Direct
- reviewing the operation of the Funding Code to reflect funding priorities
- purchasing integrated family and social welfare law services

From April 2009 we will commission services through best value tendering based on the quality, capacity and price of service as well as how it offers access. In preparation for this we will introduce:

- fixed fees for solicitors, barristers and experts
- a rational allocation of regional budgets based on an analysis of eligible clients

### **Whole system reform**

The strategy outlines the need to work in partnership with other stakeholders to deliver effective outcomes for families. To do this we will:

- continue to work with the Family Justice Council at both national and local level across England and Wales
- work with both providers and users of family legal aid services

### Introduction

The Legal Services Commission (LSC) vision for family legal aid is:

- To ensure our clients have access to quality services which meet their needs
- To work with providers who provide quality, value for money and client focused services
- To deliver a sustainable scheme within the budget available and demonstrate positive outcomes for clients and real value to Government in terms of effective financial control and improved value for money.

The Community Legal Service (CLS) strategy<sup>1</sup>, published in March 2006, set out our priorities for social welfare law. This was endorsed by Lord Carter's review of legal aid procurement<sup>2</sup>, also published last year, which set out a series of recommendations for the commissioning of family and social welfare law services. This paper follows on from these documents and from the recent publication *Legal Aid Reform: The Way Ahead*.

The purpose of this paper is to set out LSC priorities for the funding of family legal aid, how we intend to work with other parts of the family justice system and to provide a framework for decision making over the next five years. While this document is not the subject of a formal consultation, future policy decisions made within this framework will be subject of formal consultation, as appropriate, with affected stakeholders according to our consultation code.

Legal aid in family proceedings is provided to support access to legal advice, representation and mediation and to facilitate an efficient family justice system through effective funding of eligible clients. Following the publication of *Legal Aid Reform: the Way Ahead*<sup>3</sup> we have a clear blueprint for the way we procure these services in future. These services must be delivered within the budget set by Government, to which end the effective and timely implementation of procurement reforms is fundamental.

In 2005/06, the LSC spent around one quarter of its legal aid budget - £570 million - on family work. This allowed it to fund Legal Help for just over 280,000 family cases and an additional 130,000 certificates for Approved Family Help and Legal Representation.

The family justice system is complex, with a variety of stakeholders whose actions have a financial impact on the legal aid budget. The LSC must engage appropriately with these stakeholders to make sure that all relevant parts of the family justice system are working together so that effective services, which maximise the potential positive outcomes, are delivered consistently for all clients.

---

<sup>1</sup> *Making Legal Rights a Reality: the Legal Services Commission's Strategy for the Community Legal Service*, March 2006

<sup>2</sup> *Legal Aid: A market-based approach to reform* - Lord Carter's Review of Legal Aid Procurement, July 2006

<sup>3</sup> *Legal Aid Reform: the Way Ahead*, November 2006

## **Making Legal Rights a Reality for Children and Families**

---

In seeking to do this we recognise the considerable achievements of our providers over the past six years in delivering quality services to clients. We will continue to work in partnership with preferred suppliers and others to deliver the high quality services that legal aid lawyers and the LSC are committed to providing to clients.

## **Section One**

### **Context and Drivers for Strategic Action**

- 1.1 This section provides a summary of the analysis of:
- The need for family legal advice
  - The supply and cost of family legal aid
  - How and why the wider family justice system impacts on the cost and supply of family legal aid
- 1.2 Detailed information on and analysis of all these issues are contained in Volume Two of this strategy, *An Overview of Family Legal Services*.

### **The need for family legal advice**

- 1.3 Family legal aid comprises 58% of all controlled and certificated civil legal aid expenditure. The need for such advice has been analysed by several investigations in recent years, through the *Paths to Justice*<sup>4</sup> report, the Legal Services Research Centre (LSRC) *Causes of Action* survey<sup>5</sup> and the Family Advice and Information Service (FAInS) research report<sup>6</sup>. All of these have identified the complexity of problems often experienced by family clients.

“The range of disputes coming under the remit of family lawyers has exploded in recent years. While the courts have become increasingly occupied with the monitoring of the decision making processes of local authorities, they are also increasingly concerned with family breakdown and its consequences.”

- 1.4 Families often experience problems in clusters, such as those arising from domestic abuse, divorce and relationship breakdown in general. Moreover, the more problems a client experiences the more vulnerable they are to new ones: family problems are often a trigger for debt, welfare benefits and housing problems.<sup>7</sup>
- 1.5 Consumer research carried out by the department for Constitutional Affairs (DCA)<sup>8</sup> and by the LSC has shown that families experiencing relationship breakdown find the system difficult to navigate when seeking help. The results confirmed the *Causes of Action*<sup>9</sup> findings that first points of contact frequently do not refer clients on to the most appropriate place.

---

<sup>4</sup> *Paths to Justice – What people do and think about going to law*, Hazel Genn (1999)

<sup>5</sup> *Causes of Action: Civil Law and Social Justice*, Pascoe Pleasence, A Buck, N Balmer, A O’Grady, H Genn, M Smith (2004)

<sup>6</sup> To be published Spring 2007

<sup>7</sup> The FAInS Report showed that one in six FAInS clients had concerns about debt, welfare benefits or housing

<sup>8</sup> Department for Constitutional Affairs Consumer Strategy Volume 3 - Relationship Breakdown, 2004

<sup>9</sup> Op. Cit.

- 1.6 Clients said they would value being able to access services as far as possible in one place, together with other support services. They also wanted services to be provided over the Internet and telephone as well as face-to-face. Clients appreciate the chance to remain anonymous and can often receive the information and support they need without face-to-face legal advice. Telephone and Internet services can be a more appropriate use of limited resources, as well as an effective way of providing information and education about legal rights and responsibilities.

- “It’d be good to have one point of contact for all issues to do with relationship breakdown.”
- “There should be one place that just deals in break ups. There are too many different places.”
- “It would be very useful for people at the start of the process to have someone at the end of the phone.”

*A Study into the information and support needs of people experiencing relationship breakdown and family disputes by Promise for the LSC, June 2004*

- 1.7 Some family clients are particularly vulnerable to social exclusion and it is important that priority is given to providing the advice services that they need. Family type also has an impact on the likelihood of a client experiencing problems, with lone parents more likely to experience problems than parents in a relationship.
- 1.8 Children are particularly at risk of harm from high conflict relationship breakdown; many either witness domestic abuse or are subject to it themselves, which can have a long-term impact on emotional development. Domestic abuse is one of the problem types that is least likely to lead to action being taken by the client and it is vital that legal advice to those experiencing these problems is made more accessible.
- 1.9 Children who are taken into care are more likely to have special educational needs. Many do not have access to the support and advice that they need when leaving care<sup>10</sup>, making them particularly vulnerable to social exclusion or at risk of criminal behaviour. In many cases support from the relevant local authority can address these issues and specialist legal advice is an effective tool to ensure local authorities comply with their obligations.
- 1.10 Parents whose children are the subject of care proceedings have often been abused as children<sup>11</sup> and many have learning difficulties or mental health issues. It follows that these parents are a particular priority for legal advice as well as their children.
- 1.11 Unaccompanied Asylum Seeking Children (UASC) are children who have no adult relative or guardian in the UK, and are likely to have complex needs

---

<sup>10</sup> *Care Matters: Transforming the Lives of Children & Young People In Care* (DfES), October 2006

<sup>11</sup> *Review of the Child Care Proceedings System in England & Wales* (DfES & DCA), May 2006

requiring quality advice across a number of categories of law, including immigration, welfare benefits and public law proceedings.

On the 31<sup>st</sup> March 2005, there were 2,900 UASC looked after in England. The overwhelming majority (69%) were located in London, with a further 16% being located elsewhere in the South East<sup>12</sup>.

- 1.12 Access to integrated specialist legal advice for all these client groups will be a priority for the LSC over the next five years.

### **The supply of family legal aid services**

- 1.13 Work carried out by the Legal Services Commission has shown that the most effective proxy for predicting the need for family advice is the proportion of clients eligible for state benefits which automatically 'passport' them to financial eligibility for legal aid, currently Income Support, Income Based Job Seekers Allowance and Guaranteed State Pension Credit.
- 1.14 In addition, LSRC research now gives national statistics on the prevalence of legal problems in the general population. For example, it shows that lone-parents are statistically more likely than others to experience family and related legal problems. We have therefore produced a funding formula that takes into account the need for services based on income (targeting resources at the poorest clients) and, where possible, the likely incidence rate of problems within an area.
- 1.15 Analysing the current provider base against this proxy shows there is a good level of access to family legal advice, with 93% of the population living within five miles of a family solicitor, and we are committed to maintaining appropriate access. However, current provision is fragmented with only 18% of firms with a family contract offering another type of civil advice and assistance under a specialist contract. There is a need therefore to ensure more integrated provision.
- 1.16 It is also important for the LSC to be able to understand in more detail the specific type of family provision within a contract to make sure that all aspects of the family cluster are available to clients and that the need for and supply of advice in priority areas (such as domestic abuse) are comprehended and properly met.
- 1.17 The LSC will therefore continue to work with the LSRC and stakeholder groups representing clients at particular risk in order to understand the need for different types of advice and how those needs might be better addressed. We will publish more detail on our proposed targets for access to legal advice later in the year, as well as the data we have used to develop these. We will do this on an annual basis from now on.

---

<sup>12</sup> National Statistics, March 2005

- 1.18 The future provision of legal aid services is dependent on encouraging young lawyers to take up legal aid work, especially in areas such as that of public law childcare proceedings where the number of specialists with membership of the Children Panel is in decline. Young care leavers can find it particularly hard to access specialist legal advice and therefore it will be important to continue to use the LSC training contract scheme and the legal aid Legal Practice Course to encourage new solicitors to work in these important areas of law.

### Cost of family legal aid services

- 1.19 The cost of family legal aid has risen, disproportionately to the increases in volumes since 2002/03. Spending on public law childcare cases has risen the most, with increases in counsel's fees, disbursements and solicitors' costs all increasing above inflation.

Between 2004/05 and 2005/06 the volume of Special Children Act cases rose by 6.5% and the cost of these cases rose by 21.6%. Over the same period the volume of private law cases rose by only 1.9% compared to a cost increase of 7.4%.

- 1.20 A significant proportion of disbursements are represented by experts' fees, particularly those of medical experts, whose evidence is increasingly being used to aid judicial decision making in public and private law cases. Between 2004/05 and 2005/06, the cost of disbursements in Special Children Act cases rose by 28.9% to over £28m and in private law cases by 19.7% to over £13m. A shortage of experts in some areas has also contributed to delay and therefore an increase in case costs, as well as raising the price of many medical experts who are able to charge market rates for their services.
- 1.21 In private law cases there is scope to re-focus spending on less adversarial methods of conflict resolution, particularly in child contact cases. A recent value for money review by the National Audit Office (NAO)<sup>13</sup> has highlighted that mediation can be more cost effective than litigated solutions; clients appreciate mediation and some would value it as an option. The President of the Family Division's *Private Law Programme*<sup>14</sup>, with its focus on in-court conciliation, is another opportunity to encourage non-adversarial settlement in these types of cases.
- 1.22 There has been an increase in the type of specialist family law cases such as child abduction<sup>15</sup> and Rule 9.5 appointments in high conflict contact cases. In addition there has been a significant amount of legislation in the family arena, including the Children and Adoption Act 2006, the Adoption and Children Act

---

<sup>13</sup> *Legal aid and mediation for people involved in family breakdown* – a Value for Money Report by the National Audit Office to be published Spring 2007

<sup>14</sup> *The Private Law Programme: Guidance issued by the President of the Family Division*, January 2005

<sup>15</sup> *Making Legal Rights a Reality for Children and Families: The Legal Services Commission's Strategy for Family Legal Aid: Volume Two – An Overview of Family Legal Services*, p. 27

2002, the Civil Partnership Act 2004, the Domestic Violence Crime and Victims Act 2004. These all have the potential to place added pressure on the legal aid budget.

- 1.23 It is therefore important that the LSC is rigorous in controlling the cost of legal aid, so that the limited resources available are focused on areas where specialist legal advice can make the most difference to a client, and on providing consistent access for all priority clients. We must also ensure that legal aid resources are not diverted to finance activities outside the LSC's proper remit.

### Impacts on the wider family justice system

- 1.24 Issues arising in the operation of the family justice system can also impact upon the legal aid budget. For example, adjournments and delays in court can lead to excessive waiting time or parties having to make several appearances, which add to the cost of cases.
- 1.25 In Public Law there has been an increase in emergency proceedings and in proceedings coming before the courts with (in the courts' view) insufficient preparation to allow a decision. The seriousness of these cases and the requirements of the Human Rights Act have increased the complexity of decision making for judges and there is a reliance on multiple experts' reports. These reports can be costly and it is not always clear how they contribute to the outcome of a case. The Chief Medical Officer has recently identified that, out of 28,687 cases in only 26 did a court's decision depend on disputed medical evidence.<sup>16</sup>

In one example where a residential assessment was directed by a court, the court then approved a second assessment at a total cost of over £100,000 two-thirds of which was to be met by the funded clients and therefore from the legal aid budget.

- 1.26 Orders continue to be made for residential assessments, which can take longer than the average 12 weeks recommended by the House of Lords decision in *Re G* in 2005<sup>17</sup> and include work which could be regarded as treatment or therapy, not assessment. In some cases there appears to be little, if any, discount made for any costs that the local authority might otherwise have incurred for the placement of the child. Most residential units deny there is any treatment or therapeutic element to the work they undertake (despite the inclusion of such items as anger management classes and family therapy groups), without providing a detailed breakdown. The courts will on the whole accept this. The LSC maintains that much of this work is therapeutic in nature and the costs should not be falling to the legal aid budget. There is little evidence that these assessments add sufficient value to the legal process to justify the costs and delay.

---

<sup>16</sup> *Bearing Good Witness – Proposals for reforming the delivery of medical expert evidence in family law cases*. A Report by the Chief Medical Officer, October 2006

<sup>17</sup> *Re G* [2005] UKHL 68

- 1.27 In Rule 9.5<sup>18</sup> cases, where the Children and Family Court Advisory and Support Service (CAFCASS) does not allocate a guardian, judges often order that a lawyer be appointed as guardian. This means that the costs of social work support to the child also fall to the Fund, as the lawyer will buy in that expertise and charge it to the Fund as a disbursement.

The average cost to the legal aid budget of Rule 9.5 certificates conducted by one provider of independent guardian services in 2005/06 was £6,243, compared to the average cost of £3,300 for certificates conducted by other contracted providers.

- 1.28 While other stakeholders' actions can impact on costs, there is no doubt that the current adversarial system is an important driver, as all parties need separate representation. Since in many cases all parties are legally aided, the cost to the Fund of those cases is likely to be considerable, particularly in public law cases where there can be multiple parties.
- 1.29 While it is not necessarily the role of the LSC to push for changes in primary legislation, whole system reform will be the only way to contain costs significantly and improve outcomes for clients. Section Four will deal with our approach to this.
- 1.30 In the short term the LSC has a number of levers for change. The Carter review<sup>19</sup> has outlined some key recommendations with respect to family legal aid. These include:
- Careful evaluation of family services within the Community Legal Advice Centre (CLAC) pilots to inform how best to purchase integrated family legal advice services
  - Investigation of the scope for increasing provision within the NFP sector
  - The development of standard fee schemes prior to developing best value tendering at local authority level
  - Tailoring the size and length of contracts to quality and provision of service
- 1.31 Prior to this, the Care Proceedings Review<sup>20</sup> highlighted the potential for more to be done to engage families in addressing local authority concerns earlier (for example through the provision of pre-proceedings advice), with the aim of avoiding proceedings altogether where possible or desirable; ensuring they understand the local authority concerns and how the process works; and that alternative care options have where possible been considered pre-proceedings.
- 1.32 The next two sections outline how we intend to move forward with these recommendations.

---

<sup>18</sup> Cases where children receive separate legal representation in their parents' contested contact disputes

<sup>19</sup> Op. cit.

<sup>20</sup> Op. cit.

## **Section Two**

### **Clients and Services**

2.1 This section outlines how we will:

- Decide on priorities for funding
- Increase access to services for those experiencing domestic abuse
- Contract with all providers to provide integrated services
- Pilot specialist family advice over the telephone
- Develop Key Performance Indicators in conjunction with providers and peer reviewers in order to monitor adherence to best practice

### **Priority Clients**

2.2 Our top priority will be children at risk of abuse. They will have access to the full range of services from information to representation. Our lowest priority will be adults without dependent children who are seeking an undefended divorce and ultimately this advice may be limited to telephone advice or information as to how to conduct their own divorce.

2.3 The framework below outlines who our priority clients are, which areas of law they most need advice on and what services will be available. The highest priority areas and services are indicated in red, medium in amber and low in green. 'Vulnerable' in this context refers to parents and adults with mental health issues or learning disabilities.

## Making Legal Rights a Reality for Children and Families

---

| Priority Client                                 | Issue  |  |  |   |   |
|---|--|--|--|---|---|
|   | <b>Domestic Abuse</b>                        | <b>Public Law Children Act</b>   | <b>Private Law Children Act</b>                                | <b>Money/Property</b>                                     | <b>Undefended Divorce</b>                                 |
| <b>Children &amp; Young People</b>              | Information Telephone advice, Representation | Information Telephone advice, Representation                           | Information Telephone advice, Representation<br>Representation | NA  | NA  |
| <b>Vulnerable Parents</b>                       | Information Telephone advice, Representation | Information Telephone advice, Representation                           | Information Telephone advice, Representation<br>Mediation      | Information Telephone advice, Representation<br>Mediation | Information Telephone advice, Representation<br>Mediation |
| <b>Vulnerable Adults w/o dependent children</b> | Information Telephone advice, Representation | NA   | NA   | Information Telephone advice, Representation              | Information Telephone advice, Representation              |
| <b>Parents</b>                                  | Information Telephone advice, Representation | Information Telephone advice, Pre-Proceedings advice<br>Representation | Information Telephone advice, Mediation                        | Information Telephone advice, Mediation                   | Information Telephone advice                              |
| <b>Adults w/o dependent children</b>            | Information Telephone advice, Representation | NA   | NA   | Information Telephone advice, Mediation                   | Information Telephone advice                              |

- 2.4 While there will always be local variations (for example, in local authority areas which have specific reception centres for asylum seekers, there may be a priority need for integrated services for unaccompanied minors seeking asylum), this framework should provide an outline guide for the Commission to prioritise the allocation of funds in a particular area. The Welsh Assembly Government (WAG) has outlined its own priorities, which those commissioning services in Wales will be able to take account of within this overall framework.
- 2.5 There are no current proposals to remove any low priority area from the scope of legal aid altogether, rather to find more cost-effective ways of delivering those types of service. However, if costs are not contained or we wish to redirect resources to reflect shifts in priorities, it may be necessary to look at removing areas (such as ancillary relief and undefended divorce) from the scope of family legal aid in order to protect services to priority clients. Given that family issues often arise in conjunction with other problems, care would have to be taken to avoid leaving at risk clients liable to experience domestic abuse or withdrawing services from those who are otherwise particularly vulnerable.
- 2.6 In fact, we will be increasing access to domestic abuse services via improved information provision and by contracting for services to be provided in different ways. There is some evidence that some advice workers who work with domestic abuse victims are not aware of the availability of publicly funded civil injunctions and we will develop proposals to raise awareness of legal aid services among those who work with victims of domestic abuse.
- 2.7 We will contract specifically for the provision of advice and representation for victims of domestic abuse where they are most likely to access them. The previous section outlined the importance of providing services in this way and

we will work with the relevant agencies and user groups to identify how best to achieve this. For example, services could be provided in refuges or allied to one of the specialist domestic violence courts.<sup>21</sup>

- 2.8 We will continue to keep the future of lower priority services under review to ensure we meet our highest priorities in the light of our commitment to increase access to services for clients suffering domestic abuse within the budget available.

### **Services**

- 2.9 All contracted family legal aid providers will be expected to offer the full range of advice services including early legal advice. All providers should be able to offer both public law and private law services, but in certain areas or circumstances there may be a need for a provider to focus on provision of one or the other. Whether their family service offered is private or public law, however, all providers will be expected to be able to demonstrate that they can address related needs for legal advice in the social welfare categories of law. This can be either through offering those services themselves or by having effective referral mechanisms into integrated social welfare law providers (for example a phone line in their office enabling clients to call CLS Direct).
- 2.10 Private law providers will be expected to offer the full range of services reflecting the private law family cluster (domestic abuse, relationship breakdown, contact/residence and advice on money and property disputes). Solicitors providing advice in care proceedings will be expected to offer pre-proceedings advice and therefore the LSC will no longer offer licence-only contracts<sup>22</sup>.
- 2.11 We anticipate that private practice solicitors will remain the principal providers of family legal aid services, but the LSC will continue to explore provision through Not for Profit providers and other business structures. This follows recommendation 3.4 of the Carter report<sup>23</sup>.

### **Specialist national / regional services**

- 2.12 Particular client groups such as UASC or young people leaving care may have a need for specialist services that cannot be provided locally in every area. In these circumstances we may consider tendering for services at a national or regional level rather than at local authority level. We are currently working with the Home Office to explore the involvement that Children, Public Law and Community Care lawyers should have in dealing with and representing UASC,

---

<sup>21</sup> If integrated domestic violence courts (IDVCs) are rolled out beyond the first currently in place in Croydon, there may be potential for working in this forum. An IDVC is a court where both criminal and civil matters relating to a single family where domestic abuse is an issue are held in front of the same judge

<sup>22</sup> This is a contract where a provider only offers representation at court and doesn't carry out legal help (initial advice) work. This provision is also contained within the unified contract proposals

<sup>23</sup> Op. cit., p.62

and investigating the potential for exclusive contracting arrangements at specific locations.

### **Mediation services**

- 2.13 We currently have no proposals to move toward tendering for mediation services and for the immediate future will continue contracting with mediation suppliers as we do now. Proposals as to how we will fund this are contained in the fees consultation paper issued in March 2007. Following the NAO's recommendations<sup>24</sup> we will be developing our understanding of the effectiveness of mediation by developing performance measures which will look at mediation conversion rates and outcomes for clients across the country.
- 2.14 As multi-disciplinary practices develop following the enactment of the Legal Services Reform Bill, we anticipate that mediation services may become integrated with larger providers with other service provision, in which case best value tendering for mediation services may be considered.

### **Telephone services**

- 2.15 We will pilot the provision of specialist family legal advice through CLS Direct.
- 2.16 The pilot will focus on exploring the options for adding a specialist family service to CLS Direct to complement the suite of specialist casework services currently offered. There will be an emphasis on signposting those clients who require further information or support before deciding which option they wish to pursue to appropriate sources. Where there is risk of harm, or where public law proceedings have been commenced, clients will be directed to a face-to-face specialist immediately.
- 2.17 The tender process for the provision of this service was launched on 19 February 2007 and will run until 30 March 2007. The tender documentation can be found on the LSC website at: [http://www.legalservices.gov.uk/civil/tendering\\_opportunities.asp](http://www.legalservices.gov.uk/civil/tendering_opportunities.asp).

### **Quality**

- 2.18 We will continue to assure quality through peer review and will work with the family peer reviewers to develop ways of measuring more accurately the adherence to requirements of the Law Society Best Practice Protocols in both private and public law. We will develop a series of key performance indicators (KPIs) based in part on these measurements, and on the outcomes that we wish to purchase on behalf of clients. KPIs will be developed in conjunction with practitioners and peer reviewers.
- 2.19 The views of providers are invaluable in devising both peer review and KPIs. We will continue to work closely with them in stakeholder reference groups as we look to implement this strategy.

---

<sup>24</sup> *Legal aid and mediation for people involved in family breakdown 2007* (NAO), March 2007

## **Section Three**

### **Procurement**

3.1 This section outlines the following proposals:

- Fixed fees for solicitors, experts and barristers
- A single fee for advocacy
- Introduction of an 'effective use of funding' test in public law proceedings
- A stronger presumption to mediate in private law proceedings
- Best value tendering for family legal services

### **Fixed fees**

3.2 In *Legal Aid Reform: the Way Ahead*<sup>25</sup> the Government accepted Lord Carter's recommendation that fixed fees be implemented as a transitional step towards commissioning services through best value tendering. We have published alongside this document our revised proposals covering solicitors' fees and will begin implementing the final proposals from October 2007, culminating with fixed fees for final hearings in private law proceedings in April 2008.

3.3 We will also develop proposals to introduce fixed fees for the payment of medical and other experts. We will where necessary improve our knowledge of the quality and cost of these services. We will then develop a range of standard fees for different expert reports, depending on the level of expertise being used and the amount and type of work involved.

3.4 This approach will support the work we are doing with the Chief Medical Officer (CMO), the Department for Constitutional Affairs, Her Majesty's Courts Service and the Department of Health to identify the most appropriate way to commission expert medical opinion in care proceedings via NHS trusts, following the CMO's report published in October 2006.

3.5 We will set rates for advocacy work by both solicitors and barristers, which will provide for a re-working of the Family Graduated Fee Scheme for barristers (FGF), effective from April 2008. It is important to recognise the role of solicitor advocates and those solicitors who conduct their own advocacy, and we want to develop a single fee to cover all advocacy regardless of who carries it out.

### **The Funding Code**

3.6 We will continue to review the Funding Code regularly to ensure that it reflects the LSC priorities for funding. The Funding Code has a vital role as a mechanism for driving procurement in determining the scope of services we will fund. From October 2007 the Funding Code will specify that residential assessments are not within the scope of legal aid. There is a separate consultation on the Funding Code changes which can be found at the Legal Services Commission website ([www.legalservices.gov.uk](http://www.legalservices.gov.uk)). As identified

---

<sup>25</sup> Op. cit.

- earlier, the requirement to fund these assessments has been placed on the legal aid budget by the courts. As noted in Section One, some elements of these assessments are therapeutic in nature and it is not appropriate that assessments should be paid for out of the limited legal aid budget.
- 3.7 In private law cases the merits test<sup>26</sup> for Family Help seeks to reflect the President of the Family Division's *Private Law Programme*<sup>27</sup> by introducing a strengthened presumption that dispute resolution should be the first option for parents in dispute over contact arrangements, and that funding for representation for a contested hearing should not be granted until all appropriate forms of dispute resolution have been attempted. For example, dispute resolution can take the form of mediation or in-court conciliation conducted by a CAFCASS or CAFCASS Cymru officer. Full details of this are contained within the fee schemes consultation published on 1 March 2007 and available at [www.legalservices.gov.uk](http://www.legalservices.gov.uk).
- 3.8 We will ensure that vulnerable clients will not be forced into inappropriate settlements, especially where there are allegations of domestic abuse. The mediation exemption where an applicant has reasonable fear of domestic abuse from a potential party and is unwilling and in fear of participating in mediation will continue. However, this exemption is currently determined by the solicitor alone. We suggest that the exemption should be framed in line with other exemptions, that it should apply whenever the *mediator* is satisfied that the client has such a reasonable fear. We would not wish to be prescriptive as to how mediators should consider this test. By definition there is of course no question of any applicant being forced into mediation – the purpose of this amendment is simply to make it clear that mediation should not automatically be ruled out. We will work closely with survivor groups and other stakeholders to understand and monitor the impact of these changes.
- 3.9 Many mediators would take the view that mediation can be of benefit even where they may have been domestic abuse issues in the past, and the intention is to provide an opportunity for mediation to take place if the parties are willing. Consideration may be given to co-mediation, the use of separate waiting areas, staggered arrival and departure times, or the use of shuttle mediation so that the clients need not be in the same room at any stage in the mediation process. We are not requiring the mediator to meet the client in all cases before considering the exemption. In some cases, for example where there is an application for a domestic violence injunction, a telephone call between the solicitor and the mediator may be sufficient for the mediator to be satisfied that mediation is clearly inappropriate. Usually however the mediator would want to meet the client separately if necessary to assess whether mediation is suitable.
- 3.10 In public law our aim will be for all parents to receive initial help and pre-proceedings advice. Funding for representation will continue to be automatic, provided a parent has sufficient interest and remains engaged in the case. At

---

<sup>26</sup> Details of this test are contained in the consultation paper published alongside the family fee scheme in March.

<sup>27</sup> This seeks to promote dispute resolution at the first court hearing through in court conciliation.

present, cases are sometimes continued where a parent has little interest in the case, either because they have had little or no involvement in the child's life or because they have ceased to give instructions. This test is similar to the one already operating in other public law proceedings and will be an important check so that funds are not utilised on specialist legal advice where there is no possibility of making a difference to the outcome of a case.

### **Commissioning services**

- 3.11 We will begin to introduce the commissioning of family legal aid services from April 2009, in line with recommendations outlined in the Carter report to tender for services at a top tier local authority level. This commissioning will follow a best value approach. We will require potential providers to bid against a set of criteria which will include the quality, capacity and price of their service, as well as how it offers access to priority clients.
- 3.12 As a necessary basis for introducing best value tendering, there will be a rational allocation of regional budgets based on an estimate of eligible clients. These will be notional budgets allocated at a local authority level which will allow the LSC the flexibility to move funds between areas according to local priorities, as long as these fit within the national priority framework.
- 3.13 For example, the LSC national framework has identified children who are the subject of care proceedings as a priority for funding. A particular local authority may identify services to unaccompanied asylum seeker children as a priority and the LSC would have the flexibility to commission providers to deliver care proceedings advice to this specific client group.
- 3.14 The LSC will not have flexibility to, for example, prioritise the commissioning of face to face advice services for adults without dependent children seeking an undefended divorce if the national framework has identified that these services should be provided solely over the telephone.
- 3.15 In Wales we are currently consulting on whether to tender social welfare law services at a regional, local authority or countrywide level and how best to move forward with joint commissioning and service delivery<sup>28</sup>. Subject to the responses to that consultation it is our intention to tender for family services in the same way as for social welfare law and on consideration of responses we will publish our approach in both England and Wales. We will enter direct discussions with the Welsh Assembly Government on service commissioning and service delivery in Wales.
- 3.16 It is important to recognise that this approach will not change an individual's entitlement to legal aid. The budgets will be notional, but they will be related to KPIs relating to both the amount and the number of priority clients having access to services. Any significant variation either above or below a regional allocation will be reviewed and appropriate action taken.

---

<sup>28</sup> *Making Legal Rights a Reality in Wales* (LSC) December 2006

## **Section Four**

### **Whole System Reform**

- 4.1 This section outlines the following proposals:
- Integrate the strategy for family legal aid with the strategy for the whole family justice system
  - Work with the Family Justice Council at a national and local level
  - Engage with the judiciary
  - Engage with clients
  - Work with stakeholders in Wales
- 4.2 Work with stakeholders was identified as important in Lord Carter's review. We will take active part in the quarterly stakeholder meetings being set up as a result of that review. It is our intention to continue to work with all interested parties in reforming the family justice system so that it can provide the best outcomes for clients as well as being cost effective. An overall strategy for the family justice system will be published later this year and we will work with partners in the Department for Constitutional Affairs (DCA) and Her Majesty's Court Service (HMCS) to ensure that the legal aid strategy contributes to the wider strategy for family justice.
- 4.3 We will continue our contribution to the Family Justice Council (FJC) whose work is important for reform and improvement. We will discuss with HMCS the development of clear outcomes for LSC involvement at both a national and regional level. It is our intention that eventually these outcomes will develop into LSC corporate targets as part of our overall performance management and we have already begun by defining a corporate target to identify and share best practice in listing of hearings.
- 4.4 We also wish to work closely with the judiciary to make sure that they are fully engaged with the importance of effective management of the legal aid budget. While we understand that judges have significant responsibilities and that they are not responsible for managing our budget, nevertheless we believe that the LSC can do more to support the judiciary in understanding the different funding implications of the options they select. An example of this is our recent training guidance to the judiciary (via the Judicial Studies Board) on the availability of public funding for mediation services.
- 4.5 We will continue to work with the Care Proceedings Delivery Board to implement the recommendations of the *Review of Child Care Proceedings*. We will also work to achieve Government targets on reducing unnecessary delay in court proceedings.
- 4.6 We have also begun to explore with the Department for Education and Skills (DfES), CAF/CASS, CAF/CASS Cymru, DCA and HMCS how we may carry out joint impact analyses to identify how each department/agency can best use its budget to optimise outcomes for all families within the family justice system and identify changes in working practices across all the relevant areas.

- 4.7 We intend to continue work begun with providers through our family practitioner forum and in the domestic abuse field via client reference groups.
- 4.8 In Wales we will be working with the Welsh Assembly Government, the CLS Wales Committee, the CLS Wales National Forum and the client consultation sub-group for Wales to understand the need for family services in Wales and how they can best be integrated with social welfare law services and the provision of other services.

### Timetable for Action

The following table shows the timetable for the proposals referred to in the strategy. Many of these proposals are already or will be subject to separate formal consultations.

| <b>Proposal</b>  | <b>By When</b>       |
|--|----------------------|
| Publish paper on access targets  | March 2007           |
| Introduction of Unified Contracts  | April 2007           |
| Introduction of standard fees for solicitors in Special Children Act proceedings and all work up to final hearing in Private Law Proceedings | October 2007         |
| Introduction of effective use of funding proposal in Special Children Act proceedings  | October 2007         |
| Introduction of stronger presumption to mediation/dispute resolution in Private Law Children cases   | October 2007         |
| Standard fees for experts consultation   | May 2007             |
| Single advocates' fee consultation   | May 2007             |
| Introduction of best value tendered contracts  | Beginning April 2009 |



Legal Services Commission  
85 Gray's Inn Road  
London WC1X 8TX

tel: (020) 7759 0000  
[www.legalservices.gov.uk](http://www.legalservices.gov.uk)