

Appendix One: Partial Regulatory Impact Assessment and Equality Impact Assessment

1. Title

'Making Legal Rights a Reality: The Legal Services Commission's strategy for the Community Legal Service 2006 - 2011'

2. Purpose and intended effect of the measures

Objectives

The measures in the strategy are aimed at addressing the challenges facing the CLS in focusing on the needs of clients. In particular, they aim to:

- Join up civil legal aid more effectively with non-LSC funded legal and advice services.
- Expand some legal and advice services to be available to all.
- Provide better access to legal and advice services for those in the poorest areas with the most problems, while maintaining reasonable access elsewhere.
- Provide integrated services, from basic advice to complex litigation, that can deal with a range of problems in different categories of law, and that minimise the need for referrals.
- Obtain better value for money by co-ordinating different sources of funding.
- Deal with the institutional causes of the problems that clients face.

To achieve these aims, the LSC will:

- Work to improve the understanding of the role of legal and advice services in addressing social exclusion. This strategy supports that of the DCA's early advice strategy '*Getting earlier, better advice to vulnerable people*', which will be published shortly.
- Continue the expansion of the Community Legal Service Direct (CLS Direct) telephone service into a well-publicised, national service for obtaining legal advice.
- Introduce Community Legal Advice Centres and Community Legal Advice Networks which pool civil legal aid with local authority and other funding, to provide easily accessible face-to-face services (from early advice to legal representation) to address the combinations of problems people experience.
- Encourage, through more flexible approaches in our contracting system, legal and advice service providers in other localities to broaden their areas of speciality in social welfare law.
- Instigate new national and local governance for the CLS in order to provide for better co-ordination among funders, and that includes input from client groups.
- Engage with public and private organisations to help address the delivery issues that can lead to problems for clients, both centrally and locally.

Background

The LSC is responsible under the Access to Justice Act 1999 for maintaining and developing the CLS for the purpose of ensuring (within the resources available, and priorities set) that individuals have access to specified civil legal and advice services, as set out in the Act. The LSC directly funds, from the Community Legal Service Fund (civil legal aid), services provided by solicitors and not for profit agencies. It also has a wider responsibility to facilitate the planning by other authorities, organisations, groups and individuals of what they can do to meet the need for services

using any resources available to them. In relation to services paid for by the Community Legal Service Fund, the LSC has an obligation under the Act to obtain best value for money.

The measures contained in this strategy aim to secure the future of the CLS at a time when its funding is under increasing pressure due to increased expenditure in criminal legal aid. The strategy also seeks to address the key issues identified in paragraph 3 below. the Legal Services Research Centre's reports on the National Survey of Justiciable Problems, 'Causes of Action' (2004, 2006), as well as in the Frontier Economics report, 'A market analysis of legal aided services provided by solicitors' (2003) and the report of the Independent Review of the Community Legal Service undertaken by Matrix Research and Consultancy (2004).

The strategy will be developed within the procurement framework for civil legal services as recommended by Lord Carter's Review of Legal Aid Procurement. It shall also be consistent with our Preferred Supplier Scheme, which seeks to alter the business relationship between the LSC and the legal service providers and restructure the provider network.

3. Rationale for Government Intervention

The proposals set out in the strategy for consultation flow from:

- Our analysis of the research data and evidence set out in Volume Two of the consultation version of this strategy 'Making legal rights a reality'.
- Our experience of developing and delivering the CLS to date.
- Our analysis of the independent review of the CLS undertaken in 2004 by Matrix Research and Consultancy, and of the House of Commons Constitutional Affairs Select Committee's enquiry into civil legal aid.
- Discussions we have held with CLS stakeholders, including those within central and local government, providers of legal and advice services and the people that represent them.
- Analysis and work undertaken by the Department for Constitutional Affairs Fundamental Legal Aid Review.

We consider that there are five key points arising from this evidence and analysis:

- There is a need for the LSC to provide clear leadership of the CLS including providing strategic direction and working with others to address the causes of problems.
- Not all Community Legal Service Partnership's (CLSPs) have delivered the evidence to allow for a more focused commissioning of legal and advice services to meet priority needs.
- There is a need for improved access to early legal advice for both existing clients and those who do not get advice about the problems that they face.
- Social welfare legal and advice services need to be provided in an integrated and seamless manner to have the most impact for the most deprived clients.
- Currently services are not necessarily in the right places to meet identified priorities in a strategic manner. In future services should be commissioned against agreed targets on access as well as on the range of services delivered.

We believe that change is essential to enable the LSC to deal with these issues.

4. Devolution

These changes apply to England and Wales. In Wales, our key partners are the Welsh Assembly Government and local authorities, and discussions are ongoing with them as to the best way to implement this strategy in Wales.

5. Consultation

A draft version of this strategy 'Making Legal rights a reality' was published in July 2005 with a 13-week consultation period. Consultees included local authorities, government departments, client groups and representatives of the solicitor and voluntary sector advice providers.

We received 260 responses to the consultation. In general, key stakeholders supported the overall direction of travel set out by the strategy, and agreed broadly with the need for change, and our proposed response to them. A summary, together with copies of those responses is on our website at www.legalservices.gov.uk

6. Options

Three options for taking the CLS Strategy forward were considered:

a. Do nothing

The LSC could continue to manage civil legal aid as at present. However, to do so would not deal with the issues (see section 3) or achieve the benefits (see below) necessary to improve the provision of civil legal aid.

b. Develop only some of the proposals put forward in the CLS strategy and not others.

It would, in theory, be possible to separate the measures in the CLS Strategy and develop each one in isolation. However as the measures are designed to be complementary, to uncouple them would not allow us to realise the full benefits or savings the CLS Strategy is designed to achieve. Further while the risk of disruption to existing services would be minimised, there would be increased risk that the LSC would not have enough resource to maintain existing services and implement one or two of the measures on their own.

c. Develop all the proposals as detailed in the strategy.

All the elements in the strategy are designed to be complementary and to work together to achieve the LSC's vision for the CLS. Implementing them as a whole will ensure that we can fully realise the benefits they are intended to provide.

Consultation on the draft strategy revealed broad support for the direction of travel outlined and for the measures described, both individually and as a whole. In the initial impact assessment we recommended adopting option c and, given the generally supportive responses to the consultation, we intend to implement option c, subject to further evaluation of individual elements as necessary.

7. Cost and Benefits

a. Do nothing

There are no apparent benefits of doing nothing.

We cannot ignore the issues raised by the research and analysis referred to in section 3 of this impact assessment.

In particular, we need to make changes to focus advice on the most disadvantaged, and to ensure that services are integrated across a number of categories of law and available where clients need them.

Whilst we believe the interests of clients are paramount in the CLS, it is also apparent from their responses to the responses to the Matrix Research and the Department for Constitutional Affairs Fundamental Legal Aid Review that the representatives of the voluntary sector and solicitor advice sectors do not consider the system sustainable in its current form in the long term.

Financial pressures are only likely to increase over time, intensifying the need for reform.

- b. Develop only some of the proposals put forward in the CLS strategy and not others

It would be possible to separate the elements and develop them in isolation. This would have the potential benefit of minimising the disruption caused.

In particular we have considered the options of:

- Trying to move towards an integrated service without the proposed Centre and Network approach.

This could be seen as less disruptive to some suppliers in those areas where Centres and Networks are to be created. However, without a joined up approach to funding with local authorities, without a new form of contracting focusing on disadvantaged groups and integrated services we do not consider the benefits for clients to be achievable.

- Not expanding the CLS Direct Telephone Service. Clearly not expanding this service would leave more money available for face-to-face services. However, this would ignore the fact that many people find it easier to use the telephone to obtain early advice. For example, *'Causes of Action'* shows that over half of all those who obtain advice make initial contact over the telephone. This may be particularly the case with certain priority groups – for example, in its first year of operation (July 2004 - June 2005) 20% of CLS Direct clients were from ethnic minorities and 18% had a disability.

- c. Develop all the proposals as detailed in the strategy.

The advantage of developing all the proposals together is that they have been designed to be mutually supportive, and adopting a systems-wide approach is more likely to deliver a robust and comprehensive framework to bring about improvements consistent with any recommendations made by Lord Carter.

In particular:

Developing Centres and Networks will allow:

- a focus on the most disadvantaged groups
- integrated funding to obtain best value for money and to provide a sustainable future for suppliers
- holistic services to be provided together.

Expanding CLS Direct will provide increased access to cope with the demand for early advice and, over time, will deliver individual cases more cheaply than face-to-face.

8. Costs

The costs and benefits of the measures in the strategy to all stakeholders will be examined in the detailed implementation to follow. The overriding objective will be to maintain or increase value for money, and to reduce transaction costs wherever possible by streamlining processes and methods of delivery. Our preliminary views on costs are set out below:

Costs to the LSC (Legal Aid Impact Test)

The strategy will be delivered within existing civil legal aid expenditure. It is not designed to save costs overall, but to allow more clients from disadvantaged groups to be helped within the same budget. We will achieve this through:

- Increased use of CLS Direct to provide cost effective early advice.
- Focussing expenditure in Centres and Networks on priority groups and driving value for money through targets.
- Joining up LSC funding with local authority and other funding to purchase services together that the LSC could not alone.

Expected funds to be committed to each Centre and Network will vary according to demand. However, over the three-year contract period for Centres and Networks we expect them to be at least cost neutral when compared to the current cost of providing the same services.

In the short term, there may be increased administration expenditure by the LSC in managing a new type of arrangement through Centres and Networks. However, over a longer period costs will be saved by the reduced need for contract management occasioned by a concentration of services and by virtue of the Preferred Supplier reforms and any changes arising from any recommendations made by Lord Carter.

Costs to suppliers –solicitor and voluntary sector

It is not intended that those suppliers who take part in Centres and Networks will incur extra unrecoverable costs over the life of the contract. The contracts will be designed to streamline present processes and reduce bureaucracy.

9. Business sectors affected

The legal services sector is affected by the strategy, which will apply to organisations supplying civil legally aided services under contract to the LSC. It will also apply to organisations supplying legal and advice services under grant or contract to local authorities or other funders that agree to pool funding with the LSC.

These organisations are both privately owned, for profit partnerships and not for profit organisations such as Law Centres and advice agencies.

The measures will only indirectly affect barristers and experts sub-contracted to provide services to providers.

10. Small firms impact test

Many providers of legal and advice services are small businesses. Their interests will be represented through the Law Society, the Legal Aid Practitioners Group and other representative

bodies with whom the LSC will consult in respect of these measures outlined in this document. Taken together all legal aid practitioners are members of these bodies.

We anticipate that these measures will offer both challenges and opportunities for small firms. The concentration of supply to provide a holistic service will reduce the number of suppliers. However, we believe that the Centre model is in the overwhelming interests of clients. Nevertheless, there are likely to be opportunities for small firms under the proposed models of delivery, including joining in a consortium, or sub-contracting arrangements whereby a lead supplier will be able to offer sub-contracts to smaller service providers holding the expertise and specialisms required in a given locality.

Whilst opportunities will continue to exist for small firms, particularly those of strategic importance, the LSC needs to ensure that it is able to provide a full range of services in the interests of client need whilst demonstrating value for money. In order to achieve this it will be necessary to concentrate resource as it is not cost effective for us to continue to allocate a large number of small contracts to individual firms delivering limited scope of service to local clients. We also need to consider the likely effect and impact of Lord Carter's recommendations on civil legal aid following the conclusion of his independent review of legal aid procurement

We will continue to engage with representative groups to assess the impact on small firms during the implementation of these measures.

11. Competition assessment

Having applied the Cabinet Office's competition filter test to the relevant market (suppliers of legal and advice services), we anticipate that the measures outlined will have some impact on the market. However, this will be very limited during the initial evaluation period for Centres and Networks and can be reviewed once decisions are made on further implementation. We expect it is likely that the market will comprise of fewer, larger, organisations delivering publicly funded advice services – however any recommendations made by Lord Carter around the future procurement arrangements in this area are likely to have the greatest impact here and these will need to separately considered. In any event, we will be continuing to seek to procure cost effective high quality services. We would expect this to encourage fair competition in the market and contracts for Centres and Networks will be awarded following an open tendering process.

12 Equality Impact Assessment.

The Initial Equality Impact Assessment was published in Annex 4 of the draft strategy. Respondents raised a number of relevant points:

Access to services

Respondents considered the ability to access services important and felt that access problems were one of the main challenges facing the CLS. They thought that the LSC should consider 'pockets of deprivation' (e.g. in more affluent areas) and the patterns of how clients access services when looking at accessibility of services. It was pointed out that access is not just physical; people must also feel confident accessing services e.g. they are staffed by approachable advisors. CLS Direct, while not viewed as suitable for all, was considered by some a better way to access services for certain vulnerable clients. In response to Community Legal Advice Centres and Networks many respondents emphasised the importance of outreach services and several mentioned home visits. Flexibility to suit the local area was also felt to be important. Further, it was felt that the LSC must address the advice and other needs of specific groups when implementing the strategy.

Access for disabled clients

One concern that was raised was ensuring that disabled people had access to services, both CLS Direct and to face-to-face. Respondents raised the point that those with disabilities could live in any area and therefore needed services in any area. Similarly, concerns were raised about access for

the disabled in rural areas or small towns with poor transport links if services are to be concentrated in (urban) deprived areas.

Some respondents also emphasised the importance of training staff to deal with vulnerable clients over the telephone, for example those with mental health problems or speech impediments.

Information

It was felt that information about rights and how to access advice should be available in places commonly accessed by clients but also that sometimes people needed assistance in accessing and interpreting the information. It was also felt that for some of the most vulnerable clients information was not enough because they would be unable to act on this information without advice. Many respondents thought that rather than being generic, information should be targeted at specific client groups. They also thought that the information should be in plain English and/or other local languages and should be available in alternative formats e.g. audio.

National Stakeholder Group

It was felt by many respondents that the National Stakeholder group should represent service users, in particular representatives of minority groups.

Small providers

The main concern regarding supply was that the CLS could lose the expertise of small specialist organisations who might not become part of a Community Legal Advice Centres or Community Legal Advice Networks. Respondents felt that small specialist providers had an important role to play in the CLS and should not be forgotten. It was also felt that a smaller numbers of larger providers would restrict client choice.

Small providers are included in the equality impact assessment because Black and Minority Ethnic (BME) and female majority owned firms tend to be smaller and have a smaller fund take (see 5th Annual Diversity Report, LSRC, 2005). Any measure that seeks a smaller number of larger providers therefore has the potential to impact negatively on BME and female majority owned firms.

Revised Equality Impact Assessment

We anticipate that the implementation of the CLS Strategy will have a positive impact on all client groups because the measures are designed to achieve greater access for all through the provision of integrated and end-to-end services. While services will be available for the whole community, they will also be specifically targeted at identified 'hard to reach' groups that tend not to access services. Providers will be required as a term of their funding to take the needs of their client groups into account when providing their service, for example, location of outreach, physical access to buildings, and languages that advice can be provided in. Further, once a client has accessed the service, in any location it operates from, they will be able to receive assistance in all categories of law and at all levels of assistance, as they need. CLS Direct will be an important access point. It can refer people to face-to-face services but also can provide assistance to those who cannot or prefer not to access face to face services.

Access for clients with disabilities will be ensure through a number of methods. All buildings will be compliant to the Disability Discrimination Act and services will make reasonable adjustments (e.g. priority parking, large print forms) for their disabled clients. Services will be delivered through outreach locations that are easier to access and the possibility of home visits will be considered. Staff will undergo training to enable them to better deal with disabled clients.

The impact of the proposals on providers of services funded from the CLS Fund will in part depend on how far we are able to refocus provision of services through CLS Direct and Community Legal Advice Centres, in line with Lord Carter's recommendations, and to target services on the poorest and most disadvantaged communities and clients. It will also depend on the implementation of the

Preferred Supplier Scheme, which will set eligibility criteria for inclusion in the scheme (and therefore ability to contract with the LSC).

The general move towards fewer contracts and providers with larger values of legal aid work must be carefully managed to ensure that BME and female majority owned organisations, which tend to be smaller and have smaller values of legal aid work, are not disadvantaged. When tendering for a Community Legal Advice Centre we will allow firms to apply as consortia. This will enable small firms to be part of the single legal entity that will run the Centre and to use their specialist knowledge to deliver the integrated and holistic service that clients need. We will also allow bids to include some subcontracting arrangements. A Community Legal Advice Network, which is a network of providers, will include a number of providers and offer the opportunity for small, BME and female majority owned organisations to develop themselves.

We are committed to ensuring that any selection process for the award of future contracts is fair and transparent, and complies with the LSC Equality Scheme and our duties imposed by any relevant legislation.

We will continue to monitor this issue carefully in the course of developing the strategy.

13. Rural Impact Assessment

Our assessment of the impact of the measures outlined in the document 'Making Legal Rights a Reality' has shown that access for clients in rural areas to publicly funded advice services will be maintained and, in some cases improved significantly, at no additional expense to them. Improvements will include providing a full range of services to rural clients who may have previously only had access to limited services. Subject to the recommendations in Lord Carter's final report, this will be achieved through the development of supplier networks on a regional basis and increased access through CLS Direct. The suppliers involved would sign up to a common specification of services to provide a seamless and integrated service. By creating widespread networks we will ensure that a full range of legal and advice services can be provided in areas where clients are more geographically dispersed.

We anticipate that the CLS Strategy will have some impact on rural suppliers delivering services funded from the CLS fund. We recognise that certain providers in rural areas are 'strategically important' and will therefore be encouraged to play a role in the delivery of services under the measures outlined.

14. Enforcement, Sanctions and Monitoring

We are committed to monitoring the effects of the implementation of the CLS Strategy in order to enable us to evaluate its impact. There will be continuous assessment of each individual measure and the overall impact of the implementation of the CLS strategy will be reviewed on a regular basis.