

Legal aid procurement: Compact with voluntary & community sector in England

The Compact between the Government and the voluntary and community sector (VCS) exists because of a shared commitment to recognise distinct roles and build upon shared objectives and common values. The Legal Services Commission is committed to the Compact. Here I set out some of the key challenges that we face in taking Compact forward within legal aid.

The two areas that are perhaps most apposite for legal aid are consultation and procurement: both have their own Compact Code of Good Practice. It is worth restating some of the key principles from these as we consider how best LSC and VCS can work within Compact to deliver the Government's legal aid agenda. These are both considered within the recognition that the VCS must always remain independent and is neither an arm of Government nor commercial business.

In many ways the relationship between the LSC and the VCS can be split into two distinct parts. The first is the contractual relationship – VCS agencies acting as the LSC's delivery channel for legal aid. That is of course central to Compact but it is also more fundamentally subject to contract, procurement and public law. The second area is about recognising the unique position of the VCS in terms of client engagement. A much wider spread of VCS agencies can contribute to this element of our relationship than the former and it is vital that the two are not confused.

Consultation

The LSC is committed to consultation and has its own code of consultation based on the Cabinet Office Code of Practice on Consultation.

We aim to ensure the sector's position is being considered in relation to policy. We recognise the need to consult widely with providers and other stakeholders on overarching policy direction and have done this in examples such as the LSC strategy for the Community Legal Service *'Making Legal Rights a Reality'* and on Lord Carter's report *'Legal aid: market based approach to reform'* through *'A Sustainable Future'*. We are also committed to providing clarity about what is and what is not open to change. Thus, after setting out the way ahead for legal aid reform in November 2006 (in response to the above consultation exercise) subsequent consultations have been focused on implementation of those reforms – the detail of some fee schemes, specification of services and indeed as we move forward the implementation of a competitive process for procuring legal aid.

The Commission must and will remain flexible in its consultations. Written, formal consultation is necessary where widespread views are sought and this may need to be supported by presentations, road shows and meetings with representative bodies. But equally, informal consultation on more specialist issues or where the likely number of interested parties is lower may be appropriate. A range of approaches is often necessary – especially if we are to encourage responses from a diverse population. Whatever the approach, it is important that we ensure we specifically engage with VCS wherever they, their users or beneficiaries are affected.

This leads to another important element of consultation. The VCS should always be clear about whom they represent and who their constituency is in replying to consultations. Where ever possible VCS should involve service users in developing their response and remain evidence based – identifying the interests of their users and taking account of the specific needs, interests and contributions of women, minority groups and the socially excluded. The LSC would like to encourage a much wider spread of VCS agencies to

contribute to consultation from the perspective of users of legal aid services – it is distinct from consultation about the relationship (financial or otherwise) between LSC and VCS agencies.

For consultation to be effective there needs to be trust and that is often based upon an open and transparent recognition of different roles and responsibilities and a respect for those parties. In bringing VCS agencies into the provision of legal aid in recent years and in encouraging a level playing field in funding terms the Commission continues to demonstrate its commitment to the partnership.

Funding

The LSC currently contracts with about 500 VCS providers and our investment in the sector currently stands at about £80m per annum. In 2006/07 NfP providers delivered 201,875 acts of assistance out of a total of 796,563.

The LSC cannot provide funding to VCS to deliver their objectives. It exists only to procure legal aid services within the statutory framework set by Parliament. Equally, that VCS do not exist just to deliver legal aid services must also be recognised. Within these differing frameworks is a clear overlap for many agencies delivering legal aid services and involved in the delivery legal aid services.

We recognise the right of VCS to include overheads in costing legal aid service delivery and indeed have sought to implement real equality in treatment between the VCS and private sector in this regard – fixed fees apply regardless of sector. This is important as it means the most efficient VCS provider delivering at a cost comparable to the best private sector firms is able to retain a surplus equivalent to that firms profit. Such profit actively supports the independence of the VCS as it is unrestricted funding that can be used to further other charitable objectives. This not only recognises the ‘added value’ of the VCS but supports and enhances it.

The NAOs office of Third Sector report *‘Implementation of full cost recovery’* recognises that there are a range of financial relationships that exist between the Government and VCS. The legal aid relationship is moving squarely into what it characterises as a ‘shopping’ relationship ‘where a purchaser [the LSC] designs a specification for a service it is statutorily obliged to provide, and seeks a supplier to provide that service’. The typical characteristics of this relationship are that it is contract based, market contestable, price based, defined outputs, certainty, enforceable, defined outputs, risk with providers and provider keeps surplus.

This ‘shopping’ approach is entirely consistent with both the LSC move towards competition and the Compact. We welcome the sector’s involvement in the legal aid market and, like all providers, will help and encourage it to bid for a higher stake in the £2 billion spent each year on legal aid. It falls to the VCS bidder to know their costs and bid appropriately. It falls to the VCS provider to deliver the agreed services and it can expect to be managed against agreed key performance indicators. In return it can expect certainty through longer-term contracts.

Client engagement

Underpinning all of this – for both LSC and VCS – is a real commitment to improve client engagement and thus make legal aid services organised around the needs and experience of clients rather than the preference of providers or convenience of funders. Inevitably the LSC contracts with a narrow group of VCS agencies – those able to deliver complex legal advice that falls within the scope of legal aid. However this should not prevent a much wider group of VCS agencies from engaging with us to help us shape services around clients needs. Joint research projects such as between Youth Access

and LSRC provide good examples of how to do this so that we have a real evidence base for policy-making and service delivery.

In the spirit of Compact LSC will seek to improve its engagement with VCS groups that can represent clients experience – and often this is the experience of the clients who do not get advice, because it is these clients that legal aid and its providers are currently failing.

It is vital that we do not allow clients to be a political football in the contractual discussions that inevitably follow LSC procuring services from VCS agencies. We must all rise above that to ensure that client voices are heard over and above the voices of commissioners, advisers and lawyers – together that is possible.

Conclusion

The move towards a market based procurement regime for legal aid is undoubtedly challenging for all stakeholders. However, we believe it represents the best opportunity to enhance our shared objectives:

- It is good for clients
 - Increased access to client focused services delivered by high quality providers
- It is good for VCS providers
 - Real reward for delivering innovatively to meet client need
- It is good for LSC and government
 - Priorities are met and value for money evidenced

Only if we continue to seek to align the interests of VCS providers, the LSC and clients can we make the Compact a meaningful enabler of our shared objectives.

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