

# **Legal Aid Reform – The Next Steps**

December 2007

## 1. Introduction

This paper provides an overview of where we are with the reform of legal aid and outlines the next steps. The transformation of our legal aid system is vital. We must move it from a system which paid for hours worked instead of services delivered for clients, resulting in unsustainable cost increases and inefficiencies year on year, to one which will deliver quality, access, and value for money, ensuring the future sustainability of services for the people who need them.

Our goal for the reform programme is focused on those people: it is to maximise their access to quality legal aid services for the future and to ensure that we can continue to increase the number of people helped within a budget that is necessarily limited. Our funding for legal aid is by far the most generous in the world and we must work within it, demonstrating value for taxpayers' money.

We believe that moving to a competitive market for the majority of legal aid services is the best way to deliver quality services at the best possible price. It would also give providers the advantage of an agreed price, which they have offered and which they know is profitable for them. Fixed fees are a transitional stage to enable both providers and the LSC to adjust our ways of working ready for the competitive market we propose.

The next steps in the reform programme, outlined in this paper, therefore include early consultation on the principles of best value tendering and how it might work for criminal legal aid services. They also include an explanation of how we will ensure that the quality of services for legal aid clients continues to have the highest priority.

## 2. Legal aid reform – where are we now?

The implementation of the legal aid reform programme outlined in the November 2006 publication *Legal Aid Reform: the Way Ahead* is now well under way. This reform programme was shaped during a year-long review of legal aid procurement by Lord Carter of Coles, which involved considerable discussions with organisations representing clients and providers, and subsequent formal consultation on its proposals by the Department for Constitutional Affairs (now part of the Ministry of Justice) and the Legal Services Commission.

The reforms now under way build on changes already made in recent years, when fixed fees were introduced in some areas of both civil and crime work and the Community Legal Service strategy had already started to shape services more effectively around clients' needs. These changes have already produced significant results: the number of acts of early civil legal advice has risen by more than a third in two years, from 595,000 in 2004-5 to nearly 800,000 in 2006-7.

The reform programme will enable us to build on this success. The key elements implemented so far are outlined below:

### 2.1 Fixed fees

To ensure that we pay for the work completed for clients rather than the number of hours worked, as we did in the past, we have already consulted on and introduced fixed fees for many types of work (magistrates' court work in urban areas and all early civil work apart from mental health) and others will be introduced in January

2008 (mental health, police station work and Crown Court work). Fixed fees are an important transitional step in helping providers to prepare for the proposed competitive market, when they would need to bid on the basis of a fixed fee for a specified amount of work. The new fixed fee schemes also reduce the considerable administrative inefficiencies, both for providers and the LSC, which resulted from the old system of payment by the hour.

As a result of introducing these new schemes we are already starting to halt the significant year on year increase in legal aid spending that had become the norm until the last two years, thus getting the budget onto a sustainable footing.

## **2.2 Unified contract**

We now have a single unified contract in place for all civil providers, whether they are private firms or not-for-profit (NfP) agencies. Next year we plan to introduce the Unified Contract for crime providers too, ensuring consistency across the legal aid system.

## **2.3 Very High Cost Cases (VHCCs)**

In January 2008 we will be implementing a new panel of providers authorised to carry out Very High Cost Cases for crime. These are cases, which are expected to take at least 25 days in court, including major fraud, terrorism and drugs cases. A tender based on best value principle has already taken place to form the panel, which will be an important step in controlling costs in these cases. Currently, around 100 cases a year cost over £100million.

## **2.4 Means Testing in the Magistrates' Court**

Means Testing in the Magistrates Courts has now been in place for over a year and is on track to deliver the projected savings of £35m. This will make a significant contribution to the sustainability of the legal aid scheme for the future and is an important part of the context for the reforms set out last November in *Legal Aid Reform: the Way Ahead*.

## **2.5 Implementing the Community Legal Service Strategy**

The Community Legal Service Strategy, *Making Legal Rights a Reality*, published in March 2006, set out our plans to ensure that services are shaped around clients' needs. In particular, the clusters of problems that people often experience mean that social welfare services need to be joined-up and made available in the right locations. We are making good progress in establishing the first Community Legal Advice services, jointly commissioned with local authorities, to meet this need. The Gateshead Community Legal Advice centre opened in May 2007 and we have appointed a co-ordinator for the network we are setting up with the local authority in Cornwall. We aim to award the contract soon for a centre in Derby, and tendering processes are at a variety of stages for centres in Leicester, Portsmouth and Hull. We are also working with local authorities to establish services in Wakefield, the East Riding of Yorkshire and Barking & Dagenham.

Ultimately we want to commission all social welfare services jointly in order to bring together generalist and specialist legal advice. Experience from these first services will help to inform how best we can do this.

In addition, the Community Legal Advice telephone helpline (previously known as Community Legal Service Direct) is providing people with joined-up access to help with multiple problems in a single phone call. Customer satisfaction ratings of the service are consistently high.

## **2.6 Engaging with providers and partners**

We have introduced new ways of engaging with those who have an interest in legal aid, including quarterly and annual meetings with groups who represent providers and partners in the justice system. We have introduced fortnightly email updates for legal aid providers to ensure that they are kept informed on reform progress and other developments, and we will be setting up regional Provider Reference Groups in the New Year to discuss and get input on how the reforms will be implemented. During key consultations we have also decided to meet with providers face to face in smaller groups, so that there is a real opportunity for engagement. We will be putting this into practice straight away by running workshops during the consultation on best value tendering (BVT), which is outlined below.

## **2.7 Improving efficiency across the justice system**

In addition to the reforms specific to legal aid, we are also working with partners in the justice system on national and local initiatives, which will help improve efficiency across the system as a whole. For example, at national level the LSC is working with defence solicitors, the Courts Service and other agencies to advance the CJSSS (Simple, Speedy, Summary) initiative. There have already been successes as a result, including new criminal court procedures, which are reducing delays. Locally, achievements include:

- introducing staggered bail times in Devon and Cornwall to reduce provider and defendant waiting times
- in Wales, making custody records available to defence solicitors on arrival at police stations so that interviews can take place more quickly
- in Sussex, introducing a new police text message system to update defence solicitors on changes to bail conditions.

There is important work under way in the family justice system too. For example, in Greater Manchester the LSC is working with the Local Family Justice Council to look at ways of improving efficiency and has also provided training to local authorities on family legal aid.

## **3. Legal aid reform – the next steps**

While the first year of the reform programme has already seen the implementation of significant changes. We are now sharing our plans and proposals for some important next steps. Today, 10<sup>th</sup> December 2007, we are publishing:

- 3.1 A policy announcement on Assuring and Improving Quality in the Reformed Legal Aid System
- 3.2 A first consultation on Best Value Tendering of Criminal Defence Services (12 weeks)
- 3.3 A cumulative impact assessment for phase one of the Legal Aid Reform Programme

### **3.1 Assuring and Improving Quality in the Reformed Legal Aid System: a policy announcement**

The LSC is committed to improving quality standards for legal aid clients. Quality remains at the heart of the reformed legal aid system and only those providers who deliver good quality advice and representation to clients will be able to work in legal aid in the future.

We will be implementing many of the key elements of the Preferred Supplier Scheme over the next few years as an integral part of the reforms leading to our proposed goal of best value tendering. These features will include quality assurance through peer review, electronic working, devolving responsibility to providers for more civil case decisions, remote performance monitoring and relationship management. There will therefore be no need to introduce a separate Preferred Supplier Scheme as we had initially proposed.

We will operate a strict quality threshold, measured by peer review, and providers will need to achieve a minimum of Peer Review rating of 3 (Threshold Competence) to be eligible to bid for work in the proposed competitive market. In some small categories it will not be possible to develop peer review, so alternative indicators of quality will be used.

Skilled relationship managers will continue to be trained and will give providers exemplary customer service. This will be focused on enabling providers to be as prepared as possible for the proposed tendering process.

We will also start a revised programme of contract compliance audits to replace the planned 'File Assessment – Value for Money' process. These will be amended to take account of the fact that a far greater proportion of legal aid expenditure is now managed through fixed fees. As a public body accountable for £2bn of public expenditure each year, we need to have the appropriate mechanisms in place to demonstrate control of expenditure. The revised audit process will ensure that we can do this.

### **3.2 Best Value Tendering of Criminal Defence Services: a 12-week consultation**

We believe that setting prices through a competitive process instead of the LSC setting them administratively would result in a fairer and more sustainable system. In a competitive market we anticipate that the price of services could go up in some areas where the inherent cost of delivering them is high, whereas in others it could go down because the services can be delivered at lower cost. In simple terms, the market will set the rate based on local circumstances.

We are undertaking a first consultation on both the basic principle and the possible outline design of a best value tendering process for criminal legal aid services. We are at an early stage of the planning process and want input and ideas from providers now to shape the detail of how the process might look. Depending on the responses to this consultation, we would then carry out a second consultation during 2008. This is a real opportunity for providers to help shape the future and we will be holding consultation workshops in the New Year as well as encouraging firms to respond to the consultation.

The outline competitive tendering process we set out would be based on three core principles: quality, capacity and price. There would be a three-stage process:

- i) Quality would be the first and most important step, with all providers needing to achieve a Peer Review rating of at least 3 to be able to bid for work.
- ii) Providers would then need to demonstrate that they have the capacity and ability to offer the required level of client access as well as a well-run and financially stable business
- iii) Finally, competitive tendering would take place on the basis of **price**.

Following a successful bid, quality would be continuously monitored.

We recognise the need to ensure a long-term, sustainable and diverse provider base delivering these services. This means that we would need to ensure that there can be new entrants to the market, and that smaller providers can continue to develop and grow within it, as well as enabling larger firms to thrive.

### **3.3 A Cumulative Impact Assessment: Legal Aid Reform Programme (Phase 1)**

We have assessed the impacts on clients and providers of the 2007 reform programme to date. The data underlying the assessment assumes that providers will take no steps to change their business practices in the light of the reforms. In practice, providers are already changing the way they work and we therefore expect the real impacts to be reduced.

The assessment shows that, following the reforms already implemented, overall funding for criminal legal aid work will reduce by £15.5million and that 65% of crime providers can expect to see their income decrease. However, for 65% of those, the reduction will be less than 10%. Funding will reduce in every LSC region, with rural areas least affected and urban areas most affected.

The cumulative impact assessment considers the impact of the reforms on providers overall and also, more specifically, the impact on particular groups such as those with a disability or people from ethnic minorities.

The overall funding for civil legal aid will not change as the fee schemes have been designed to be cost-neutral. Without the reductions in the criminal budget, the civil budget would have been smaller. Over half (56%) of civil providers would have increased their income had they been paid the new fees on their 2005/6 caseload. However, some civil providers (with London providers most affected) would have seen their income decrease. 57% of London providers would have been paid less on their 2005/6 caseload, although often the amounts involved are fairly small and the total amount spent in London would have been only 1% less. However, a majority of cases in all regions are conducted by providers who would have been paid more under the schemes – including 70% in London.

## **4. The importance of engaging with providers**

We are encouraging all those with an interest in the future of legal aid to contribute to the consultation paper on Best Value Tendering and to help us shape the path ahead. We have one of the best legal aid systems in the world. By working with

providers and other partners, we can ensure that it continues to deliver the services that people depend on to resolve their problems at very difficult times in their lives. That is what the reforms are all about.