

**LEGAL SERVICES COMMISSION  
IMPROVING VALUE FOR MONEY FOR CRIMINAL DEFENCE SERVICES IN LONDON**

**RESPONSE OF THE BLACK SOLICITORS NETWORK**

The Black Solicitors' Network represents approximately 3,000 Solicitors, Legal Executives, Paralegals, Students and Trainee Solicitors. A large proportion of our members undertake legal aid work. The Black Solicitors' Network aims to be the primary voice of black Solicitors in England and Wales. The BSN is committed to achieving equality of access retention and promotion of black Solicitors and was formed in May 1995 to promote the interests of black Solicitors, for support and sharing information, to participate in consultations, initiated by The Law Society and other Government Bodies, in relation to matters which affect black Solicitors. The Black Solicitors' Network is recognised as a Law Society Group.

The LSC document "Improving value for money" is aimed at cutting the Criminal Legal Aid budget. In the course of 2004, the LSC made it known that they proposed to cull the large number of crime firms in London. The LSC hope that by implementing price competitive tendering (PCT), the economic laws of competition will force down the price charged by firms per case. Existing firms who see their profit margins dwindle will probably fold or cut back. New firms coming into the market will either content themselves with returning a small profit, or drop out of the market place. This way the LSC can shelter behind market forces in achieving a cull.

If the exercise resulted in a lower cost to the public purse without affecting the quality of service to the client then, all things being equal, it would be hard to argue against it. But all things are not equal, the proposals:

- claim validity from the flawed Frontier Report.
- will sacrifice quality of service delivery to price competition.
- ignore diversity and access to justice issues.
- may breach the Race Relations Act 1976
- may ironically increase crime.

**The Frontier Report**

- Frontier based its findings on 303 responses to a survey of all legal aid suppliers, hardly a sufficient sample for a scientific survey upon which such a cataclysmic change can be based.

- It suggested that pilots should be undertaken to test the practical and cost implications, and effectiveness of the alternative options for the supply of legal aid services, alternatives which it proposed. This is no pilot.
- At page 25 of the report, Frontier economics asserts without any evidence that legal aid clients are unable to judge the quality of the service they receive. We disagree with this assertion. To the client feedback question "Would you recommend us to someone else if they needed legal help or advice?" most answered "Certain to". Here follows a sample of the reasons why: *"Because I was treated fairly with respect and I want to thank you because I saw how you really wanted to help me while this time" (sic); "Because of your fairly treated" (sic); "Because (you) gave me all information in a straight and direct manner and did not hide anything to do with my case from me (good or bad)"; "Well u were very easy to understand and u were also on time when I needed 2 c u which is good"; "Because as a youth it was very informative and very efficient"; "Because of a brilliant service you provide in (a) way which is easy to understand and polite"; "I myself think my solicitor(named) was better than other solicitors I had in the past, he also give me his truthful opinion on anything I asked him" (sic), etc etc .*

## The Quality Issue

After four years of using the Specialist Quality Mark (SQM) as the measure of quality and a ticket to undertaking legal aid work, the LSC has decided (at 4.5 of the consultation document) that it is no good as a quality assessment tool. What is the evidence for this? Can the proposed peer review process which is expected to sift "the incompetent suppliers" in the bid process not be used to categorise firms within the existing framework?

## Diversity and Access to Justice

- The LSC claims that 20 of the largest firms "couldn't wait" for PCT to be introduced. If the largest firms welcome PCT, then small firms must quake. According to the LSC, 45.9% of London criminal suppliers are Black & Minority Ethnic (BME) owned<sup>1</sup>. One does not need to guess where the axe will fall heaviest when the PCT cull is implemented.
- Home Office<sup>2</sup> statistics maintain a picture of apparent bias against BMEs in the Criminal Justice System. Black people are three times more likely to be arrested than white people. BMEs account for 24% of the male prison population and about 31% of the female population. The overall proportion of the national population formed by BMEs is 8.7%.

<sup>1</sup> P.40 of the Consultation Paper

<sup>2</sup> "Statistics on Race and the Criminal Justice System – 2004".pviii.

- NACRO suggests that race and ethnicity cannot be eliminated as a factor which impacts on the decisions which are made by Magistrates.<sup>3</sup>
- The composition of the Magistracy in 2003/4 is relevant here. Of 26,199 lay Magistrates, 1,754 are BMEs. Of 278 District Judges, there are only 19 BMEs.
- The disproportionately large numbers of BMEs appearing before the Magistrates' Courts are being dealt with by a predominantly non BME Magistracy. The perception of bias and the sense of alienation which such BME defendant/clients must feel in the face of these statistics must be real and overwhelming.
- At the coal face of criminal legal aid practice, BME solicitors and legal advisors are daily confronted with attitudes that leave us in no doubt that the ethnicity of detained persons at the police station and defendants at court, provide an additional hurdle that they have to surmount.
- In the face of those attitudes, when a BME advisor is instructed, the BME user of criminal legal aid services is often provided with a crumb of comfort and assurance when they know that the legal advisor is someone who understands that extra intangible tier of pressure brought on by their ethnicity. They are comforted by the knowledge that they have at least one thing in common with an authority figure who is "on their side".

### **Race Relations Act 1976 as amended**

- The LSC is under a duty not only to seek the views of BMEs in the consultation process, but, separately, to do an impact assessment in compliance with their duty to promote equal access to justice for BME consumers, and ensure that they do not directly or indirectly discriminate against BME suppliers in the procurement of legal services.

### **Crime Prevention**

This issue of utmost public importance has been overlooked in the LSC's thinking about how to reduce their budget. Young black men are disproportionately represented in the crime statistics on the wrong side of the law. It is the experience of BSN members that many young black men who have passed through the Criminal Justice System are often left with such a deep sense of anger at their unfair and dishonouring treatment, that rather than be deterred or rehabilitated after their sentence, they are more likely to become hardened to authority and callous to the impact of their actions on the society from which they feel

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<sup>3</sup> "Barriers to Equality", Nacro 2004 p.9

marginalized and alienated. If the cull results in a reduction in the number of BME suppliers, the positive side effect of providing role models to such angry young men would have been removed.

### **Why PCT should not go ahead**

- The evidence base for the proposal is flimsy.
- The proposal is untried and could have catastrophic consequences for the supply of criminal legal services in London.
- As BME firms form a large proportion of the small firms in London, the overall number of BME suppliers will undoubtedly be affected by the resulting cull.
- This will remove for a significant number of BME clients, one crumb of hope that they can achieve fair treatment, and respect for their personal dignity when in police custody or passing through the courts, in the face of all the statistics that causes them to fear otherwise.
- No appropriate assessment of the impact that PCT might have on the BME supplier base has been undertaken.

The BSN consider that the LSC are currently failing to comply with their duties pursuant to the Race Relations Act 1976. Further, should the LSC proceed to move towards the bid stage of the process as per page 51, Bid Process – Outline Timetable, without having taken any steps to meet its obligations under the Race Relations Act 1976, as amended, by ensuring that BME firms are not discriminated against, on racial grounds, by the introduction of price competitive tendering, we consider that the LSC will be in breach of its statutory obligations under the Race Relations Act 1976.

**27<sup>th</sup> May 2005**

**Black Solicitor's Network**

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