

# Law Centres Federation

## Response

### Legal Services Commission

#### Civil Bid round for 2010 Contracts

The Law Centres Federation (LCF) welcomes the opportunity to respond to the proposals set out in the consultation paper on the civil bid rounds for 2010 contracts.

The Law Centres Federation represents a network of 54 Community Law Centres based in England, Wales and Northern Ireland. Law Centres provide a range of legal services focused on the varying needs of local clients. They provide casework and legal representation in the key areas of social welfare law – many cover at least five areas of law including immigration. All Law Centres employ solicitors and have been awarded the LSC Specialist Quality Mark.

Consultation meetings have been held with Law Centres and our comments reflect their combined views.

The first section of our response relates to broader government agendas and initiatives and the place for community legal services. The second section provides general observations about the consultation and finally we give specific answers to the consultation questions.

#### **MAIN COMMENTS**

Key points in our submission are:

- \* The timing of the consultation and the introduction of the new scheme
- \* The proposals around the grouping of areas of social welfare law
- \* The introduction of a new discrimination\equality category of law
- \* The inclusion of social outcomes in the procurement process
- \* The humanisation of service delivery

#### **BACKGROUND**

##### **Community Law Centres**

Law Centres were established in the late sixties to address the legal needs of poor and marginalised communities who had been ill served by the legal aid scheme set up in the 1950s. For the first time, ordinary day to day problems were addressed: housing, employment and benefits. These initial steps created a whole new category of law, now known as 'social welfare law'. Law Centres shook up the way services were provided by putting clients and their local communities first. Their imperative was to empower local people and especially the most disadvantaged. Work within the community included legal education and social policy work around issues that most affected local people and they took action with and on behalf of

communities of interest. Law Centres set priorities with a view to providing the most effective and long lasting solutions.

### **Law Centres Federation**

The Law Centres Federation's work focuses on meeting the needs of marginalised and disadvantaged clients. The 'Improving Access – Raising Awareness Project' funded by the LSC aims to improve access to legal services for those most in need across England and Wales, support the transformation of Law Centres to deliver reformed civil legal aid and deliver policy, research and legal education activities that will influence policy makers to deliver changes that enable people to avoid or climb out of social exclusion. In addition, the Federation is supported with grants from London Councils, The Big Lottery Fund, the Equality and Human Rights Commission and by project funding from the Baring Foundation and City Bridge Trust.

## **1. GENERAL OVERVIEW**

### **Integrated Services**

In July 2005, the LSC published a consultation, 'Making Legal Rights a Reality' which identified three priority areas for the Community Legal Service: individual acts of advice, assistance and representation; strategic action to address the need for advice; and information about legal rights. The LCF welcomed this analysis as it mirrored the Law Centre model of public legal service delivery.

The focus of this paper is about the first of these three priorities: the purchasing legal advice and representation and we welcome the Commission's support of the need for specialist advice on social welfare law and the commitment to ensuring that clients have access to representation in the courts and tribunals.

We hope that that the other two priorities will be subject to further consultation. Only by integrating the three activities will there be a truly effective community legal service able to deliver the social outcomes the government wants to achieve, such as reducing child poverty and crime and improving health and well being, desired by central government.

Law Centres have always provided a range of legal services in different areas of law that best reflect the needs of local people. We therefore support the LSC's commitment to funding services that address the multiple problems clients face. We also support the delivery of all levels of advice from Legal Help to Legal Representation so that clients have 'the same provider from the start to finish of a case and ensures advisers are able to utilise all appropriate legal measures when acting for clients'. This has been an essential criteria for Law Centres since their inception.

### **Equality and Discrimination**

In 2009, we look forward to a new Equality Bill bringing together all the key legislation on the different strands of discrimination. The Bill will introduce new legislation such as banning age discrimination in the provision of goods, facilities or services. It will aim to strengthen enforcement and look at the practicalities of providing redress to people who face multiple discrimination. We welcome the Commission's recognition of the importance of access to specialist advice and representation on discrimination issues as discriminatory practices which could increase in the current financial crisis, especially in the field of employment. However, the field of discrimination law is going to be increasingly important and relevant to many of the current categories of social welfare law.

### **Working in partnership with other Government Departments**

We welcome the Commission's creativity in working with other government bodies to boost the funding of legal aid services as illustrated by the joint commissioning of disability discrimination services and hope this will be expanded into other areas of discrimination advice.

Community legal services contribute to a wide range of central government (and local government) objectives.

## **Social Outcomes**

The identification of anticipated social outcomes by prospective contract holders can build the case for aligning access to legal advice with other key public services, such as access to education and health.

In 'Legal Aid Reform: The Way Forward'<sup>1</sup> the Lord Chancellor said:

*'Legal aid is one of the cornerstones of the post-war welfare state...It fulfills two roles: it needs to be part of an ever more sophisticated justice system, and, as an integral part of the welfare state, it needs to contribute to the fight against social exclusion. We need to reform the system to make sure it can continue to fulfill these roles effectively.'*

With greater emphasis on social outcomes, there should be the possibility of attracting other sources of funds. A joint government departmental policy for the provision of community legal services – one that identified how the service contributes to meeting key government objectives - would be ideal.<sup>2</sup>

The Advice Services Alliance has listed some of the indicators that could be considered, such as experience of targeting particular disadvantaged client groups.

## **Social Issues\Outcomes in Procurement**

Since 2006 when 'Legal Aid Reform: The Way Forward' was published, the Office of Government Commerce (OGC) has published a series of papers on public procurement policies. In June 2008, they issued a Policy Note on Procurement, 'Buy and Make a Difference – How to address social issues in Public Procurement' which says in the introduction:

*'With an annual expenditure of over £150 billion, public procurement has an important part to play in furthering the Government's agenda for tackling social issues.'* OGC says that addressing social issues is best achieved in the early stages of procurement when identifying the need, establishing the business case and defining the specification.

We understand that the Office of the Third Sector is now reviewing the use of social clauses in contracts with a view to developing standard format wording as well as good practice guidance.

We therefore believe that social issues\outcomes ought to be part of the delivery plans for 2010.

## **Social Exclusion**

One of the outcomes of community legal services identified in the 'Making Legal Rights a Reality' was tackling social exclusion. Second to those at risk from losing their life or liberty or whose human rights are threatened, are another core group of clients - clients who face poverty, disadvantage, discrimination and exclusion.<sup>3</sup>

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<sup>1</sup> Legal Aid Reform: The Way Forward' published by the Department for Constitutional Affairs (now the Ministry of Justice) and the LSC in November 2006.

<sup>2</sup> This point was made in Part B of the Legal Services Commission's consultation 'Making Legal Rights a Reality' in July 2005 on pages 32 and 33.

<sup>3</sup> 'Making Legal Rights a Reality' published by the Legal Services Commission in July 2005. p.21.

There are two issues we draw attention to. Firstly, as recognised, clients experiencing social exclusion have many associated problems – identified now by researcher as ‘clusters’. Being client-focused, Law Centres have provided for this by having experts in the fields of law associated with meeting certain local needs, which have naturally varied from area to area. We believe that these cannot be specified at a national level and is contrary to the aim of putting client’s needs first. Providers should be able to provide legal advice in the areas of law best suited to meet local demand. We suggest that a minimum of three areas out of the range of related social welfare law. In ‘Making Legal Rights a Reality’, ‘issues of fundamental rights (such as actions against public authorities, asylum and mental health)’ were considered to be vital.

The paper says, *‘Legal and advice services must be able to meet needs across both ‘rights’ and social welfare issues.’*<sup>4</sup>

### **Client Needs First**

Putting the needs of client first, means that services must be accessible. For people who live in the most deprived areas, access to legal and advice services are needed in the heart of their communities<sup>5</sup>. Any reduction in the number of suppliers is likely to increase the alienation many vulnerable people feel towards seeking help. Local and stable provision builds up trust and encourages those who are most marginalised to get help and become more engaged in community activities.

Priority outcomes are listed in the Ministry of Justice’s Corporate Plan for 2009-2011<sup>6</sup>. It aims to contribute to nine PSAs outside of the criminal Justice system. These include:

- \* addressing the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief (PSA 15);
- \* increasing the proportion of socially excluded adults in settled accommodation and employment, education or training (PSA 16)

and

- \* increasing the number of children and young people on the path to success (PSA 14),
- \* building more cohesive, empowered and active communities (PSA 21)

The Not for Profit legal services sector is attuned to meeting these objectives.

### **Value of the Third Sector**

The third sector has a particular role in helping to achieve PSA targets and the Ministry of Justice has made several commitments to supporting third sector organisations. For example, in ‘The Third Sector: Improving polices and securing better public services through effective partnerships’ consultation in December 2007 and very recently in, ‘Working with the Third Sector to reduce re-offending: Securing effective partnerships 2008-2011’. For example,

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<sup>4</sup> Ibid page 39

<sup>5</sup> Ibid page 39

<sup>6</sup> Creating a Safe, Just and Democratic Society: Ministry of Justice Corporate Plan 2009-2011 published in January 2009. List of PSAs Section 26 on page 13.

*'The Government sees a thriving third sector as being at the heart of a successful modern democracy, transformed public services and community cohesion, with the sector and the state working together to bring about real change.'*

*'The third sector has unique and positive attributes that are different from the public and private sectors... Our vision is of a thriving, independent and diverse third sector.... The third sector has a critical role to play as advocates of service users and communities as partners in strategy and service development, and as service providers.'*

*'We will ensure that there is clarity around commissioning opportunities, and identifying the best provider will require proactively working towards ensuring a 'fairer playing field' for providers from all sectors. This will involve addressing the specific barriers faced by the third sector, underpinned by raising awareness of and adhering to Compact principles.'*<sup>7</sup>

The statements made about the value of the third sector are not echoed in the current consultation on the delivery of community legal services. They were made with reference to 'delivering a more effective, transparent and responsive criminal justice system for victims and the public' (PSA 24) by the Ministry of Justice.

Revision of the contract is required to take up the opportunity to adopt a common strategy for the effective delivery of both criminal and civil legal services.

### **Added Value**

The Not for Profit legal sector shares common characteristics with the rest of the third sector. These are now recognised and include:

- \* Established links with the community – a real understanding of the needs of their local communities, potentially making them best places to create solutions which address particular needs.
- \* Understanding particular groups in society (e.g. the disadvantaged and excluded) – an understanding of particular communities and are therefore best able to shape services that best meet particular needs.
- \* Knowledge of local statutory body policies and procedures.
- \* Socially motivated – independently motivated by the pursuit of social improvement rather than the pursuit of profit. This offers the advantage of being able to reach communities in ways that the private sector cannot.
- \* Innovative and imaginative approach to delivering services
- \* Empowering local communities - meeting one of the government's key objectives.

In addition and crucially, the sector has access to other sources of funding, for example from local authorities and from Trusts and Charities and can harness pro bono and volunteer

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<sup>7</sup> Working with the Third Sector to reduce re-offending published by the Ministry of Justice in October 2008. Quotes taken from the Executive Summary on pages 7 and 9.

services. If Law Centres were to close as a result of the proposals, these resources for legal services would be lost.

Quoted above is the Ministry's reference to the need to create a 'fair playing field' in the paper on working in effective partnerships. Some of the barriers faced by third sector were researched in a report, 'Research on Third Sector Access to Finance' which explored the problems in finding funding and finance. These have been exacerbated by the financial crisis and the ability to get loans or overdrafts from banks. This is critical at this time when extra resources will be needed to compete for contracts.

## **Social Action**

This consultation is taking place at time when central government is discussing policy initiatives that impact upon the delivery of legal and advice services. The Council on Social Action set up by the Prime Minister, has recently published 'Side by Side and implications for Public Services' outlining a new approach to service delivery. The paper advocates the humanisation of public services. 'We need to build a one-to-one mindset; a shared recognition that this is an established, effective and mutually beneficial approach to tackling a diverse range of personal challenges and to develop individual potential that ultimately reduces inequality.'

CoSA (Council on Social Action) states that they will be focusing on civil legal aid advice. Under a heading 'What are the implications for voluntary organisations delivering public services under contract to government' they report:

*'CoSA would like over the coming months to assess the ways in which current practice delivers against the criteria for productive one-to-one relationships and identify ways in which the funding and administration of social welfare legal aid might be improved in order to achieve the most productive relationship between advisers and clients. This will require detailed work on how the public sector and the voluntary sector combine to generate transformative outcomes. It will have to explore issues concerning the measurement of outcomes and how to reflect particularly valuable ways of working in contract specifications and agreements.'*

The 2010 contract should enable legal services to be provided following the 'side by side' model of humanised service delivery.

## **The Economic Recession**

The impact of the recession and the demand for civil legal advice is the subject of the study of legal advice at a local level headed by Lord Bach. It is expected that a report with recommendations for action will be put to Ministers in the spring of 2009.

The proposals in the current consultation are based on the proposed legal reforms outlined in 'Legal Aid Reform: The Way Forward' in 2006 and the budgetary constraints placed on the Department by the Treasury in better times. In a different economic climate giving rise to increased demand for legal assistance, policy must be revised for the delivery of a community legal service fit to meet both the economic and perhaps political priorities for 2010.

Again, this indicates that a revision of current LSC strategy is needed before proceeding with the proposals in the consultation paper.

## **2. SPECIFIC COMMENTS**

### **Timetable**

We appreciate the demands being made on the LSC to make savings and note the radical reduction in staffing levels at both head and regional offices. However, this must not lead to a less effective community legal service.

We recommend that these proposals should be postponed for further consideration and thought because:

- \* Economic Recession and the effect this has on increasing legal advice needs and changing political priorities
- \* Research currently being conducted on the delivery of civil legal aid
- \* The need for inclusion of social outcomes clauses in the procurement process

In addition, the proposals in the consultation paper are unclear in key areas such as immigration and in relation to consortia. It is difficult to comment on the impact of the changes without knowing more about the details of the scheme.

### **The Consultation**

Central Government has published a Code of Guidance on Consultations and we believe that this consultation falls short on clarity and transparency. The consultation appears to have been published prematurely. We refer to the first criteria in the Code of Practice which states in 1.2:

*'It is important that consultation takes place when the Government is ready to put sufficient information into the public domain to enable an effective and informed dialogue on the issues being consulted upon'.*

The consultation has been published without sufficient detail on consortia and in advance of the procurement plans for each procurement area. This raises many issues as it is difficult to respond to or discuss the impact of the changes without knowing how the system will work on the ground.

There are three main areas of concern: Consortium, Procurement Areas, number of contracts to be tendered and the criteria to be used for deciding between equal bids.

### *Consortia*

The Law Centres Federation welcomes the proposal to allow consortia bids, but it is not possible to negotiate with potential partners about making joint bids without further details.

A guide for third sector organisations involved in public service delivery, 'Working in a Consortium' was published by the Cabinet Office in December 2008. The Cabinet Office advises that organisations need time, effort and resources to get a consortium up and running.

The guide outlines potential pitfalls in developing consortiums. For example, it warns,

*'If your consortium wins the contracts, you will be entering into contractual arrangements not just with the other consortium members but also with the public agency that is purchasing the*

*service. This means that all of the contractual terms will be enforceable in the courts. There is therefore the potential that you and the other consortium members could incur financial liabilities if there is a failure to deliver or breach of contract. Even if you deliver your contractual requirements, you may still be liable because of the failure of one of the other members.'*

There are many legal issues to consider and still many unknowns. Significantly, section 8.13 on the consultation paper acknowledges that the Solicitors' Conduct Rules 'currently impinge on consortia arrangements in a number of important ways and we are discussing this with the Solicitors Regulation Authority (SRA)'.

Until the end of the consultation it will not be known what areas of law should or could be provided together, or whether providers could be allowed to select at least three areas that best fit the legal needs of their local communities. Until there is certainty, Law Centres and their potential partners will spend considerable time and money investigating solutions to problems that may not arise.

### *Procurement Areas*

The consultation has been published before the procurement plans for each procurement area. We are concerned about the LSC redefining the geographical areas without detailed discussions with providers. Aligning the location of providers to 'appropriate authorities for associated services' does not automatically mean that they will meet the needs of marginalised clients. We are particularly concerned about the proposed procurement areas for immigration and asylum and the implications of new boundaries.

If the aim is to have only one provider in each procurement area, it raises several concerns:

- \* Monopoly provision - access, diversity and client choice
- \* Potential conflicts of interest - conflict of interest issues arise in many area of civil legal aid in addition to family law, such as community care and education.
- \* Continuity of services – how would legal services be provided if the contract holder was found to fail or be found to be delivering poor quality services.

We support the suggestion made by the Advice Services Alliance that the LSC should state, in relation to each procurement area:

- \* Whether the area is likely to be designated as A or B
- \* The key locations specified in A areas
- \* Details of the NMS currently awarded to providers in the area (and neighbouring areas)
- \* The proposed NMS allocation for each category of law in that area
- \* The minimum number of contracts that the LSC is looking to award
- \* How the LSC propose to deal with areas where a high proportion of clients come from outside the procurement area.

### **Selection**

The consultation is not clear on how the LSC will distinguish between competing bids. The LCF supports ASA's view that some weight should be placed on a bidder's demonstrated ability to

deliver the services they are bidding for.<sup>8</sup> An indicator of the range of services currently provided could be taken into account including services in areas of law not paid for by the Commission.

Indicators for added value and social outcomes addressing social issues should be a priority. The Ministry of Justice paper 'Working with the third sector to reduce re-offending' includes a priority to 'promote the legitimate use of social benefit clauses in service specifications'.<sup>9</sup>

## Quality

### *Peer Review*

In 'Assuring and Improving Quality of Legal Aid Services' written by the joint LSC/Law Society Working Party on Quality<sup>10</sup> it states, 'the LSC is committed to ensuring that quality remains at the heart of the reformed legal aid scheme'. The paper reports that it is agreed that peer review is currently the 'best available mechanism that exists to measure directly the level of quality that is received by clients'.

However, it does not appear that quality is at the heart of the proposals in the consultation paper.

We are concerned that the LSC is proposing that there will be no reference to the peer review when it selects providers. New providers will only have to say that they intend to reach level 3 at the start of the contract. They could then compete with other organisations which have already reached level 3 and indeed levels 1 and 2.

We believe that there should be flexibility. To totally exclude organisations from applying if they have a level 4 in one subject, but say levels 1 or 2 in others, seems harsh and could exclude many good providers.

The new bidding round provides an opportunity to raise the quality of advice by recognising the value of reaching higher peer review ratings – Excellence (1) and Competence Plus (2).

Threshold Competence is level 3 is a very basic standard. For example, indicators include:

- \* Clients' instructions are appropriately recorded
- \* There is adequate but limited communication with the client
- \* The advice and work is adequate although it may not always be extensive and may not deal with other linked issues other than the presenting issue.
- \* There may be areas that the supplier will need to address in order to progress towards Competence (2) or Excellence (1).

Threshold Competence allows suppliers to be unable to identify/deal with issues other than the presenting issue. This level of quality assurance undermines the LSC overall objective to create a system that tackles the range of linked problems that many clients experience.

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<sup>8</sup> Response to the LSC by the Advice Services Alliance. January 2009. p.15

<sup>9</sup> Working with the third sector to reduce re-offending' published in October 2008. p.9.

<sup>10</sup> Assuring and Improving the Quality of Legal Aid Services – Joint LSC/TLS Working Party report published in December 2008.

Consideration should be given to rewarding excellence. The Institute of Advanced Legal Studies with the LSC provide regular updates for suppliers on how to improve the quality of advice in the different areas of social welfare law. These guides are useful and do show a commitment by the LSC to improve quality. However this commitment is not reflected in the consultation.

We note that the joint Working Party on Quality has agreed to carry out further work on peer review outcomes and that this could result in a new quality framework.

#### *Ratio of Supervisors to Caseworkers*

Besides the updating of the SQM and introducing category specific quality assurance measures, the consultation includes the ratio of supervisors to caseworkers as a measure of quality. The LCF supports the proposed minimum ratio of one supervisor to four caseworkers. We believe that this should be extended in the case of part-time workers where the ratio should be one supervisor for six part-time caseworkers.

This particular proposal was discussed at length in our consultation meetings as there are complex issues, such as:

- \* Expertise of the caseworkers and complexity of casework in different areas of law
- \* Experience of the supervisor and standards of supervision
- \* External supervision issues
- \* Supervisory duties of solicitors with three year practising certificates<sup>11</sup>

The joint Working Party on Quality could be asked to investigate these issues further.

### **Social Welfare Law**

#### ***Definition***

The consultation paper states that the LSC seeks to buy services that better respond to clients' advice needs. Clients' needs however do not fall neatly into the areas of social welfare law defined by the LSC. The exclusion of education, public law, mental health and immigration and asylum from the social welfare law category of law does not reflect the complexity of need and their relationship to the five areas selected, i.e. community care, debt, employment, housing and welfare benefits

Areas of social welfare law change over time. Four examples are given below:

#### *New areas of law*

Discrimination law is likely to become increasingly important in the coming years with the passing of the Equality Act. Community care was a relatively small area, but is becoming increasingly complex as case law develops. Education law is quickly developing.

#### *Central government priorities can influence demand*

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<sup>11</sup> Also see our comments on supervisory requirement under 'Tolerances'

A key objective in recent years has been to reduce child poverty and the 'Every Child Matters' agenda has influenced local government agendas and those of charities and trusts. This gives greater emphasis to services for young people including education law.

#### *Research on particular clients' inability to access advice*

The TUC's Commission on Vulnerable Employees report<sup>12</sup> found widespread ignorance of rights at work and a lack of access to employment rights advice. The Prime Minister has said that he will give positive consideration to the TUC's recommendations.

#### *Local circumstances*

A priority for Law Centres has been their ability to address local legal needs as they emerge. This could be the closure of a local company or an increase in homelessness.

Following on from this, we believe that:

#### ***Flexibility***

The legal aid scheme and the areas of law defined as 'social welfare law' must be flexible enough to cater for changing circumstances to cover the full range of client problems that present at Law Centres. There should be no separation of the categories. Hence social welfare law could be said to currently include: asylum, community care, debt, education, employment, housing, immigration, and mental health, public law, and welfare benefits.

#### ***Education law***

While education law may have less reported cases, it is a developing area of law and demand is rising. There is a danger that if an area of law gets categorised as low volume it will remain so. The fixed fee for education work is low and has led to many firms ceasing to give advice in this area. A high percentage of work is appeals to the Special Educational Needs and Disability Tribunal (SENDIST). Only 20% of parents have representation during the appeals process.

Statistics from the Department for Children Schools and Families show that children from Black African and Caribbean families continue to be massively overrepresented amongst those permanently excluded from schools.

A Home Office study, 'The independent effects of permanent exclusion from school on the offending careers of young people' shows the impact of exclusion on young people's lives. 44% of the children studied, who had no offending behaviour prior to

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<sup>12</sup> 'Hard Work, Hidden Lives' was launched by the General Secretary of the TUC in May 2008. The research found, 'Vulnerable workers prefer face-to-face advice, and are less confident about telephone advice and information, finding it harder and more time-consuming to resolve problems in this way. But those who could provide this advice - particularly solicitors, voluntary advice providers and union groups - are often without the resources to meet demand.'

Legal aid reform has made it harder for some employment advisers to access funding, and has led to a reduction in the number of solicitors taking on employment advice work. The TUC called for an urgent review of the impact that legal aid reform has had on the availability of employment advice for vulnerable workers.

exclusion, had a record of offending behaviour following permanent exclusion. Of these, 7% began their criminal careers in the same month they were permanently excluded. 60% of children permanently excluded from school have special educational needs, and children with emotional and behavioural difficulties are also overrepresented.

Law Centres are increasingly taking on this work because of the growing need and the impact it has on young people's lives.

### ***Discrimination and Human Rights***

The new Equality Act will bring nine pieces of legislation into a single Act. It will create a new Equality Duty on public bodies covering race, disability, gender, age, sexual orientation, gender reassignment and religion or belief. The new Act is going to create new legal demands and it will be important to have lawyers able to interpret and develop the law in this important field.

There has been evidence that the Human Rights Act has not been used as much as was anticipated and there is gathering concern about the lack of knowledge of the Act and how it relates to equality.<sup>13</sup>

From the evidence gathered by the British Institute of Human Rights<sup>14</sup> there needs to be improved access to assistance and advice about human rights, as well as improved awareness of human rights within the third sector and amongst service providers.

Many Law Centres have expertise in discrimination work. With the new Act the LSC should create a separate category for discrimination and human rights work.

### ***Areas of Law Clusters***

There are two points that we would like to make. Firstly, on the current proposal to group housing, debt and welfare rights together and secondly, a call to reconsider the concept of grouping by subject to grouping according to the legal needs of particular client groups, such as young people or older people.

#### ***Housing, Debt and Welfare Benefits Cluster***

While agreeing that these three areas often occur together, and that one can trigger others – the cascading of one problem to another, it is unlikely as found in 'A Trouble Shared – legal problems cluster in solicitors' and advice agencies'<sup>15</sup> that the client will necessarily present all of

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<sup>13</sup> BIHR response to the Equality and Human Rights Commission's 'Human Rights Inquiry' Call for Evidence 2008. BIHR comment of Legal Aid saying: 'We constantly hear from voluntary and community organisation that lack of access to legal aid is an enormous barrier for people seeking advice about how to claim their human rights. This compounded by the inability of the Commission to provide legal assistance to individuals for human rights cases, except where there is also an equality dimension. It is BIHR's view that the extent of this problem should be properly established and solutions sought accordingly.' (Page 18)

<sup>14</sup> *ibid*

<sup>15</sup> DCA Research Series 8/06 published in November 2006 and written by Richard Moorhead and Margaret Robinson from Cardiff Law School and Matrix Research and Consultancy.

the problems in the first instance. The researchers note that the links were made over a particular reference period.<sup>16</sup>

*'Save in very general terms, the research conducted to date does not indicate the time across which the problems occur. Thus clusters of problems may in fact be temporary discrete and in the eyes of the client or adviser, not clusters at all'*

The results of the research cited in the consultation paper provides the basis for the reforms, i.e. that the most common clusters relate to housing, benefits, debt and relationship breakdown, is not surprising when it is known that the study looked at 12 organisations who all specialised in housing, welfare benefits and debt (to varying degrees).

The researchers comment:

*'The problems suffered by the clients observed were dominated by problems with money, benefits, debt and rented housing'<sup>17</sup>. **This is not surprising given the nature of the suppliers recruited to the study**<sup>18</sup>*

Interestingly, the research found two other clusters in their study. These were:

- \* Relationship breakdown, children, home ownership and domestic violence, and
- \* Discrimination and employment.

There are problems with clustering areas. The researchers suggest an alternative approach,

*'simple cross-tabulation of problems show that benefits, homelessness and employment problems linked with a wide range of problems (debt in particular). Mental health problems also have linkages across a range of problems.'*

The 'Report of the 2007 English and Welsh Civil and Social Justice Survey'<sup>19</sup> voices some reservation about grouping areas of law into clusters. The report says:

*'Certain civil justice problems have a tendency to co-occur, or 'cluster together... This does not mean that problems have to cause or be caused by one another. They may for instance, both be caused by a third factor (e.g. poor health).'*

The Report found that the following areas of law tend to cluster together:

- \* Family – domestic violence, divorce and relationship breakdown problem
- \* Economic – consumer, money\debt, employment and neighbours problems
- \* Homelessness – renting, homelessness and welfare benefits.

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<sup>16</sup> See the above research pages 4,16 and 17.

<sup>17</sup> It is interesting to note that the actual link was between benefits, debt and rented housing, and not housing in general.

<sup>18</sup> Ibid page 20.

<sup>19</sup> Civil Justice in England and Wales published in 2007 by the Legal Services Research Centre. The survey excluded some sections of the population, such as elderly people in residential care and students living in education establishments, gypsies and travellers and people staying in immigration detention centres.

In both reports the research showed that certain population groups are more vulnerable than others to civil justice problems.

*'People vulnerable to social exclusion (e.g. lone parents, those on benefits, those who have a long-term illness or disability and victims of crime) report problems more often than others.'* and

*'It has also been shown that problems can also act to bring about or reinforce characteristics of vulnerability (such as unemployment, relationship breakdown and illness).'*

The research indicates how complex these issues are. For these reasons the LCF does not support the LSC cluster proposal to group the three categories of housing, debt and benefits law together as a specific cluster.

Furthermore in urban areas such as London many legal solutions rely on the immigration status of clients and we urge the LSC to include immigration in clusters in these areas.

There are certain areas of law that do have some universality, such as welfare benefits and debt that are useful companions for immigration, employment, community care as well as housing advice provision.

Law Centres provide a range of legal aid services in different areas of law. If immigration is included many Law Centres cover four or five areas of law.

Law Centres' experience over thirty years is that an individual client does often present with linked problems. Our model of service delivery has developed to effectively provide legal solutions to these clients. However, our experience is that the groupings vary according to the 'trigger' problem.

We therefore recommend that suppliers should be able to elect which areas of law they will provide determined by local need.

### **Debt**

Many Law Centres do not have contracts to cover debt work. Law Centres of course have always done debt work as it related to their core areas of work, particularly in housing where for example, solving housing benefit problems are essential.

We have noted though, that as this area of law becomes increasingly complex, Law Centres have recognised the need for specialists and more are applying for LSC contracts. The LCF has heard reports of Law Centres applying for contracts in new areas but have been refused.

The inclusion of debt in the minimum requirements therefore will give current contract holders in this category an unfair advantage.

We appreciate that there is now a huge debt crisis. This is of great concern to central government who have invested considerable sums of money into money advice and debt work. For example, many organisations including a few Law Centres have funding from the Department for Business, Enterprise and Regulatory Reform (BERR) for the

Financial Inclusion Funding project.

While debt is of particular importance at this particular time, additional funding from elsewhere in the government is helping to cater for that demand. However, central government is taking action now to try to stem the spiralling debt problem. If successful, demand may decrease. This is an example of how demand can fluctuate and the danger of being too prescriptive.

The LCF recommends that organisations should be asked to select at least three areas of law out of the nine areas of social welfare law listed above, plus discrimination law that are most appropriate to the legal priorities of their communities. They should be able to provide high quality specialist legal advice and representation in these areas. Additional points should be awarded to those who are able to supply additional areas.

### ***Alternative Grouping of areas of law***

From the evidence cited above in the two research studies looking at clusters of problems, one of their findings was that:

*'certain clients suffer from more problems because their problems linked but also because these clients are amongst the most vulnerable in society'*<sup>20</sup>

There is a case for organising the provision of legal services according to the specific needs of particularly vulnerable client groups. We give three examples: Older People, Mental Health Service Users and Young People.

### ***Older People***

In 2006, Age Concern commissioned research into the experiences of civil justice problems in older people.<sup>21</sup> The results represented the first quantitative findings specifically exploring the legal needs of older people in England and Wales. Older people may have legal needs in the following areas:

- \* Accommodation (including residential settings and sheltered and care-assisted settings)
- \* Health related issues, including advance care directives, access to health and social care and consumer rights, advocacy, and disability issues
- \* Finance and consumer issues, including pensions and benefits
- \* Discrimination, including age discrimination in employment
- \* Elder abuse (including financial abuse)
- \* Substitute decision-making and end of life issues such as Powers of Attorney, guardianship and financial management, wills and probate

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<sup>20</sup> 'A Trouble Shared' page ii.

<sup>21</sup> In September 2006, Age Concern commissioned the Legal Services Research Centre to undertake a secondary analysis of their Civil and Social Justice Survey (CSJS), based on civil law problems reported by the survey sample in a three and a half year period between January 2001 and July 2004.

## **Young People**

Street/legal was based at a Law Centre in North London and provided services for children and young people aged 8 to 19. The Project aimed to ensure that the rights of children and young people were enforced, and that they received the care, education and accommodation they were entitled to. The Project focused on three basic human rights for young people; housing, education, and protection from abuse. They commented:

*'For many young people these rights are inextricably linked and the loss of one can quickly have a cascading effect whereby housing, welfare, and education are lost in rapid succession.'*

The Centre reported, 'Homelessness can make children and young people extremely vulnerable to abuse, illness, drugs, prostitution and crime. Often young people who visit Street/legal have found it impossible to continue attending school or college when they do not know where they will be sleeping, showering or eating from one night to the next.'

Youth Access published a paper 'Young People's Social Welfare Needs and the Impact of Good Advice'<sup>22</sup> in 2007. The research found the advice needs of older young people (i.e. aged 16 - 25) are focused primarily on social welfare issues such as housing, homelessness, benefits, debt and employment. Children and young people under 16 are more likely to experience problems related to education, being in care, leaving care, social services and the family.

## **Mental Health Service Users**

Springfield Law Centre in South London based in a Mental Health Hospital provides legal advice, casework and representation in the areas of housing, community care and debt. It aims to provide easy access to free independent legal services for the users of South West London and St George's Mental Health NHS Trust and their carers and relatives. It also provides general advice in most areas of law and makes specialist referrals for people whose cases they are unable to take on.

The LCF considers these types of providers are essential in providing a holistic service to their clients and room for such providers must be made within any procurement programme.

The recommendations within the consultation appear to give little or no consideration to clients that do not have freedom of movement such as patients of psychiatric hospitals or younger children or older and disabled people that need home visits.

These examples indicate clustering around client characteristics. In 'A Trouble Shared' the researcher indicated that at least 28% of the clients observed had mental health or chronic illness problems. Youth Access report that the specific needs of young people need to be more

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<sup>22</sup> Young People's Social Welfare Needs and the Impact of Good Advice. Issues Paper by James Kenrick published in February 2007 and funded by the Big Lottery Fund. The Paper found that the level of need for legal advice among young people is relatively high compared to that among other age groups. Young people's needs are unique in their range and pattern – legal problems are often inextricably linked to emotional, personal, health & practical problems. Young people's problems tend to be relatively complex and severe and they are particularly prone to multiple problems.

widely recognised by policy-makers, planners, funders and providers within the legal advice sector. Age Concern's initial study indicates the specific legal needs of older people. We welcome the consideration the LSC is giving to letting contracts for disability discrimination through joint commissioning and believe that consideration should also be given to contracting with providers who have specific knowledge and understanding of the legal needs of vulnerable client groups such as those described above.

### **Tolerances**

The LCF supports the continuation of tolerance work for the following reasons:

#### *Provision of comprehensive services*

To meet clients' legal needs, Law Centres need flexibility. Tolerance work provides this by allowing organisations to give additional assistance on an issue relating to the core problem.

Law Centres have funding from other sources, such as local authorities and charities and trusts. Funding from charities and trusts is often given to support a project involving legal education and awareness raising. Contract funding from the LSC under tolerance allows Law Centres to extend the project to include legal casework.

#### *New Areas of Law*

Education law is an example of how important it is to be able to have partnership funding where one funder provides money for outreach services in the community and another funds the casework arising from that work.

Education law was used as an illustration above of the development of new areas of law. Tolerances are essential to enable Law Centres to take up new areas and help promote, develop and interpret new legislation.

It is essential where there is no LSC defined category for that area of law.

#### *Discrimination*

Discrimination and a range of equality law issues are to become increasingly important in the coming years.

Without a category of law for discrimination, Law Centres have used tolerances to provide the casework services. For example, casework relating to disability discrimination in respect of access to goods, facilities and services, education and public service. The Manager of Kirklees Law Centre says:

*'At the moment, we are forced to do this work as tolerance because the work does not form a sufficiently large range within any category (we have reported such cases variously as housing, debt, consumer, public law, education, welfare benefits), although the work itself requires a specialist knowledge of discrimination law more than a knowledge of the notional categories above.'*

The Equality Act will strengthen the law on discrimination and will include a ban on age discrimination in the provision of goods, facilities or services.

The enforcement of new legislation will be hampered if tolerance work were to be abolished.

We do not believe that the LSC's concern over quality should reduce tolerance work for the reasons given above.

The ability to take on tolerance work will be limited to those organisations employing solicitors. Solicitors employed in Law Centres must comply with the Solicitors' Code of Conduct 2007 which includes standards of service. Rule 5.1 outlines the responsibilities for supervision and management. Section 5.1(1)(a) states that the senior solicitor must:

*'Exercise appropriate supervision over all staff, and ensure adequate supervision.'*

Standards of Service state that solicitors must *'provide a good standard to client care and of work, including the exercise of competence, skill and diligence.'*

The Solicitors' Regulatory Authority (SRA) has published new key objectives for the next three years which include setting standards. SRA will:

*'set and communicate effective and proportionate standards of professional behaviour and performance and make effective rules to secure acceptable standards of safe, competent practice'*.

We believe that this commitment is a reassurance that quality is a high priority in the profession and will be maintained.

## **CONSULTATION QUESTIONS**

### **Types of services we want to buy**

#### **Q.3. Do you agree with the types of services we intend to procure in each category of law? If not, how should services be structured to ensure more integrated advice?**

We disagree with the validity of the social welfare law clustering of housing, debt and welfare benefits as discussed above. We believe that organisations should be allowed to select at least three categories of law that best match the legal needs of their communities.

#### *Immigration and Employment*

We do not agree that the immigration category should be treated entirely separately so that clients seeking immigration advice will not necessarily be able to access advice from the same organisation in other social welfare law areas. The separation of immigration and asylum does not integrate services as desired. Related areas of law are welfare benefits, community care (age assessments for minors, care services for asylum seekers with disabilities and serious health problems), employment, housing and family.

An integrated service for employment needs a combination of employment, housing and welfare benefits. Losing a job acts a trigger for a cluster of related problems. Employment advice will become more important in the coming months with the reduction of the manufacturing industry, and the closure of retail outlets and businesses. Employment advice helps prevent people losing their jobs.

Employment advice lays an important role in tackling wider discrimination in the workplace.

#### **Q.4. Do you agree with the types of civil legal aid service we will no longer procure? If not, why?**

The LSC will need to take account of rural localities and that there should be regional flexibility to meet local need.

#### **Q.5. Is it reasonable that, in order to maintain integrated services, where contracts have been awarded on the basis of multiple categories (e.g. debt, housing and welfare benefits), work in all categories usually lapses where the minimum new matter start size per contract year has not been met?**

We disagree with this proposal. The take up of matter starts is influenced by a number of factors, many of which cannot be controlled by the provider.

Providing an integrated service across three contract categories fails to take account of the differences and types of case mix that may present themselves that may impact on overall performance.

North Kensington Law Centre provided an example:

*'Average case lengths for debt and welfare benefits are less than those in housing where case lengths may be much higher where the matter involves possession proceedings or*

*homelessness review. Secondly, withdrawing funding for an integrated service due to non-performance in one category will lead to a destabilisation of supply and threaten the viability of other services delivered by other funding streams which bring added value.'*

We believe the following reasons should be included as 'good reason' for under-performance:

- \* Unexpected short-term reasons or under-performance, such as the flooding of premises, fire or theft of equipment and files.
- \* Under-performance due to staffing issues, such as maternity\paternity leave, sickness absence, or gaps in cover where key personnel leave and new staff are recruited.

Employers have responsibilities under maternity and disability legislation that must be taken into account.

**Q.7. Is the minimum supervisor to caseworker ratio set at the correct level or are there, for example, some categories where processes are simpler, and as such require less supervision?**

Yes, we agree with the suggested minimum supervisor to caseworker ratio. The ratio could be increased where caseworkers are part-time where the ration should be one to six. Please refer to our comments above.

**Q.8. Are there any practical impacts on debt providers that will make the requirement to have an Approved Intermediary for Debt Relief Orders unachievable?**

We agree that there needs to be opportunities for agencies to become Approved Intermediaries over time as they develop their services.

**Q.9. Is Panel membership for advocates before the MHRT a reasonable requirement for Integrated Services A in high security hospitals? If not, what additional measures should we use to ensure appropriate expertise of MHRT work?**

Springfield Law Centre reports:

*'All of our solicitors who advised clients on specialist mental health matters were panel members. If clients are held under section it is important the adviser has the necessary experience and knowledge to conduct their case. I understand panel membership requires advisers to undertake a number of cases of different types. This seems sensible for high security hospitals with complex cases.'*

**Q.10. Do you agree that requiring immigration providers to have at least one Level 2 to every two Level 1 caseworkers employed will help ensure that providers are structured to represent clients through the appeal stages of their case?**

We agree that is an appropriate ratio due to the complexity of immigration casework.

**Q.11. Is the Integrated Services A requirement to undertake Legal Representation in community care, housing, mental health and immigration and asylum the most suitable way to ensure that clients can access all levels of advice? If not, what would be a better approach?**

We agree but the LCF is concerned that the consultation has been published prior to having any knowledge on whether an area is going to be designated A or B. With insufficient information it is difficult to comment.

**Q.13. Other than independent advocacy services are there any other types of support service that the LSC can more closely specify that mental health providers should have links with? If so, what are these?**

Springfield Law Centre advises:

*'We feel that services should be provided for Mental Health Services users where they need them - on site at psychiatric hospitals and via outreach venues and home visits. By providing legal services on site clients will get the advice and support they need.'*

*We offer a service tailored to the needs of mental health service users. Clients can contact us for advice via drop-in, telephone, and by appointment. We also offer outreach at psychiatric wards on other hospital sites and home visits if required.*

*We offer a coordinated service which liaises with other staff and agencies on site including social workers, psychiatrists and ward staff.*

*We also receive referrals from Community Mental Health Teams, GPs, Consultants, as well as specialist departments dealing with drug, alcohol and substance abuse, eating disorders, post-traumatic stress and post-natal depression. Our clients may be receiving treatment on the wards or getting help in the community. We also receive referrals from Local Authority Departments and other solicitors.*

*We feel the links we have with the Mental Health Trust are crucial in providing our service for clients.*

*Wherever possible we aim to negotiate settlements without court proceedings. This allows clients to achieve agreed outcomes without having to attend hearings which many clients find stressful.*

*Clients often have complex legal problems arising from their lack of paid employment and difficulty in coping with day-to-day affairs; and legal help can be an essential part of the recovery process. The Law Centre aims to support clients who may be detained in hospital or receiving treatment in the community. Trust staff can refer clients for help with preventing homelessness and debt or for advice on other legal matters. By providing a service which is sensitive to client's needs we aim to support and improve our clients well-being. We also consider preventive measures to try to ensure that there will not be recurring problems.*

*The Law Centre is managed by a volunteer management committee comprised of local community groups, mental health service users and other volunteer members with direct personal knowledge of mental health issues. Being aware of the needs of mental health service users is central to helping us plan and deliver our service.'*

**Q.14. Given the limitations on competition for mental health services, is the LSC right to treat high security hospitals as separate procurement areas?**

Yes

## **Where services will be delivered**

### **Q.15. Do you agree with the approach in immigration and asylum to identifying areas of high demand (access points) and letting matter starts on this basis?**

We agree that NMS should be allocated to areas of high demand. However, it is not possible to identify these areas from historical NMS usage as the figures are distorted by:

- \* Reception and Detention Centres
- \* Home Office dispersal
- \* historical gaps in supply which has meant low NMS usage in some areas where there is nevertheless medium or high demand.

There will be particular difficulties for clients living in rural areas. Gloucester Law Centre says:

*'In our area, under the current proposals, our immigration and asylum clients, many of whom are vulnerable, almost invariably live in our immediate catchment area of Gloucester City, and yet would be required to attend an office which we would be required to set up in the Bristol in order to be able to bid for continued funding.'*

Flexibility needs to be built into the system as situations can change during the life of a three-year contract.

### **Q.16. Do you agree that a different approach to setting access points for London in immigration and asylum is necessary?**

Because of the high demand a different approach may be necessary – other regions may also require different approaches, especially in rural areas.

### **Q.17. Do you foresee any issues with the proposed definition of permanent and part time presence?**

### **Q.18. Does the type of presence proposed in a procurement area for family and social welfare law advice achieve the right balance of ensuring client access to service whilst being practical for providers?**

Many Law Centres found this difficult to answer because there is insufficient information and a lack of clarity. For example, there is a lack of clarity on the distinction between 'outreach' and 'part time' presence.

At our consultation meetings with Law Centres, there was concern that the proposals would limit access points and choice. This would be that vulnerable clients would have to travel some distance to consult a lawyer. Brent Law Centre pointed out:

*'Direct conflicts in the subject matter of a dispute will arise in very many family cases and also quite frequently in housing and welfare rights. A number of accessible suppliers are needed in every area.'*

Many were very concerned about the idea of imposing on the provider a requirement to have an office in prescribed areas in order to obtain a contact. The proposals are far too restrictive.

Chesterfield Law Centre comments in relation to rural areas, 'There needs to be a greater degree of flexibility about how access to the service is organised and what premises are used.'

An additional point was made Birmingham Law Centre:

*'There seems to be no recognition of the considerable extra costs to a provider of having 'part-time' presences across procurement areas.'* They ask, 'Are these extra costs going to be recognised within the final contracting arrangements?'

**Q.19. Where a mental health provider has no permanent presence in a procurement area does an insistence on fee earners being based in that area ensure good access for both detained clients and those in the community? If not, what should we specify in addition?**

Springfield Law Centre is permanently situated in the grounds of a psychiatric hospital. They explain their approach to service provision:

*'We offer a service which clients can access immediately once they enter hospital. We also help and advise clients when they return to live in the community. Clients can access our services by walking over from the wards or contact us when they come back to the hospital to attend an appointment. We also offer advice to relatives and carers.'*

*The majority of clients are either in-patients or out-patients of the local mental health trust. Mental health illness can lead to difficulty in coping with day to day affairs and clients at the Law Centre often present with multiple problems. The Law Centre often deals with clients in crisis situations as lack of support results in clients having to attempt to manage their affairs at a time when they are ill equipped to do so. This leads to problems which gives rise to legal issues.'*

*We offer general advice and assistance in all areas of law and specialises in housing, debt and community care. We operate in an atmosphere of support for clients who often face high levels of stress and may also experience lack of understanding, discrimination and isolation from the wider society.'*

*We feel that being based on site the Law Centre is ideally located to be able to offer a bespoke service to mental health service users and is the best way to provide service for mental health service users.'*

**Q.20. Is requiring a permanent presence in at least one immigration and asylum access point, and a permanent or part time presence in each access point bid for, the best way to ensure access across procurement areas (Home Office regions) whilst maintaining a level of flexibility for providers?**

See Question 15.

**Q.21. In the award of UASC work, do you agree that we should favour providers with the shortest travel time to the Home Office Interview in the specialist local authority for which they are bidding? If not, why not?**

The LCF held a focus group with Unaccompanied Asylum Seeking Children about their experience of receiving legal advice, and their opinions on what makes a good adviser. The key issue for them was having an adviser with the skills to build a trusting relationship alongside sound technical skills and clear communication.

Quality of advice is a much higher priority than having shorter travelling times. As one Law Centre pointed out, the proposal will create an uneven playing field and potentially compromise a client's freedom of choice. *'Favouring providers who are located closer to the Home Office will not have any practical advantage, and will only benefit the provider, no one else.'*

In 5.39 it is proposed to require a permanent presence with the 'specialist local authority area'. We believe that this is an unreasonable proposal at this stage, given that there are no 'specialist local authority areas' yet.

**Q.22. Where a low volume category provider, other than in clinical negligence and personal injury, has no office in an area, what requirements should be placed on the provider in terms of facilities offered to clients and the marketing of their service? Is it appropriate to use video conferencing to provide face-to-face advice to clients where there is no local "access point"?**

The availability of face to face is very important. In education for example, the issues are often complex. Many parents may be vulnerable such as those from BME background and people with mental health and learning difficulties.

**Q.23. In immigration and asylum should the restrictions around undertaking the majority of work for clients in the procurement area extend to restricting providers in Wales from accessing clients in the South West and vice versa considering that the Home Office operates only one region covering both areas?**

Client choice should be deciding factor.

**Q.24. Do you believe that mental health, and immigration and asylum providers should be restricted to undertaking most of their work for clients from within the procurement area(s) bid for?**

Yes.

**Q.26. Bearing in mind the limits on the legal aid budget, is the initial 30% ceiling the most suitable way to calculate the HPCDS budget for 2010 onwards?**

This appears to be an arbitrary approach. The LCF recommends that the LSC look at past performance in each HPCDS and, allowing for some increase, calculate the necessary budget. The budget should reflect need – particularly in a time of recession.

30% is probably too low given the current economic and financial circumstances and the projected increase in homelessness and mortgage repossession.

Many Law Centres are concerned about the future of HPCDS under the new scheme. Many of them take part in very successful schemes.

Lambeth Law Centre comments:

*'Consortia have developed very good services for HPCDS. Lambeth Law Centre is part of a very good well run scheme that is administered by Black Friars Advice Centre. There are a large number of agencies on the list, which enables Lambeth County Court, one of the busiest tenanted possession schemes, to run effectively. There is now a good system of referral of*

*housing cases through an email group and networking and exchange of good practice at local Housing Lawyers Group meeting.'*

Changes that would compromise the future of such schemes would be retrospective step.

**Q.27. Do you agree that in mental health, immigration and asylum and low volume categories we should move towards distributing new matter starts more closely to where clients are located?**

Yes. The particular area and its demographic profile should be a factor (amongst others) to take into consideration.

### **How we will procure services**

**Q.32. Do you agree with mandatory requirement that all advisers who provide advice to UASC have obtained disclosure checks from the Criminal Records Bureau as a pre-requisite? Should this be at the enhanced level?**

This is not a requirement applied in other areas of practice involving children. If this were to become a requirement for adviser doing UASC work then it should apply to all advisers dealing with children in any category.

**Q.35. Do you agree that in immigration and asylum, asylum should remain our priority and the marking of bids reflects this? Is this the correct approach for South East also, which is not a Home Office asylum dispersal area?**

Some providers deliver a predominately asylum based service whilst others deal with immigration (non asylum) matters. These should be treated differently rather than pushed together.

Camden Law Centre's Immigration Unit has been at the forefront of immigration advice for 35 years and has an enviable reputation for its work. They are worried about proposal saying:

*'Currently the vast majority of our work is around immigration and nationality and this is reflected in the proportion of NMS available to us under our current contract. The proposed general requirement of a minimum 100 asylum NMS a year will prohibit us from obtaining a contract for our immigration work. The demand for good quality immigration advice in the borough is overwhelming and we struggle to cope with it. The loss of our service will leave a substantial number of local residents with no access to advice.'*

**Q.36. Do you agree that the LSC needs to guard against bids to deliver services that will not have the capacity to do the work bid for? Do you think applying a maximum number of matter starts bid per FTE will assist in that?**

The LCF agrees but there are concerns – many of which are outlined in the response made by the Advice Services Alliance. The dilemma was described by Brent Law Centre as, 'the maximum levels appear to be high enough, but they cannot sustain a full-time worker'

**Q.38. Do you think the proposed selection criteria for each category are the best way to differentiate between bids?**

No - Please refer to our comments above

### **Changes to the scope of funding**

**Q.40. Do you agree with the proposal to remove experts' cancellation and administration fees from the scope of public funding in all civil cases and to cap rates for experts' travel and waiting time?**

The LCF believe that this could have an impact on the availability of experts and the consequent effects on outcomes of cases for vulnerable clients.

Research and a pilot study are needed before any proposal is rolled out.

### **Other contract changes**

**Q.41. Do you agree that change of name work should be made available only by telephone?**

This would not be appropriate in the case of children seeking name changes. Streetwise Law Centre commented:

*'For young people this is a question about identify not just a change of name. Young people also need the reassurance of an explanation of how to use the change of name document with the authorities. Young people often fail to act or understand on the basis of telephone advice alone, and face to face is more likely to be effective'*

**Q.43. Do you agree with the consortia arrangements we propose? Are there other categories of law e.g. family or immigration where we should allow consortia?**

Our concerns are outlined above.

**Q.44. Do you agree that these proposals allowing providers to apply for extra new matter starts without going through a bid round gives a reasonable amount of flexibility for providers while maintaining the principle of open competition for new work?**

We have responded to this above.

### **Initial Impact Assessment**

**Q.52. Do you have any comments on any prospective impacts on clients or providers resulting from the introduction of a tolerance bar in actions against the police, education and public law?**

We have commented on this earlier.

**Q.54. Do you think there will be an impact on clients and providers on the basis of sexual orientation or religion or belief?**

A Law Centre commented:

*'These client groups are likely to have more complex cases and tend to be refused access to or are provided with curtailed service from profit-driven providers under a fixed fee system. This will only be made worse by a reduction of the supplier base, the reduction of contracts through the NfP sector and the reduction of services which can provide enhanced provision such as free representation before tribunals using other funding.'*

**Q.55. Do you have any comments on prospective impacts of these proposals on clients and providers on the basis of ethnicity, gender, age or disability?**

See comments above in Q.54. The proposal could threaten the supply base which could disproportionately affect the most vulnerable including BME groups and those with disabilities.

Law Centres Federation  
23<sup>rd</sup> January 2009