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July 2008

Legal Services Commission



Unite members are finding their conditions of employment and jobs under major threat due to changes in Legal Services Commission (LSC) funding.

In response Unite is calling for the following:

1. A major review of the impact of the new funding framework to assess the impact on access to services and the needs of the most vulnerable clients.
 2. There should NOT be a move to 'best value' competitive tendering as this will further damage services.
 3. The work that the not for profit sector delivers which is unique to the sector should be funded differently from private providers.
 4. Good employment terms and wages should be hard wired into all contracts.
 5. TUPE needs to be a condition of any transferral of contract.
 6. Service users should be involved in deciding local community services.
 7. All bids should take into account quality not just cost to ensure that the needs of the most vulnerable clients are met.
 8. There needs to be realistic financial support for providers that provide to clients with specific needs – e.g. those with high percentages of clients who do not speak English as a first language, those with mental health problems and those with disabilities.
 9. The LSC should restore their commitment to high quality services, with all providers needing to attain a level 1 or 2 in order to be awarded a contract.
 10. There should be a commitment to assisting not for profit agencies throughout the transitional period with a guarantee that agencies will not be forced to close as a result of the changing of the funding framework within this time.
 11. LSC funding should be led by service requirements, not restricted by LSC criteria.
 12. A London Weighting should be introduced.
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BACKGROUND

Changes to the funding system

In July 2006 Lord Carter of Coles published the final report of his Government commissioned review of legal aid.

This review was driven mainly by large increases in the cost of legal aid for advice in criminal cases. This in turn put pressure on civil legal aid including funding for not-for-profit agencies (independent advice centres, law centres and Citizens Advice) which provide legal advice to those on low incomes.

As a result many organisations are now facing a one third cut in actual funding or losing service contracts that they have been delivering for years. Although the changes are intended to be budget neutral, they have forced agencies to make major changes in their client groupings and case profile within a very short period of time. Many agencies are simply not able to alter their local profile within the few months necessary to meet the LSC's timetable.

The changes have often skewed the focus of agencies. Many agencies that offered complex casework and support to more vulnerable clients simply cannot make the contracts pay. At the same time agencies that give basic advice and less support have no incentives to take on more vulnerable clients. This 'cream skimming' effect means that those clients that need support the most are losing out.

Market in Legal Aid

The report, 'Legal Aid – A market-based approach to reform', proposed a number of major changes. In particular it pushed for a move towards competitive 'best value' tendering (or a market) to distribute contracts. The report's proposals mean that solicitors in private practice and not-for-profit agencies will be forced to compete against each other for the delivery of free legal advice.

As is happening in other public service contracts - competition will inevitably lead to a race to the bottom in terms and conditions in many not-for-profit providers. Cost will be the key concern and contracts will go to the lowest tenders rather than the best value or quality service.

An increasing number of contracts are already going to large private sector providers such as Capita and A4e that often employ relatively unskilled staff on lower wages (see Integrated Social Welfare Law Services). This involvement is expected to increase. Terms and conditions need to be hardwired into all contracts to prevent this happening.

'Unified Contract'

Another major change is the introduction of the "Unified Contract" in October 2007.

Under the old system, each agency with a not for profit contract had a contract based on hourly rates. The decision as to how long to spend on each client was down to the professional judgement of the advisor and was subject to LSC audit and file review. Legal Aid firms had a tailored fixed fee which reflected the type of work and client group that they have built up expertise in working with. The Unified Contract pays a set fee per case. This 'fixed fee' is set at an unrealistic level – there is no financial reward for meeting the needs of the most vulnerable clients, or for providing a high quality service which delivers long term solutions.

Unified Contract is having a devastating effect on providers, particularly among voluntary sector advice agencies.

For example in housing law, the fee is £171 per case. At the rate charged by local solicitors, (about £150 an hour), this fee represents less than 1.5 hours per client. Even on the LSC's view that housing advice can be delivered for a mere £53.54 per hour, this still restricts advice and all follow up work, including advocacy and representation, to little more than 3 hours per client.

Worse still, the fixed fee of £171 per case is a national rate. There is no allowance whatsoever for London weighting, despite significantly higher salaries and overheads in the capital. The LSC's own figures indicated that most London providers of legal aid would lose out financially as a result of the changes.

Some independent advice services, law centres and CABx with a Unified Contract are suffering severe financial penalties or major changes to their work. This has been particularly true for agencies focusing on specialist cases. Some agencies have already become insolvent and more are on the brink of insolvency.

Integrated Social Welfare Law Services (ISWLS)

The LSC has put in place a strategy that will see it move increasingly towards joint commissioning with local councils. The aim is to grant fewer but larger legal aid contracts in the future for "Integrated Social Welfare Law Services" (ISWLS) - sometimes referred to as Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs).

The Commission believes that its stated aim to see client focused, accessible, independent, cost effective, coordinated and quality assured advice services is best delivered by moving away from contracts with hundreds of diverse organizations and specialist solicitors. They plan to tender 120 contracts in England and Wales to single agencies (ISWLS) that provide advice on all social welfare topics such as housing, welfare benefits and debt. The move could see the number of voluntary organisations with legal aid contracts reduce drastically and prompt many to form consortia or consider merger to safeguard their future.

This strategy will result in monopoly provision in a number of areas giving clients less choice and could result in real problems of conflict of interest. Additionally, if not for profit agencies lose their LSC contracts many will not be able to sustain their other project-based funding streams. This would lead to a dramatic reduction in overall access to advice - costing the public purse dear in terms of homelessness, worklessness, destitution etc.

Gateshead CLAC opened its doors earlier this year. The Council and LSC now have pooled their advice funding under a single contract with a single, Community Legal Advice branded legal entity – a company formed by the local Citizens Advice Bureau, Law Centre and three solicitors firms. The Law Centre has subsequently closed down. CLACs are also being formed in Leicester, Derby, Portsmouth and Hull.

Unite members report that ISWLS's are having major repercussions on smaller specialised organisations and are likely to impact disproportionately on those residing in rural areas, those from black and minority ethnic (BME) communities, people with mental health issues and disabled people. The strategy to reduce the number of providers could easily mean that the provision of face-to-face services will become increasingly rare in many areas and that existing outreach provision amongst the not for profit sector is destroyed.

There is also a fear that the structure is being used to facilitate large private sector providers winning the contracts such as in HULL where the CLAC contract is set to go to A4e. Lastly there are concerns that some of the proposed CLACs are to be housed in Council buildings raising issues of independence and confidentiality.

IMPACT ON SERVICE USERS AND STAFF

Access to legal services

Unite believes that publicly funded legal aid and free advice services are crucial to making the legal system accessible to all. They provide a much needed safety net that ensures that low income households are able to access justice and receive their legal entitlements. Unite members report that the changes that LSC have brought in are leading to worse services for service users.

In particular:

- Cuts in face-to-face and telephone services
 - Decreased specialised help
 - A funding system that incentivises “cream skimming” cases i.e. a focus on easier cases.
 - A loss of expertise due to loss of staff and contracts to other providers with no knowledge of the community.
 - Stressed staff under funding pressure and time constraints.
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- Moving away from local provision to centralised advice centres means that advice could be less accessible and convenient.
 - Increases of court costs as reduced services will prevent the voluntary sector from resolving cases before they get to court.
 - Many local private law firms have reduced or walked away from legal aid advice work because it is no longer financially sustainable. This is putting even more pressure on the voluntary sector.
 - Knock-on affects on wider public services and society. In human terms, including stress, health, family relationships and the well-being of families and children and their ability to perform at school, the price is hard to quantify but the value is far reaching and profound.

Staff hit hard

Funding changes are having a devastating impact on staff and their organisations.

- Due to the transition from an hourly rate to piece work many agencies have had dramatically reduced incomes – often half what they were previously receiving.
 - No variance for region or local costs - this has hit London hardest due to property rent and higher wages for solicitors, advisors and support staff
 - If case work takes longer than the allotted time organisations are penalised this has meant the employees either rush their work or have to work excessive unpaid overtime. For examples Unite members in CABx report working 12 hour days, when they are not paid for 5 of these.
 - There has been a major increase in case load for voluntary sector organisations often from some of the most difficult cases who cannot find a legal aid lawyer to take their cases on in the private sector.
 - Organisations that are managing to make this work are resorting to using unpaid labour and volunteers to cover work that was previously done by a paid member of staff.
 - The LSC has refused to include TUPE procedures when tendering for contracts.
 - NCVO and the National Compact advocacy programme have reported that LSC funding is the worst funding stream for Compact breaches of every government agency and funding body.
 - Some organisations are simply going under as the funding is not sustainable.
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EXAMPLES:

Refugee Legal Centre

Pressures on Refugee Legal Centre due to LSC funding have led to management imposing a new pay scale. As a result 50% of staff have been put on pay protection. They have had no cost of living increase for two years. Staff are told that if they take industrial action the whole RLS may go bust.

Shelter

Staff at homelessness charity Shelter were forced to take strike action in response to managements attempt to push through major cuts. These included the abolition of annual increments to salaries, an extension of the working week by 2.5 hours - amounting to an extra three weeks a year, downgrading of posts throughout Shelter's housing advice, support services and non-service divisions as well as changes to redundancy policy, with a huge reduction in salary protection for redeployed staff. Management justified these cuts because of funding shortages relating to LSC contracts.

BPTRG

In preparation for the Unified Contract Brent Private Tenants' Rights Group (BPTRG) ceased its telephone advice service because the Legal Services Commission require clients to be seen face-to-face to sign a form and produce written evidence of their income. BPTRG also ceased providing any help to those whose incomes or savings take them just above the legal aid limit. These changes have been insufficient in themselves to maintain income. To survive under the Unified Contract BPTRG will have to halve the average time spent on each case. Unite reps report that to do this services will need to be marketed at tenants with less severe and complex problems, and to those who are likely to be able to act on one-off advice and take actions themselves.

JCWI

Joint Council for the Welfare of Immigrants (JCWI) has had to cut all its telephone advice work due to funding cuts.

CABs

More than 240 local Citizen's Advice Bureaux (CABx), which give advice on issues such as welfare and debt, have contracts with the government to run the community legal service, the successor to Legal Aid, which are worth £25m. Many of these are struggling to stay afloat. Paddington Citizen's Advice has been forced to terminate its Housing Advice contract and make highly qualified staff redundant. HULL CAB one of the oldest and biggest citizens advice bureaux in the country has lost its contract to an out of town bid from A4e backed by private practice firm Howells when the council pushed forward with their CLAC project. The CLAC is proposed to be housed in a council building leading to major concerns over confidentiality and user confidence in the service. Similar issues are reported in Sheffield CAB. Some CABx have simply stopped bidding for legal services contracts instead they seek to subsidise the work or do work from other funding sources.

A4e and CLACs

A4e is a £120m, 2500-strong, global corporation that specialises in public service reform and contracts. It is bidding to run many CLACs and CLANs across the country. So far Unite is aware that it has won a contract in Leicester and Hull in both cases it refused to apply TUPE conditions to staff moved over. A4e is also bidding for contracts in Barnsley and Wakefield CLACs.

Law Centres Federation

The LCF have reported that as many as 20 law centres out of 58 are struggling to stay afloat. There are fears that the Southwest London Law Centres, which receive 68 per cent of their funding from the LSC and helped more than 26,000 people last year, could be the first London law centre to collapse. 4 Law Centres have closed in recent times, and many more are outside of the transitional buffer and are at significant risk of closure. Along with other not for profit providers many of them lever in significant amounts of additional funding for advice and if they close this will only add to the levels of unmet need.
