

Protection of legal aid budgets overdue

In late October, the government did a deal over Very High Cost Cases (VHCCs) for criminal work, which was driven by political expediency. Meanwhile, in another less salubrious part of the legal aid village, the Legal Services Commission (LSC) announced its consultation on the civil bid rounds for 2010 contracts. (See pages 5 and 6 of this issue for information about both events.) LAG believes that these actions add piquancy to the argument for ring-fencing the criminal and civil legal aid budgets.

Criminal legal aid was first introduced for the representation of defendants in the higher criminal courts (if they had a defence) by the Poor Prisoners Defence Act in 1903. In 1907, the Criminal Appeal Act (CAA) ensured that legal aid was available in all murder appeals and in some other criminal appeals. The CAA's provisions therefore predate the establishment of the rest of the legal aid system by over 40 years, and criminal legal aid has evolved through separate administrative procedures in the courts' system influenced largely by the Bar. It was not until April 2003 that criminal legal aid work in the Crown Court and higher courts was transferred to the LSC. Before this date, the LSC administered only criminal legal aid in police station and magistrates' court work. In one fell swoop, legal aid was consolidated into its current £2 billion budget with Crown Court and higher court work accounting for one-third of total expenditure.

In 2003/04, £645 million was spent on Crown Court and higher courts work; in 2007/08, £693.4 million was spent. VHCC cases made up just over £124.5 million of this expenditure for just 394 cases. Overall, Crown Court and higher court work accounted for only five per cent of the cases dealt with in the legal aid system. Since 1997, the Labour government has struggled to contain the cost of criminal legal aid and of Crown Court and higher court work particularly. Successive Lord Chancellors have acknowledged that the failure to do this has led to raiding the civil budget to balance the books. The government's climb down over VHCCs does not inspire much confidence that it will be able to reduce the overall costs of Crown Court and higher court work.

Turning to the consultation on the civil bid rounds, from what

LAG can discern, family law work will continue in much the same way, with four or five suppliers in each local authority area. Civil legal aid grew largely from the growth in divorce cases caused by social change and the resulting demand for representation. (Incidentally, this also suited the business needs of high street solicitors.) Now expenditure is more skewed towards the protection of children and family life, and this must remain a priority for the legal aid system.

For much of the history of civil legal aid, social welfare law has been the neglected, poor relation. A parallel social welfare law advice system developed through the not-for-profit (NFP) sector and local government because of the demand for such services. Large numbers of citizens advice bureaux, Law Centres[®] and other advice centres were established from the 1970s onwards. Mainly in response to this movement, the Law Society, which administered legal aid at the time, introduced the green form scheme (the forerunner of the Legal Help scheme) in 1973. At its peak in the early 1980s, legal aid covered practically every legal problem and 80 per cent of the population were eligible. In the past 20 years, legal aid has been pegged back by successive governments because of financial constraints.

Through the growth of legal aid contracts in the NFP sector, the LSC has tried to annex these mainly local government-funded services into legal aid. Joint tendering arrangements with local government still form a central plank of the strategy to do this, but the consultation paper acknowledges tacitly the difficulties in achieving this by proposing an alternative, which is to press ahead with integrated social welfare law contracts across the country from 2010. LAG believes that the LSC is adopting broadly the correct approach; it makes sense for a client group that, in general, faces interrelated legal problems to get help at a one-stop-shop, provided that it is not at the cost of specialist providers.

LAG would argue that tackling social exclusion and defending human rights should be made the explicit aims of civil legal aid. Currently, the legal aid system forces a crude moral choice between these aims and upholding the rights of those who are accused of a crime and face prison. It is time to acknowledge that a ring-fenced civil legal aid budget is essential to prevent it from withering away or at least to concentrate ministers' minds when they consider placating vested interests.

The justice gap, a book about the legal aid system by Steve Hynes and Jon Robins, will be published by LAG in spring 2009.

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