

NFP legal aid agencies under threat

There are currently around 400 not for profit (NFP) Legal Services Commission (LSC) contract holders. These include citizens advice bureaux (CABx), Law Centres® and independent advice centres. The number of NFP contracts grew rapidly from 1998 when legal aid contracting was opened up to them after it had been piloted successfully in the sector under the Conservative Lord Chancellor Lord Mackay; however, the number of NFP contracted agencies has been falling recently mainly because of the implementation of fixed fees in October 2007. LAG is concerned that unless the sector can adapt, many more NFP agencies will drop out of legal aid work after the current contracts end in March 2010. This will be a loss to the many thousands of clients with whom the services are accessible and popular.

Legal aid minister Lord Bach has recognised the problems the sector is facing. On his initiative, the Ministry of Justice is currently undertaking a study of the sector (see January 2009 *Legal Action* 5). Until the implementation of fixed fees, the system seemed to work well, albeit with some gripes. However, over the last year it has not done so; at one extreme this has led to agencies being forced to close while many others have had to cut back what they do. The LSC would like to present this as a result of fixed fees leading to more efficient services, but LAG's view is that in the main fixed fees have forced all providers to reduce what they do for clients. Those agencies and firms making a success of fixed fees, or at least surviving, are pushing more cases through the system and looking to transfer cases on to legal aid certificates or alternative funding more rapidly. LAG wonders, for example, how much of the £33m extra government funding for debt work in CABx just over two years ago has in fact turned out to be a cross-subsidy for legal aid work?

LAG has highlighted the issue of exceptional cases on a number of occasions, most recently in December 2008 (see December 2008 *Legal Action* 50). Only 850 cases were claimed as exceptional for the first year of fixed fees. This begs the question, did clients' problems become simpler after October 2007 or are suppliers not claiming exceptional cases because of fears over

cash flow? As NFP agencies tend not to do legal aid certificate work, they need in particular to make greater use of the exceptional cases procedure if they are going to survive and provide a decent standard of service to clients. Lord Bach's study is also an opportunity to consider reducing the limit at which exceptional case fees kick in to help them do this.

The results of Lord Bach's study will have to inform the bidding process for the renewal of civil contracts in April 2010. The LSC intends to commence the tendering process this summer. This gives firms and NFP agencies little time to prepare. LAG would suggest that NFP agencies should take particular notice of the consultation paper on the civil bid round published by the LSC in October 2008 (see December 2008 and January 2009 *Legal Action* 3 and 29) as it carries some pointers about the likely tender specification which the sector cannot afford to ignore.

Sole contracts for housing, debt and welfare benefits look set to end. Agencies will have to provide services in all three areas of work or provide housing with family work. According to the Advice Services Alliance, this means that over 80 per cent of NFP organisations will have to expand their services or enter into consortia in order to continue to undertake legal aid work. This move will also impact on some specialist housing law firms which do not offer family or other areas of social welfare law. In addition to requiring organisations to offer bundles of social welfare law work, in geographical areas in which the LSC decides there is likely to be a 'significant oversupply' (this is most likely to be urban areas) agencies that wish to bid for contracts in housing or community care law must be able to offer full legal representation. In practice this means that they will have to employ a solicitor or be in a consortium with one.

LAG agrees that to provide a comprehensive service in these areas of law, it is preferable that an agency is able to litigate and so needs a solicitor. Yet, this added to other likely criteria such as a supervisor to caseworker ratio of 1:4 and the requirement to reduce the cash owed to the LSC, leads us to question whether the proposed timetable for the tendering process will be fair, particularly if many urban areas are deemed to have an oversupply by the LSC. It would be better in these circumstances to delay the tendering process for a year so that agencies can make the necessary changes to compete. Not to do this would risk reducing drastically the number of legal aid providers in the NFP sector at a time when clients who are hard hit by the recession most need their services.

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