

Carter reforms: what now?

In 2005, the then Lord Chancellor and Secretary of State for Constitutional Affairs, Lord Falconer, commissioned Lord Carter to report on the procurement of legal aid after the failure of the Fundamental Legal Aid Review (FLAR) to come up with any answers to controlling legal aid expenditure (the FLAR report never appeared, although material from it was used to inform the Carter review). His report, *Legal aid: a market-based approach to reform*, published in July 2006, championed the introduction of market forces in the procurement of legal aid. By doing this Lord Carter believed a cut of £100 million could be made from the legal aid budget without impacting on the service to clients.

The introduction of fixed and graduated fees for all civil and criminal legal aid work was the first stage of the Carter reforms. Despite delays and much criticism from practitioners and commentators, including LAG, this has been largely done. A familiar ritual has been played out with initial protests and compromises being made, but the majority of legal aid providers eventually accepting the changes. This is not to downplay our concerns about quality and access, but we recognise the cost of legal aid services has always been determined by administrative price-setting and informed by negotiations with the representative bodies.

Part of the intention behind the Carter-inspired fee changes was to save cash, with the cuts in Crown and higher court fees making up the most crucial element of this. LAG accepts that some rebalancing is necessary at the upper end of criminal fees, not least to minimise the damage done to the public case for legal aid by the large fees enjoyed by a small percentage of criminal advocates. We would emphasise, though, that the vast majority of lawyers are earning the same or less than the fees Lord Carter believed to be reasonable. Indeed, LAG frequently hears from practitioners who earn considerably less than comparable professionals. The legal aid system is held together by the dedication and selflessness of such people.

Lord Carter also intended the fee-setting phase of his reforms as a prelude to the introduction of best value tendering (BVT). He wanted the reduced fees to consolidate the market as some providers would drop out as the remaining ones prepared for BVT. This is where the strategy has come unstuck. Legal aid practitioners, led by the Law Society, have so far been effective in blocking the introduction of BVT for police station work. Progress towards BVT has also been slow in civil legal aid.

In his report Lord Carter saw Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs) as the main vehicle for delivering civil legal services. He foresaw a first wave of these to be followed by others after 2009. Each contract to provide these services would be subject to a BVT process. But mainly due to the reluctance of local government to jeopardise existing services, CLACs and CLANs have not developed as quickly as Lord Carter envisaged. Only five CLACs and one CLAN have so far been established.

According to Lord Carter, price, quality and access are the criteria by which BVT bids for legal aid services should be judged. Crucially, he acknowledged in his report that the savings potentially made by the introduction of BVT are not through providers bidding lower, but by cuts in administration costs, mainly made through reducing the number of providers. LAG believes the government will announce revamped plans for BVT this month and even if it does not, BVT or a version of it might still prove attractive to this or a future government as a means of cutting the legal aid budget.

Over recent years, we have documented the decline in legal aid practices. The introduction of the compulsory specialist quality mark in January 2000 saw the number of civil legal aid providers halve to around 5,000. The following year, the roll-out of quality marks for criminal work saw a smaller, but still significant, cut in the number of criminal providers from 3,500 to 3,000. Over the intervening years, weighed down by bureaucracy and tightening fees, there has been a continuing attrition in the number of providers in the system, now reduced we estimate to less than 5,000.

LAG fears that after the general election, whichever party is in government may be bounced into rushing for a form of competitive tendering in the belief that it will lead to quick savings, as the thrust of the Carter reforms remains the same – fewer, bigger providers equals cheaper. If this happens, quality and access to legal services for the public will suffer, with no guarantee that any administrative savings will materialise.

News 4–5

Restrictions on civil legal aid announced/LSC criticised/Updated procurement plans published/Call for nominations for 2010 LALYs/**news feature**: No one left behind – a future for all?

Features 6–9

Community care 6

Reforming adult social care: Law Commission consultation/Frances Patterson QC

General election 2010 8

Criminal justice under the Conservatives/Fiona Bawdon

Law & practice 10–38

Immigration 10

Recent developments in immigration law – Part 2/Jawaid Luqmani

Civil law and procedure 14

ASBOs and other civil orders: recent developments in the law – Part 2/Maya Sikand

Social security 17

Recent developments in social security law – Part 2/Simon Osborne and Sally Robertson

Education 23

Recent developments in education law – Part 1/Angela Jackman and Eleanor Wright

Community care 26

Community care law update – Part 1/Karen Ashton and Simon Garlick

Housing 28

Recent developments in housing law/Nic Madge and Jan Luba QC

Housing 32

Allocating social housing: the new guidance/Robert Latham

Legal profession 34

Recent developments in practice management/Vicky Ling

Inquests 35

Recent developments in inquest law and practice/Leslie Thomas and Adam Straw

Letters 38