

The fear factor

It has been a busy time in the legal aid world with the tender rounds for criminal and family and social welfare law now up and running, the Magee Review on the future of legal aid published and a cash crisis at the Legal Services Commission (LSC) leading to a delay in payments to providers (see pages 5, 6 and 38 of this issue). LAG wonders at what point firms and not for profit (NFP) agencies in the system will be able just to concentrate on providing a service to clients rather than having to worry about the next change or initiative coming from the government or the LSC.

The most damning conclusions in Sir Ian Magee's report dealt with the LSC's failure to have proper financial systems in place. It seems to LAG that the commission's senior management has been focused on trying to implement the Carter recommendations while failing to get the basics right. It seems the latest fiasco of delaying providers' payments for certificated cases is another manifestation of this failure, but final-quarter, cash-flow problems are not new at the LSC or its predecessor, the Legal Aid Board.

Predicting legal aid expenditure is a balancing act between controlling budgets, knowing what volumes of work are being carried out by legal aid providers and, above all, maximising the number of cases that can be undertaken for clients. Financial management systems at the LSC can be improved, but predicting year-end expenditure on legal aid will always involve an element of informed guesswork; the more change that is introduced into the equation, the less predictable will be the result. LAG fears that the likely takeover of the LSC by the Ministry of Justice might mean that financial management swings to the other extreme. A too-cautious approach to budgeting would result in the government sitting on large balances while services to clients are cut.

LAG believes that part of the explanation for the monetary pressure on the LSC is a greater uptake of new matter starts (NMS) this financial year because of the recession. LAG is concerned that an examination of the procurement plans for social welfare law seems to indicate that there has been a cut in NMS for the 2010 contracts (see page 6 of this issue). It is difficult to unravel the figures as usually not all NMS allocated are taken up; however, the feedback from some providers is that allocations in the procurement plans are definitely down in their areas. Providers fear that even if their bids are successful, they will not be allocated sufficient NMS to make the contract viable. Similarly, while the criminal bid rounds are not competitive, providers are equally concerned about the volumes of work.

Looking over the procurement plans for social welfare law Legal Help and comparing them with existing providers in each bid zone, it is apparent that in some areas there will be little change in the firms and NFP organisations delivering the service. Conversely, it is clear that some providers might lose out and not be granted contracts, or if they are kept in the system the number of NMS allocated to them will not be sufficient to make their services viable. LAG believes that clients and communities will be the real losers if many firms and NFP organisations fail to get contracts.

If the LSC sticks to its plans at the time of going to press, family and social welfare law providers will be told in the week beginning 14 June 2010 whether or not they have been successful in applying for a contract. If many have been unsuccessful, LAG wonders what the reaction will be from a likely new government. Large numbers of firms and NFP organisations complaining that they will have to close could create a groundswell of support for abandoning the competitive element of the bid process.

A second likely crisis point may come in August or September when the contract schedules are sent to providers. Arguably these are the only pieces of the contract that really matter, as they should tell providers the number of NMS for which they are contracted. What if the new government, whatever its political complexion, has had a rethink on the budget for legal aid? Like all public spending there is the fear of looming cuts, but the government might also take the opportunity to reconfigure how services are funded. For example, Sir Ian Magee suggests that social welfare law could be joined with other elements of government funding (see page 5 of this issue). Whatever happens next, a period of stability for legal aid providers seems an unlikely prospect.

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