

A criminal waste

Plans for best value tendering (BVT) of police station and magistrates' court work have been announced by the Legal Services Commission (LSC), amid an outcry from practitioner groups afraid that the tenders will reduce the number of criminal legal aid firms and jeopardise access to justice (see pages 4 and 38 of this issue). The LSC's justification is that it needs to 'market test' the price of the services, but LAG is sceptical about this and believes that the proposals risk diminishing the service to clients. The announcement of the criminal BVT scheme also contained a warning of likely cuts that could impact on both the civil and criminal legal aid systems.

In the past six years, many firms have left criminal legal aid work. It is difficult to discover exact numbers as the LSC has changed its method of counting the firms it contracts with, but it could be as many as 800–1,000. Firms tell LAG that they do police station work mainly as a loss leader to pick up magistrates' and Crown Court work. They say that to turn a profit with criminal work a firm needs to be undertaking representation before the courts, especially in serious crime cases in which the fees are higher. The loss from the legal aid system of so many firms in recent years would seem to indicate that market forces are already in operation, weeding out those that are unable to obtain the numbers of better-paying cases to make their businesses viable.

At best what is proposed by the LSC is a partial market-testing exercise, as magistrates' court work costs are already set by administrative fees. The risk is that the LSC will decide to exclude those solicitors from magistrates' court work who do not win a police station contract. This will restrict further client choice.

Sir Bill Callaghan, the LSC's chairperson, in his introduction to

the consultation paper, *Best value tendering for CDS contracts 2010* (March 2009), acknowledges the changes in the economic situation since the plans for BVT were first floated. We are all aware that the cost of the recession, including the bail-out of the banks, will have to be paid for. The Ministry of Justice (MoJ) has been asked to contribute £1 billion in cuts or 'efficiency savings' as they are euphemistically referred to by Sir Bill Callaghan. It seems the MoJ has given serious consideration to cutting back on representation in police station work by only making face-to-face advice available to those accused of a serious crime, such as murder or rape, and reducing all other advice to telephone-only advice.

LAG believes that such a move would turn the civil liberties clock back to before the introduction in 1986 of the Police and Criminal Evidence Act 1984 and risk widespread miscarriages of justice. In Britain's adversarial justice system, the trial starts in the police station and so to ensure a fair trial representation should start there as well.

As reported on page 4 of this issue, the legal aid minister Lord Bach made a well-received speech at the Advice Services Alliance conference in March. In his speech he acknowledged the need for an expansion of social welfare law provision. LAG believes that some extra cash might be found from savings in criminal legal aid, but if the postcode lottery of social welfare law services is to end more money will need to come to legal aid from the Treasury. Also, as the figures published by LAG on its website last month illustrate, a fairer means to distribute any extra funds needs to be developed by the LSC (see page 5 of this issue).

LAG applauds Lord Bach's sentiment, but it seems clear from the warning contained in the criminal BVT consultation documents that an expectation exists in the Treasury that the axe should fall on legal aid to contribute to over £1 billion in cuts that the MoJ is expected to find. That expectation was confirmed by last month's budget statement, which also revealed that the MoJ and Law Officers' Departments must bring in additional savings of £85 million. LAG would urge the MoJ and the LSC to argue as strongly as possible that this is unacceptable. Legal aid cuts in the midst of a recession would be like making health cuts during a flu epidemic. It is impossible to impose such cuts without risking miscarriages of justice in criminal cases and reducing access to justice in civil cases.

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