

## Deal or no deal?

**R**ather like an old-style trade union general secretary, the Law Society's chief executive Des Hudson emerged from the negotiations with the Legal Services Commission (LSC) in April with words to the effect: 'Brothers and sisters, we got the best deal we could'. Urgent negotiations had taken place to thrash out an agreement after the Law Society won judicial review proceedings in the Court of Appeal which challenged the legality of the civil contract. Further proceedings had been initiated to force the LSC to accept the court's findings but these were discontinued when the agreement was reached. While the Law Society had been fully vindicated by the Court of Appeal's judgment, it was also aware that the LSC could have given notice on the existing contracts and introduced a new contract while continuing to dispute the judgment. This meant that the Law Society had to be pragmatic in arriving at a settlement. Due to this, what has been agreed will fall short of many practitioners' expectations.

As reported on page 4 of this issue, the package announced does contain some good news. The increases in fees will be welcome, and the amnesty on the recouping of payments on account will be a considerable relief to many firms that were facing the prospect of the LSC asking them to account for payments on cases for which the files had been destroyed. LAG strongly believes, though, that despite a five per cent increase in fees for mental health tribunal work, the fixed fees paid for this work are still much too low. Firms are telling LAG that the sector is in crisis and that while they have accepted contracts from the LSC many are facing going out of business as the fixed fees are not viable at the current rates. LAG would argue that the LSC needs to look again at the rates and the rules controlling mental health work or face the real danger that, within a year, there will be insufficient coverage across the country to provide services to this particularly vulnerable client group.

In general, LAG's impression is that while many firms and not for profit (NFP) agencies are adapting to the introduction of fixed fees by shifting their cases mix to take on more straightforward actions, there are significant numbers of others

which are being squeezed financially. LAG understands that many firms and NFP agencies are accepting reduced payments from the LSC as they struggle to meet case start targets. The impact of the rate increase on these organisations is therefore likely to be marginal and further withdrawals from legal aid work, as well as insolvencies, seem likely.

A six-month delay in the introduction of criminal best value tendering (BVT) was also agreed. BVT will now go ahead in July 2009 or later. LAG had called for a delay in order to analyse the impact of the introduction of fixed fees as criminal providers are facing large cutbacks in their income (see March 2008 *Legal Action* 6). In LAG's view, the government and the LSC will still press ahead with the introduction of BVT for criminal work as they believe that police station and magistrates' court work can be organised in this way without a risk to coverage. Price competitive tendering for civil and family work was put off to 2013, further supporting the point that the LSC's and the government's main target for competition is criminal work. LAG is still concerned about the threat that BVT for criminal legal aid poses to a client's choice of lawyers. We continue to warn that the government and the LSC are wildly over-optimistic about the likely long-term cost savings which may accrue from putting this work out to tender. In perhaps the best example of the use of smoke and mirrors in negotiating tactics, the LSC also agreed to a closed list of, at most, 20 Community Legal Advice Centres and Community Legal Advice Networks in the period ending April 2010. LAG seriously doubts that it would have been possible for the LSC to establish any more than this number in that time. The move comes as no comfort to the established organisations that might lose out in tenders to new suppliers: Hull Citizens Advice Bureau being the latest organisation at risk of closing after it was not named as the preferred bidder for the City of Hull contract which was announced in April (see page 6 of this issue).

Like most commentators, LAG welcomes the Law Society, LSC and Ministry of Justice agreement, which ends the uncertainty over the civil contract. It is to be hoped that the agreement will mark a turning point in relations between legal aid suppliers, the LSC and the government. The joint working parties which were announced on peer review and auditing should help set a more constructive tone. The Law Society can be justly pleased about getting some useful concessions as, previously, none were on offer. However, what has been agreed represents no more than trimming the sails of legal aid reform. The direction of travel for now at least remains the same.

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