

Just when you thought it was safe to go back onto the internet.....

....another LSC consultation

On October 11th the LSC published the draft Unified Contract for consultation. The LSC intends this contract to apply from April 2007. The documentation is available at www.legalservices.gov.uk/civil/docs_for_consultation and the consultation closes at midday on 21st November. A briefing on the draft contract and suggested guidance on how to respond will be available on Cablink asap.

We know that responding to consultations takes up time but once again **it is essential that you make your views known**. The draft contract contains some very worrying clauses and we must get the LSC to back down on some of them. As currently proposed, Citizens Advice would have to advise bureaux the contract is too dangerous to sign.

- The LSC will require that the directors of companies limited by guarantee – which would include the Trustees of many bureaux – to sign a personal guarantee to indemnify the LSC against any monies paid which the LSC then demand back
- A similar guarantee is to be required from other NfP suppliers, which would probably apply to all unincorporated bureaux; but that has not been yet been drafted by the LSC.

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welcome. Contact us on 020 7833-7046.*

This is clearly not acceptable and Citizens Advice will explain this to the LSC at a meeting on 3rd November – in basic terms, this must be ‘deal breaker’. We will update bureaux via email and Cablink on how discussions around this issue progress.

Even if we are successful in persuading the LSC to withdraw this proposal, there are a number of other proposals, which we believe, would make LSC contracts even less client focused and potentially impossible to deliver. For example:

- At an initial interview, no work can be claimed that is done before the CW1 is signed. This clearly does not give an adviser time to gain a rapport or level of trust with a client – if you are scared and vulnerable is the first thing you want to do fill in a form and sign something?
- Stricter rules will apply on giving advice to clients who have previously received advice on the same matter from another LSC provider. This would be required to assist the client to make a complaint if they were unhappy with the previous provider. This would be covered under the same fixed fee as that funding the client’s actual case!
- A mere 28 days notice to change reporting forms. There are also new requirements to report electronically, so software changes will be necessary – and 28 days is not likely to be sufficient.
- **Contrary to the impression that many of you may have got when you heard either Crispin Passmore (CLS Director) or Vera Baird MP, QC, speak at recent public meetings, a tightening up of the rules governing Separate Matters.** The draft contract strongly suggests that it will be more difficult, for example, if you close a client’s case because the client has ceased to give instructions, you will not be able to open a new matter start if they

come back – even if you have closed and reported the case!

- The section of the contract that gives category specific guidance on separate matters is MISSING at the moment and has been requested.

Hopefully these bullets will illustrate why it is really important that people respond again.

If you have any queries or comments please contact Sophie.brookes@citizensadvice.org.uk

CONTRACTING INFORMATION

Carter Catch Up

The Carter consultation closed on 12th October. A copy of the [Citizens Advice response](#) can be found on CABlink in the Service Developments/Developments section.

Thanks to all those people who attended regional events on the consultation; hearing your views really did influence what we said in the response and will also influence any follow up work that we undertake.

We understand that the LSC received in the region of 3500 responses to the consultation. To put this number in some context, when the LSC consulted on the CLS Strategy last year they received 243 responses. This just proves how concerned all legal aid stakeholders are about some of Lord Carter’s ideas and the way in which the LSC intends to implement them.

At the request of several bureaux we produced some notes on responding to the consultation. We weren't sure how successful that would be but a number of you have indicated that you wouldn't have responded if that hadn't been produced. We are pleased that some of you found it useful and if you have other ideas for work that the Legal Services Team could do please feed that back.

As usual, we asked all bureaux to send us a copy of their responses and it was excellent to see so many – we had over 30 copied to us – far more than we usually expect. It was brilliant to see the concerted effort that people have put into this consultation exercise – once again it illustrates the commitment of bureaux to legal aid and the clients that can be helped under the scheme. **Thank you for responding and sharing your response with Citizens Advice.**

Sophie has taken the time to read those responses and whilst some views were universal, there were differing opinions and most reflected something unique to the contributing bureau.

- Most bureaux opposed the proposal that the Law Society should be responsible for Quality Assurance for solicitors only. You all preferred the status quo or a new scheme devised by both sectors. There was one bureau that supported the proposal.
- There was no particular objection to fixed fees or New Matter starts but a united view that the fees were too low and would lead to withdrawal from contracts, reduction in the services offered to clients and the cherry picking of cases.
- Everyone was in favour of a transition period of two years in moving to a new payment model.

- Perhaps not surprisingly, everyone was totally against the payment in arrears proposal.
- There was a mixed response about reduced payments for tolerance work – some of you thought that this should be paid at a lower rate and then phased out to ensure quality advice. Others though were concerned about the effect that this would have on access to justice.
- You were united in the belief that Level 1 work should stay as it offers an additional service to clients.
- There were mixed views about the SQM no longer being a contact document. Some felt that this was a good idea, as you are all subject to the Citizens Advice audit. Others were concerned that this proposal could lead to a watering down of standards.
- Many of you tackled the LSC's claims of inefficiencies within the NfP sector. A number of bureaux pointed out that even though they performed at 100% and had lower than average case times, they would still have significantly to increase the number of cases opened under the new regime – at the expense of quality.
- On the minimum contract size, some were totally opposed to any minimum, suggesting that each case should be considered on its merits. Approximately half of the responses however suggested that a minimum size of £25,000 was acceptable.
- Many of you questioned the way that the fixed fees had been arrived at and were worried that very short un-audited cases could be impacting on the proposed fee level, without any assurance that the cheaper, shorter cases were of good quality.

- A couple of bureaux pointed out the cost drivers that were beyond their control, e.g.; the lack of co-operation by Jobcentre Plus, inefficiencies of the local council tax and housing benefit offices, the behaviour of creditors who continually transfer debts to different collection agents.
- There was some excellent use of statistics – not just in terms of describing the demographics of the communities that you serve but also the types of cases that are conducted and the percentages of clients that are vulnerable. For example:
 - 59% of our debt cases were multiple debt cases and LSC data suggests that these vary by plus 1/3 in the time taken compared to average case times”
 - we did 100 Social Security appeals last year and won 83% of them. For every £1 we got from the LSC for welfare benefits advice we raised £10 for our clients”
 - in 2005-06 59% of our clients had a disability and a considerable proportion of those disabilities were related to mental health issues
- Several of you showed how these proposals undermine the commitment that the LSC and DCA claim, in many of their corporate documents, to focus on the most socially excluded and deal with the person, not just their individual legal problems.

These are just a few of the ‘highlights’ of all the responses – space and time don’t permit us to go into greater detail. Overall, the best thing was the emphasis that you all put on the impact that this would have on the most important people in all this – the clients. The LSC try to claim that advice providers are only interested in how change affects them; maybe this might convince them otherwise.

If you did respond to the consultation and have not sent us a copy of your response please do – we are still very interested in hearing what people have to say.

Although we are hopeful that as a result of the consultation response there will be changes to the proposals, we cannot afford to be complacent and assume that nothing will change. The Legal Services Team will therefore be producing guidance in early November on ‘working differently’ under the contract. We have been speaking to bureaux, both individually and in groups, to discuss the different ways in which they deliver their contracts. There are certainly useful working practices out there that people may want to think about using in their bureau. Forgetting for a moment the LSC’s ridiculous fixed fee levels, it is clear that some of the practices that bureaux have changed have enabled them to assist more clients.

On Your Uppers

The LSC has been focusing on NfP contracts during 2006/07. In addition to being much tougher on underperformance the LSC has started to take a stricter approach to average case times. Throughout England and Wales the LSC have been introduced Upper Casework Limits (UCL) where an agency has an average case time that is higher than the regional average. This means that when the time spent on a case reaches the UCL the agency must apply to the LSC for permission to carry out further work.

For those of you who worked under the old green form scheme this just might seem a bit familiar! The LSC are entitled to take this action but it is a frustrating development and yet another hurdle to overcome in delivering your contracts. If you apply for extensions please let us know how efficiently they are dealt with – if there are problems we need to

raise them with the LSC. Along with CLS Support we have asked for clarification of whether time can be claimed for making the extension application.

If you have any queries about the new proposals or issues about the existing contract then please contact us – see the last page of CAB Legal for details.

Negotiations with the LSC

As discussions about the new contract start we thought it would be useful to explain how the Advice Services Alliance (ASA) works on behalf of all the NfP networks. Here Adam Griffith Policy Officer at ASA explains a little about the organisation and their role during this time of significant change.

ASA was established in 1980, and is the umbrella body for independent advice and information services. Our main aims are to:

- promote the development of high quality information, advice and legal services;
- ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
- encourage co-operation between organisations providing such services;
- provide a forum for the discussion of issues of common interest or concern to advice organisations.

Our current full members are

- Advice UK
- Age Concern England
- Citizens Advice
- DIAL UK
- Law Centres Federation

- Shelter
- Shelter Cymru
- Youth Access

When the LSC decided to expand the legal aid scheme to cover not for profit organisations without solicitors, they also decided that they wanted to negotiate with one organisation on behalf of the NfP sector,

in the same way that they negotiate with the Law Society on behalf of all solicitors firms. The previous and current NfP contracts all specify ASA as the representative or consultative body for agencies with NfP contracts. The new draft unified contract also refers to the Law Society (representative arm) and ASA as “consultative bodies”. The previous, current and draft future contracts all contain provisions requiring the LSC to consult with ASA (and the Law Society) in relation to any changes to the contract. The LSC is following these provisions in relation to negotiations over the proposed new contract.

In recent years, we have led the advice sector’s participation in the provision of legal aid services in England and Wales. Following an initial pilot in the mid 1990s, nearly 500 advice agencies now provide such services, generating income to the sector of over £50 million a year.

The LSC therefore recognises ASA as the negotiating body for the advice sector, and we are responsible for:

- responding to policy proposals from the Commission
- negotiating contract and quality requirements, pricing and contract allocation procedures
- ensuring that networks and agencies are kept informed of proposals and developments and that their views are fed

back to the Commission and the Department for Constitutional Affairs.

All of this places considerable responsibility on ASA, which we take very seriously. Although we have our own views on various matters, based on our own experience and other work that we do, such as the CLS Support service we provide, we involve the networks closely in all our discussions and negotiations with the LSC. We have meetings with the relevant networks, exchange information and views continually and also arrange meetings with the LSC and the networks to discuss important changes either to the contract or to LSC policies and procedures.

We are following the same procedure in relation to the draft unified contract. We have met with the advice networks, and have received their views through several further communications. We are very conscious that we act on their behalf. We could not do the job without them and we rely very heavily on what they tell us.

The LSC will shortly be having initial talks with the local authority about a possible CLAC in Barnsley, however these are at a very early stage and nothing is yet certain.

The only definite CLAN area that seems to have been identified is Cornwall. There has not been a formal announcement but discussions are ongoing.

The LSC was clearly stung by the comment that they were running more pilots than British Airways. The official line was that CLACs and CLANs were 'being rolled out' and were NOT pilots. However, we detect a shift ... at a recent meeting one LSC Regional Director constantly referred to CLACs and CLANs as 'pilots' and we understand that even Crispin Passmore has used the 'p' word in a letter about a CLAC recently. Dare we suggest that this may be because the current stage of development still looks more like a pilot than a national scheme?

If you hear of any information about possible CLACs or CLANs in your area please let us know.

OTHER NEWS

CLAC & CLAN Watch

There have still been no announcements about which organisations have been awarded the tender in either Leicester or Gateshead.

The third CLAC will be in Derby and Citizens Advice is working with Derby CAB and Law Centre in preparation for this. There is an element of consultation with local stakeholders, and it seems likely that the tender document will not be available until after Christmas.

When is a U turn not a U turn?

When it's reported rather too enthusiastically in The Times.

Many of you will know that on 13th October Lord Falconer gave a speech at the Law Society Conference www.dca.gov.uk/speeches. During the speech he acknowledged that legal aid stakeholders had recognisable concerns over the Carter proposals and he also said:

"We know that the proposals are not right yet – we will not be introducing a policy, in relation to family and civil, until we believe it is right.

We'll work with you to ensure that it is."

Clearly this is a glimmer of light but until there are any official announcements, we cannot assume that the proposals will be withdrawn or that there will be no changes on 1st April 2007. We have contacted the LSC for information about how this would affect the new contract and we are currently being given a 'business as usual' message. We will of course let you know as and when we receive further information.

The Eight Million Pound Man

No, not a new TV programme to rival a seventies classic....As some of you will know this is one of the statistics that the LSC, (and in particular Crispin Passmore) has been using at meetings, is that underperformance by the NfP sector costs £8 million. So how did the LSC reach this figure? At a recent meeting we were given this explanation:

- 2005/06 35% of NfP contracts performed at 90% or less;
- that means 156 000 contracted hours not delivered;
- at an average of 5 hours per case that equates to 35 200 acts of assistance not delivered;
- at an average cost of £258 per case those cases not carried out cost the LSC £8 million.

We have been told that this £8 million is before 'clawback'. So if an agency that underperformed in 2005/06 has as a result received a reduced payment in 2006/07 then that is not taken into account in this calculation.

Whilst we don't approve of the confrontational way in which the LSC use this figure it does

illustrate why underperformance is becoming increasingly important – it can have a huge impact on the ability of the LSC to meet or exceed its PSA 5 target and avoid the ire of The Treasury.

Our New Consultant

As mentioned in last month's CAB Legal, Clare Shirtcliff is now working one day a week for Citizens Advice. To keep the same level of consultancy support we are glad to say that David Gilmore is joining the team for one day per week. David will be starting from the week beginning 13th November and like Clare will be based from his office at home rather than a Citizens Advice office.

Just like Sophie Brookes, Citizens Advice's Legal Services Policy & Development Manager, David has worked for the LSC as an Account Manager. He has also been an Operations Manager and Contracts Manager in the London Regional office. Since leaving the LSC in 2000 David has carried out consultancy for the OISC, Legal Aid Practitioners Group and the Law Centres Federation. In addition he has worked with individual Law Centres in much the same way as our current team works with bureaux – carrying out visits to tackle underperformance and also to assist pre or post audit. So although David hasn't worked with CABx previously he has experience and expertise from which we will all benefit.

David's induction will include meetings with the Citizens Advice Audit and CASE teams as well as visits to bureaux. We will let you know how to contact David when his induction has been completed.

Peer Review workshops on housing and employment

ASA are hosting workshops developed by Independent Peer Reviewers and the LSC on how to improve your quality by learning from peer review.

Agencies can send one representative per category.

Dates and locations

Housing

13 November Manchester 1.30 – 4.30

20 November London 1.30 – 4.30

Employment

30 November London 9.30 – 12.30

£35 + vat (£6.13) per delegate

Booking form on the next page.

Learning from peer review

ASA are hosting workshops, developed by Independent Peer Reviewers and the Legal Services Commission, on how to improve your quality by learning from peer review.

The Independent Peer Reviewers will explain the process & pass on their findings and experiences.

The workshops are aimed at supervisors & caseworkers.

Agencies can send one representative only to each workshop

Dates & locations

Housing Law Workshops

13th November Manchester 1.30pm - 4.30pm

20th November London 1.30pm - 4.30pm

Employment Law Workshop

30th November London 9.30am - 12.30pm

We will be holding further workshops in immigration at a later date

Tea & coffee will be provided 2 CPD points available

£35 + VAT (£6.13) price per attendee

Name

Agency

Address

Telephone / email

We will invoice you with confirmation of your booking (£41.13 inc VAT).

If you have any special needs please ensure that you book at least three weeks before the course and we will do our best to accommodate them

Cancellations made anytime up to 3 weeks before the workshop will incur an administration fee of £20.

NO refunds are available for cancellations made less than 3 weeks prior to each workshop. We can only accept cancellations in writing or via email to: admin@asauk.org.uk

Please return your completed form by post to:

Peer Review Workshops, ASA, 12th floor, New London Bridge House, 25 London Bridge Street, London SE1 9SG or by fax to: 020 7407 6822 tel: 020 7378 6428

CLS Consultancy provided by Citizens Advice.

- **confused about a contract requirement?**
- **problems with underperformance?**
- **about to start a new contract?**
- **new staff who haven't worked on a contract before?**
- **or just can't find a key document on the LSC website?**

If any of these sound familiar then CLS Consultancy can help you.

We can provide advice via email and telephone, and if it's appropriate arrange a visit to your bureau.

Our consultants, Vicky Ling and Clare Shirtcliff have extensive experience of providing legal and advice services and supporting contracted agencies.

Contact details:

vicky.ling@citizensadvice.org.uk or 020 7833-7134

clare.shirtcliff@citizensadvice.org.uk or 01873 810101

If you cannot get us straightaway, please leave a message and we'll get back to you as soon as possible.

CLS Consultancy is provided by the Legal Services Team based in the National Development Team. Other members of the Legal Services Team are Sophie Brookes (manager) sophie.brookes@citizensadvice.org.uk and Laura Muir (administrator) laura.muir@citizensadvice.org.uk