Legal Aid, the Legal Services Commission and a tale of our time

Big changes are sweeping through the legal advice sector and these are having an impact on the many hundreds of independent advice services that play a crucial role in enforcing people's rights and holding authority to account. In this feature Andy Benson, from the Hackney Advice Forum, looks at what is happening in this corner of 'voluntary action'.

Many of the changes that are happening have a lot to do with the megalomaniac plans of the Legal Services Commission (LSC), the quango responsible for administering Legal Aid. Although the historic remit of the Legal Aid Board (which became the LSC) largely meant dealing with firms of private lawyers, in 1999 the LSC embarked on expansionist plans to regulate and control the entire independent advice sector. For the last 10 years, therefore, the LSC has been behaving as if any two or more people gathered together to offer advice services, should be told what to do by the Commission. Sorry to say, the advice sector has by-and-large rolled over on this one. But despite lots of cuddly partnership talk, the real intentions of the LSC – to corporatise Civil Legal Aid, cut the costs and further vandalise the independent advice sector – have more recently become clear.

Civil Legal Aid leads the way

Fixed fees were introduced for Civil Legal Aid work last October. So the payment is the same whether the case is simple or complex. This is part of the LSC strategy to 'drive down costs' and cause a shakeout of the pattern of provision, reducing dramatically the number of firms involved and creating Super Legal Aid Corporates.

Despite vain attempts by activists in the profession to persuade their colleagues not to sign this new contract, virtually all did so. Now they are reaping the whirlwind as they find that they cannot make the numbers. Many advice providers who hold these 'specialist LSC contracts' are now finding that they are actually in debt to the LSC because the payments they have been receiving under transitional arrangements are greater than the money they are earning.

In Southwark, for example, a survey in February showed that

- Some organisations are building up a debt with the Legal Services Commission and concerned that this will impact on reserves.
- There is a very high level of risk attached to the contract and uncertainty around business planning.
- More potential new clients are getting in contact as other suppliers are no longer doing the work.

- The fixed fee contract is making it difficult to take on time-consuming cases and solicitors are having to change the type of cases they take on.
- There is a major negative impact on cash flow and viability.
- Organisations are at risk of not receiving payment due to not meeting the transitional targets
- There has been a huge additional administration burden leading to more costs.
- There has been an impact on staff morale as the viability of legal aid work is very uncertain and firms dependent on legal aid contracts may become unsustainable.

All of this was, of course, predicted before the changes took place. Organisations have apparently been raising these concerns through their umbrella bodies – the Law Society, Citizens Advice, Advice UK and the Law Centres Federation. Citizens Advice has indicated that it is a bit concerned (don't want to rock the boat with the large DTI grant on board), whereas AdviceUK has at least been a bit more feisty – warning that its members are facing closure as a result of changes to the way contracts are handled. Two centres are known to have closed since last October and a further eight were also on the brink of insolvency. Crispin Passmore, director of the Community Legal Service at the LSC, said it was helping the centres to work through the changes (what? Closing down? I don't think so).

Secondly the LSC is pursuing plans to create Integrated Social Welfare Law Centres – where the whole pattern of advice services in an area will be centrally determined by the LSC and local authority contracts awarded through competitive tendering. This one size fits all model not only vandalises local patterns of provision that may have been built up over many years, it also allows the opportunity for private sector players to move into this 'new market'. Four centres are now operational, inlcuding the first to go to the private sector (A4E in Leicester); A4E also looks set to take over advice services in Hull.

This seems to have got Citizens Advice off its backside — Chief Executive David (Dave to his mates) Harker has accused local authorities and the Legal Services Commission of "failing to consider the long-term impact on the voluntary sector of contracting out community legal advice centres." No doubt he had Hull in mind. Strange that he didn't complain about the contract model when Gateshead CAB and Law Centre won the contract for the first of such centres in 2007.

The LSC has been systematically arm-twisting local authorities to agree to jointly commission advice services with them, with some success. It has just announced six new areas in England and Wales where these centres are to be installed – Manchester, Stockport, Sunderland, South Wales, Gloucestershire, and West Sussex – and discussions are taking place in Barking and Dagenham, Wakefield and the East Riding.

The LSC says "The LSC and local service providers, funders, decision-makers and users will all work together to shape each service. In particular by working with local authorities we will be able to combine council expertise in identifying local needs with our expertise in ensuring service quality and value for money. This will enable budgets to be pooled and better integration of local services." And pigs might fly.

The London Legal Services Trust mounted a sponsored walk in May, to try and keep some of the pressured London advice services afloat. That looks like it is going to be a very Long March indeed.

Criminal Legal Aid not far behind

In parallel with the changes introduced to the Civil Legal Aid Scheme, changes to the system introduced last January will mean that thousands who find themselves dragged into the legal system are going to find themselves without proper legal advice. Motive for the changes? — "Moving to a market based system will make sure that we buy criminal legal aid services at the best price for the taxpayer." Got that?

Prior to January, on arrival at the police station you would be offered contact with a solicitor of your choice. From now on you will be directed to the Criminal Defence Call Centre (CDCC) — one phone call allowed. This is staffed, not by solicitors but by 'accredited' representatives who've done a training course — many of them actually ex-coppers. You will only be allowed to contact your 'own' solicitor if you pay privately. Needless to say the call centre advice is probably going to be different to that of a specialist defence solicitor. The new rules apply to anyone who has been arrested for breach of bail, breach of court injunction, breach of the Peace, Drunk and Disorderly, Fare evasion or having warrants out for your arrest.

If you're arrested for something more serious then you might get a visit, but not necessarily from a half decent solicitor. For the Legal Aid defence firms have now been moved onto fixed fees for police station attendance. This means they get paid the same for a simple inand-out case as for a highly complex one. One can see where the incentives lie on this one. Fixed fees have already been introduced in Crown Courts and are coming to Magistrates Courts later this year.

In addition to affecting us all as citizens, these provisions also have implications for activists (independent action often demanding activism remember......) Advice from our pals in Brighton is make sure you get people to shout out their names when arrested (that way you can get a solicitor to make enquiries at the cop shop via '3rd Party referrals'). The best legal resource for activists is at www.freebeagles.org.

Meanwhile in an interesting postscript to all this, it's clear that some people in the justice business don't think that Legal Aid is needed anyway. Judge Parsons, a Brighton magistrate recently refused legal aid to seven students up in front of his bench for 'aggravated tresspass' for their involvement in D-locking and supergluing parts of the EDO MBM arms factory, on the grounds that "they are intelligent enough to represent themselves" (the offences are punishable by up to three months inside).