

HLPAs legal aid update no. 1 (3/5/07)

This is a trial email update aimed at keeping HLPAs's members up to speed with the current legal aid reform agenda in so far as it affects housing practitioners. The intention is to circulate the update to members no more than month. Please circulate this email as widely as possible amongst your colleagues. Any comments about or for inclusion within the update are very welcome. Contact details are given at the end of the email.

Constitutional Affairs Committee Report

The Constitutional Affairs Select Committee's report '*Implementation of the Carter Review of Legal Aid*' was published on 1st May 2007. The report, which is available at <http://www.publications.parliament.uk/pa/cm/cmconst.htm>, warns that if the reforms go ahead there is a serious risk to access to justice among the most vulnerable in society.

Some of the Committee's other comments include:

- Their concern that the current emphasis on helping as many people as possible to the exclusion of all else is misguided – *“Access to justice and “value for money” for publicly funded legal work which are major considerations behind the current reform proposals, are not only about the quantity of legally aided acts, but equally about the quantity, nature and adequate geographical spread of those acts of assistance”* (para. 11).
- That spending on legal aid for social welfare law is not, as it is sometimes suggested, spiralling out of control - *“As opposed to spending on publicly funded Crown Court defence work and child care proceedings legal aid, legal aid expenditure for non-family civil legal aid, especially in the categories of social welfare law, has not increased over the last decade: gross cash spending on civil legal help...fell from £320 million in 2003-04 to £227 million in 2005-06, and is now slightly above the level of £210 million in 2001-02”* (para. 29).
- As a result, it is the Committee's view that *“...the government has been unwise in attempting to reform the entire system rather than in concentrating on those areas which cause the problems: Crown Court and public law children cases”* (para. 241).
- The Committee notes that number of housing suppliers has decreased by 30% since in the introduction of the Community Legal Service and warns that *“where the legal aid supplier base is generally economically fragile and in continuing, significant decline, reforms to legal aid remuneration and procurement must not lead to a further acceleration of this decline and reduction of the profitability of legal aid work”*. (para.51).
- As to fixed fees, the Committee warns that *“fee schemes which only provide for relatively flat fixed fees with very little graduation provide economic disincentives to taking on more complex cases. This is likely to disadvantage already vulnerable clients”* (para. 76) and that *“there is a major risk that specialist providers will be lost to the system”* (para. 82).
- The Committee notes that in London the move to a national fixed fee will result in a pay cut for 68% of housing suppliers (para. 114). The Committee recommends that regional rather national fixed fees should be introduced as *“only then will comparable work in effect be remunerated on a true like for like basis”* (para. 85).

There are many other cogently argued criticisms of the reforms within the report, which should be essential reading for all housing practitioners.

The evidence considered by the Committee, including HLPAs' submission, has also been published at <http://www.publications.parliament.uk/pa/cm/cmconst.htm>. The LSC's written evidence makes particularly interesting reading and gives some clues as to the government's likely response to the report.

The new Ministry of Justice will have 60 days to formally respond to the committee's report.

Consultations

The LSC has recently closed its consultation on the draft unified contract specification. The government's current plan is to bring the new specification into force on 1st October 2007.

The specification is the document which will change way housing suppliers are remunerated for Legal Help work. In particular, in its current form, it will see all Legal Help work housing commenced after 1st October 2007 remunerated on the basis of a national fixed fee currently set at £171.

The document is critical not only because it implements the national fixed system, but it also contains the long awaited detail about how providers will be required to work under the fixed fee system.

HLPAs' response, which is available on the HLPAs website, highlights a number of significant problems with the detail within the specification including the following.

- The rules within the draft specification which dictate how practitioners carry out Legal Help work, in particular the revised matter start boundary rules, require practitioners to work in a substantially different to the way they were working when the national fixed fee was calculated.
- The exceptional cases rules that are bureaucratic and onerous and there are strong disincentives to undertake any complex cases as a result.
- The specification suggests that the national fixed fee may be reduced during the life of the current contract, with exceptional cases ignored when recalculating the average case cost upon which the revised national fixed will be based.
- The specification contains contradictory information about the circumstances in which suppliers may change their case mix to make the fixed fee system viable.
- The specification perpetuates the restrictions on telephone advice and postal Legal Help applications by its mainstream (i.e. non CLS Direct) suppliers, as contrasted with the free reign given to CLS Direct suppliers to carry out such work.

Law Society judicial review

The new unified contract contains a broad, unilateral power of amendment on 42 days notice. It is that power of amendment that the LSC will need to use to implement the changes to the specification and bring in the new fixed fee system for housing cases - and it is that power of amendment that is being challenged by the Law Society in judicial review proceedings issued on 20th April 2007. If permission is granted, the Law Society is seeking expedition so that the claim is determined by the end of July 2007. Further details are available on the Law Society's website.

HLPAs' Housing Justice Campaign

On 10th April 2007 HLPAs held a special meeting for members on the legal aid reforms which was extremely well attended. Minutes from that meeting will be circulated in the near future, but the essential message to emerge from that meeting was that direct negotiations with the LSC to come up with a more workable set of reforms are not working, and that will remain the case unless housing practitioners continue to communicate their concerns about the impact of these proposals to MPs and through the media.

Following that meeting, HLPAs Executive has resolved to launch a Housing Justice Campaign as a focus for those efforts.

HLPAs resources are limited and it was agreed that there is little point duplicating the work of the Access to Justice Alliance and the Law Society's What Price Justice Campaign. However, HLPAs is uniquely placed to provide information about the effect of the reforms on those in need of housing advice and representation to a wider audience and, with that in mind, HLPAs will be taking the following steps as part of this campaign:

- Developing a dedicated page on the HLPAs website to explain about the work housing lawyers and advisers do, and why the reforms are so problematic – with the intention of directing external organisations and MPs to that page so that they can better understand what we do and why we are so concerned.
- To develop more extensive briefing materials including a set of FAQs about the reforms and a case studies booklet highlighting the types of cases and the types of clients who will suffer if the reforms go ahead.
- To provide information and materials to help HLPAs members lobby their local MPs.
- To continue and to develop HLPAs own lobbying efforts.

More information about the campaign will be posted on the website within the next few weeks.

Request for case studies

HLPAs urgently needs case studies from members to be included within its case studies booklet.

The case studies need to be focused on illustrating the benefits of access to specialist advice provision, contrasted with provision by call centres and paralegals. We need case studies which shed some light on why very vulnerable clients need more time and help why they lose out when national fixed fees are introduced. We need examples of cases where problems haven't been resolved by non specialist advice and have got worse and have need much more costly interventions at a latter stage. We need to provide examples of high cost Legal Help cases which have achieved wider public benefits. We need to come up with examples showing why specialist advice is critical right from the start in urgent cases.

Anonymous case studies (from which the client cannot be identified and which do not count as personal data for the Data Protection Act) are absolutely fine - something along the lines of the case studies in the BIHR's recent human rights case studies booklet http://www.bihr.org/downloads/bihr_hra_changing_lives.pdf or similar to the LGO's case reports <http://www.lgo.org.uk/housing.htm>.

Please submit any case studies as soon as possible and, in any event, by 18th May 2007.

Contact details

For case study contributions please contact HLPAs lobbyist, Nowsheen Bhatti nowsheenb@gclaw.co.uk.

For comments about or inclusion within this email update please contact Gareth Mitchell gmitchell@pierceglyn.co.uk.

For information or suggestions about the housing justice campaign please contact James Harrison james.harrison@edwardsduthie.com.