

Poor relations Love letters to legal aid

**“Poor people are
not simply rich people
without money”**

**Supreme Court helps
councils share services**

**New pre-ABS franchise
for smaller firms**

**File-sharing litigation
under scrutiny**



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Poor relation

It is safe to say much of Ken Clarke's Valentine's haul was made up of love letters to another. Legal aid has got lawyers' hearts a flutter with yesterday marking the closure of the consultation into what the MoJ openly admits is to be the biggest shakedown of the system since its inception 60 years ago.

Major providers went down to the wire preparing reams of responses to the government's 51 question-long questionnaire. The grim process has at least given critics the chance to take their arguments to the next level. Recitation of welfare manifesto has been replaced with thorough research into the statistical and practical implications of a plan which aims

to wipe £350m off the slate. Different groups have different gripes. The high street solicitor knows her time moonlighting as a local hero is up. The moneyed firms fear they will be called on to plug the gap with legal aid's other half, pro bono. And the city law centre, already well acquainted with life on the breadline, is seeing spectres of car crash court cases and a forgotten underclass.

But one thing's agreed on. When legal aid minister Jonathan Djanogly talks of 'access to justice' as he did in his latest speech, he does so from another planet.

Here, we take a look at the two ends of the spectrum to gauge the scale of the revolt the MoJ has on its hands.

Rushing to court? These clients barely rush to us

Julie Bishop guides us through the Law Centres Federation's 70-page response to the consultation, rebutting each aspect of the green paper

The client imagined by the green paper is not one law centres recognise. Our clients are poor, have low educational attainment, poor literacy and numeracy, higher than average rate of disability, poor command of English, poor mental health (often caused by the legal problem) and often lead chaotic lives.

They are not, in the words of legal aid minister Jonathan Djanogly, "rushing to the courts to do battle". They come to us at the end of a long chain of events that have unravelled in their lives when they are on the eve of eviction, have absolutely no income, don't understand what is going on and have no idea what to do.

There is no evidence to back the minister's assertion. The reality is the opposite. A civil justice survey published by the Legal Services Research Centre in 2010 found there had been a 36 per cent increase in legal need since 2007. Those with the most civil legal problems are black and non-white people, those living in high-density housing, lone parents, those on benefits and victims of crime.

More importantly, those eligible for legal

aid were more likely to do nothing to resolve their legal problems than the general population even though the problems associated with poverty are more pronounced, more frequent and 50 per cent more likely to result in stress-related ill-health and other adverse effects.

Expanded beyond its original intentions?

In 1949, Lord Rushcliffe envisaged that legal aid would give access to justice to all those people of "small or moderate means" and indeed 80 per cent of the population were covered by it. In 1979, 30 years later, 79 per cent of the population qualified for advice on any aspect of English law. Three decades on, only 34 per cent of the population qualify. The original intention was to ensure that all UK citizens, regardless of means, would be treated equally and fairly before the law.

Pro bono is not an alternative service and will not fill the gap created by the shrinking of the charitable legal sector. Pro bono lawyers need funded agencies to provide their free service. Law centres host them, provide



Extracts from LCF's draft consultation response

It is absolutely clear that the driving force behind these proposals is the aim of saving £350m from the annual legal aid budget. To suggest that these proposals are about discouraging recourse to litigation or to redress the unnecessary expansion of the legal aid scheme over the last 60 years just doesn't stand up to scrutiny.

"We challenge the underlying premise that £350m of savings needs to be achieved. We believe that, at a time of £6bn bank bonus pots, to launch a wholesale attack on our civil justice system, and one that is acknowledged to be targeted at those in the lowest two income quintiles, is extremely ill-judged."

premises, organise their appointments, provide their professional indemnity insurance coverage and train them in these areas of law which are very specialised and not the daily work of most firms. This also ensured the transfer of knowledge and experience to future generations of socially conscious lawyers.

Save it

Research by Advice UK, from 2009, suggests 42 per cent of the problems law centres help to solve are caused by administrative or

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Quote: Stephen Wexler,
Practicing Law for Poor People

procedural errors made by government departments and local authorities. Just last year the National Audit Office found that there had been no reduction in the Department for Work and Pensions' processing errors since 2007.

Savings can be made by ensuring that government departments and local authorities get it right in the first place. Alternately, those agencies that cause the problem could be charged for each person that requires legal aid following their mistakes – thereby incentivising the improvement of the systems, rather than only providing remedies for individuals.

The impact of the proposed cuts to legal aid together with the cumulative impact of local authority cuts will result in a 70 per cent drop in law centre funds. The cuts are not uniform across all law centres. Some will lose all funds. This means 85,000 fewer people will be assisted. One of the building blocks for the Big Society will be knocked out.

Julie Bishop is the director of the Law Centres Federation

SJ online



For the full break down of the LCF's funding cuts and other submissions to the consultation, visit solicitorsjournal.com/legalaid

A triple whammy that could decimate the legal aid sector

At the other end of the legal aid sector, **Adam Makepeace**, practice director at Duncan Lewis, argues that the government's love affair with consolidation is doomed to fail

As Britain's biggest legal aid firm, serving more than 20,000 clients, we understand the need to improve the cost-effectiveness of legal aid provision. Our growth over the past decade has been built on applying the Carter model of using solicitors and paralegals to achieve this without compromising the quality of service.

Right now though, the future of the legal aid sector is definitely in the balance. Over the past few years, we have all witnessed a gradual reduction in the number of legal aid firms. More recently though, the pace of this consolidation has been increasing at such a rate that serious stresses to the whole system have started to appear. Consolidation leads to significant cashflow pressures for those firms that have to suddenly take on a larger number of clients.

Although our turnover is approaching £20m, we still have a lock up in excess of 365 days because of end-of-case payments in legal help work and tortuously slow billing procedures in work funded by public funding certificates.

The cashflow pressures resulting from this are obviously immense. If you then add in to the equation the tax that we have to pay on work in progress – tax on fees we won't get until the following year – we understand how precarious the financial position must be for all firms which derive the majority of their income from legal aid work.

With the coup de grace being the green paper proposal to cut civil legal aid fees by ten per cent across the board – wiping out any operating margin – you can see how this triple whammy puts the whole sector in peril.

I believe the sector's future is very much dependent on attracting external investors to support this consolidation with the provision of finance and management skills. This October's introduction of the alternative

business structures should help to facilitate such investment, but the legal aid sector needs to demonstrate its viability to attract these external investors.

The returns for investors in the legal aid sector are never going to be particularly exciting, but, with such a financial model in place, militating against the otherwise powerful incentives towards efficiency through consolidation, it won't be surprising if they choose to give it a wide berth even when ABS arrives.

Many of the proposed reforms seem to have been derived in a vacuum completely divorced from the reality within which legal aid firms operate. The minister can choose to ignore the cashflow pressures the sector faces and watch a significant number of legal aid firms go to the wall, but he must not do so in the belief that this will achieve the consolidation of the supplier base he presumably desires.

Consolidation of the legal aid sector is bad for struggling legal aid solicitors firms. However, it is not necessarily bad for the solicitors profession, solicitors and, lest we forget, clients – if the supplier base can be maintained albeit under a smaller number of umbrellas.

The problems arise with this triple whammy – too little payment, too late alongside a usurious tax regime. It means firms that want to consolidate do not have the working capital to employ more staff in the numbers required. Nor is cash available to invest in the innovations the minister seeks, to help further reduce the costs base.

At the same time, such an approach does nothing to encourage external investment to secure the future of the whole sector and may leave his reforms and the provision of legal aid in tatters.

Adam Makepeace is practice director at Duncan Lewis