Getting Ready for (Carter)

- preparing for changes to Legal Help Services

Report from the 1 day Conference

for NfP Contract Holders in London

1st September 2006

Organised by: LAW CENTRES FEDERATION London Unit

Sponsored by: Bridge House Trust

CLIFFORD CHANCE

Citizens Advice

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1. Introduction

Advice UK London, Citizens Advice London and Law Centres Federation London worked together to produce a highly successful one-day conference for Not for Profit (NfP) contract holders in London on 1 September 2006.

The aim of the conference was to provide an opportunity for organisations to be informed of the most recent issues facing London advice providers raised by current DCA and LSC consultation and the Carter report.

Michael Murray of Advice UK London opened the conference and highlighted that:

- The conference is an example of what can be achieved when advice networks work together. Two-thirds of London’s NfP contract suppliers were in attendance and the combined voice is stronger when in partnership.
- Partnership is a key theme and the networks are committed to continuing to work together as members face challenges in responding to:
  - Legal Services Commission contracting
  - Introduction of Community Legal Advice Centres (CLACs)
  - Preferred Suppliers
  - Fixed fees

These issues raise challenges for networks in how best to support their member agencies but also for individual organisations that will have to work to retain LSC contacts.

- In this environment Carter feels like yet another challenge and could be viewed as controlling spend of legal aid meaning more hours and more work for less money.

Michael raised several issues that could impact on London advice providers that were referred to throughout the conference. These included higher costs in London not
Michael highlighted that individual organisations would benefit from networking with others similarly affected and that he, Noeleen Adams from the Law Centres Federation and Bobbie Pote from Citizens Advice were all committed to working together.

Michael emphasised that most importantly organisations coming together at this conference provides an opportunity to respond to the issues highlighted in the consultation paper detailed in annex I of this report. Responses need to be submitted by 12 October 2006 and participants were encouraged to share views at the conference and submit responses.

The conference consisted of a key speech from Martin Seel, Legal Services Commission London Regional Director, three workshops covering partnership, peer review and performance management and question time with a panel of representatives from advice networks and funders.

2. Key points arising from conference content

2.1 Key points arising from conference keynote speech

Martin Seel, LSC London Regional Director, gave the keynote speech and raised a number of London specific issues. A full report of Martin’s speech is at Section 3.1 of this report.

Martin highlighted the following:

- This is a period of real change for both the LSC and providers, which he emphasised as being a contractual relationship rather than a grant
- Fixed fees and their operation will enhance price control and costs certainty but bring challenges in relation to meeting London costs, if a national fixed fee is applied.
- Centrally LSC is carrying out analysis of the impact on diversity of service providers and the effect on clients and this will have a key impact on London where plural, diverse provision is needed and niche providers exist.
- CLACs and their operation in London - NfP providers are central to CLACs as they are based around social welfare law and the potential to extend to other areas of law and anticipated revision of organisational structures in light of the proposals that could include London wide provision. One London CLAC is planned for the first phase but no plans are available
- The emphasis is on performance management with immediate pressure to meet targets and secure performance levels for preferred supplier status
A number of wait and see issues where it would be important that national policy planners should hear the views of London providers including the case for financial assistance for the NfP sector in restructuring to meet the demands of the new regime.

2.2 Partnership workshop key points

The partnership workshop considered why partnerships are particularly significant now and what an effective partnership would look like. Participants considered partnerships in the light of the plans for CLACs and raised a number of issues:

- **Value of the Not for Profit sector**

Participants felt that there were historic issues re the “partnership” with the Legal Services Commission and that initially the sector had been brought in to bring down costs compared to private practice. Now new partnerships are emerging via CLACs and the NfP’s general good relations with local authorities are a considerable factor.

- **The background around which partnerships are built**

The current climate is one of no new money so there is an issue of organisations not being open to entering into a partnership where they may have to shrink or compromise. There is potential in this climate for existing partnerships to be destroyed. A small change in the “landscape” could easily wipe out (smaller) organisations so there may be a need to introduce minimum entry requirements into partnership arrangements.

- **Partnership costs - no economies of scale**

Partnership working means putting time into the arrangement - this involves time out of the workplace and small minority groups could suffer greatly under Carter. CLACs are monolithic - not a partnership so where Martin Seel talks of plurality this is a contradiction in terms. Sub-contracting is not a partnership. LSC should, therefore, clarify exactly what they mean by partnership i.e. do the LSC see sub-contracting in a CLAC/CLAN as a partnership?

There was a strong feeling in the working group that the LSC had their ideas on CLACs and CLANs the wrong way round especially with regard to London where local networking systems are already in existence and are de facto CLANs.
2.3 Peer review workshop key points

David Gilmore, an independent consultant, provided hints to help prepare for peer review as proposals indicate that the LSC will peer review all suppliers by April 2009.

This process has already started. Hints provided included:

- Obtain copies of the Quality Profiles for your contract
- Be aware of common errors
- poor spelling & grammar
- letters being out of date when sent to the client
- lack of progress for several months on a case
- lack of analysis and indication of problems to the client
- working as a scribe rather than adding value
- lack of adequate client care
- caseworkers working out of their depth

When preparing for a peer review organisations will benefit from:

- Taking a whole organisation approach and involve everyone
- Centralise responsibility - know who is responsible for letter/law updates
- Amend file review forms to reflect the IALs Guide to common issues

Participants generally supported the idea of peer review but had concerns that quality profiles would be created by electronic collection of data that the sector was not ready for and peer review reports would not provide sufficient information to challenge a decision. It was also noted that there was a shortage of peer reviewers with NfP experience.
2.4 Performance management key points

The timing of this workshop was highly relevant - performance management was a common mantra throughout the conference, being highly relevant in ensuring organisations meet casework targets that will ensure they gain preferred supplier status and in preparing for the introduction of fixed fees.

Pointers stressed by Georgina Morgan and Nicola Dean from Tower Hamlets Law Centre included:

- Managers need to explain targets to caseworkers and ensure they understand why targets have been set?
- Gather data so you know how targets fit into a day and have clear indications of what is achievable and what should be achieved
- Prioritise efficiency so caseworkers have sufficient time to carry out their work
- Organisations should think how to motivate staff
- If problems arise underperformance and incapacity/disciplinary procedures are essential
-Analyse the implications for the future- know how far you will have to change either the way you carry out your work or the structure of your organisation

Participants fed back the need for more support and training in managing performance in the current changing environment.
3 Full reports from keynote speech and workshops

3.1 Keynote speech - Martin Seel

Martin welcomed the chance to meet and talk with the sector and highlighted that he was giving personal comments drawing on personal experience in the NfP sector, followed by thirteen years with the LSC South East region before he joined London LSC as Regional Director in April 2005. He reiterated that proposals from the Carter Report are currently out for consultation in the LSC/DCA paper and is important to respond and make own views known.

History

First major changes came with the introduction of:

- Franchise Specification
- CLS Quality Mark
- CCA Audits - costs focus

There has been significant progress over time.

The Present/Future - Peer Review

LSC is moving away from an organisational quality assurance approach and moving to focus on quality of advice. Peer review is the main mechanism for this and it has been piloted.

Developed by IALS (Institute of Advanced Legal Studies). Based on:

- Random sample of files
- Graded for performance 1 to 5 (Grade 2 proposed as an entry point for Preferred Supplier status).

Ultimately peer review will be used to confirm an organisation’s quality and focus on ongoing achievement. This could enable partial and progressive release from existing controls such as; if SQM was not applied organisations could use their own quality measures, eg Investors in People.

Lord Carter proposes that peer review will eventually transfer to Law Society. There are real issues with this proposal as the Law Society’s dealing of complaints has proved to be problematic. A key issue for debate is what might go to the “trade” organisations and what might remain within the LSC.

Other tools are likely to remain within the LSC, eg file assessment and quality profiles:

- File Assessment - tool to guide use of Peer Reviews. Quality of Advice Criteria of this developed to closely correlate with Peer Review

- Quality Profiles tend to be individually tailored to organisation and include:
  - Client outcomes;
  - Case duration;
  - Case mix;
  - Case conclusion.
File assessment and quality profiles can be useful to develop/identify trends in performance and these issues can be brought to supervision.

Driving performance is key and organisations should be using these tools to know what goes on in interviews.

**Role of NFP Providers**

Having come from the sector, Martin stressed that he recognises the importance of the sectors contribution and was committed to a plural and diverse supplier base with recognition of niche subjects and client groups. However, there are changes heralded by national policy:

- **Look at CLS Strategy.** This provides clues of what the LSC will want:
  - What services likely to want delivering
  - What national policy regional offices will be implementing

- **Inclusion of CLACs and CLANs in the strategy**
  - Social welfare law is the basis for CLACs
  - Family Law linked to CLS strategy in CLACs/CLANs and now comes under the remit of national policy
  - LSC London would be looking at a CLAC in this initial round but currently market sensitive so unable to give any other details.

Responding to these issues is important as they raise considerable challenges. Martin noted this applies to LSC regional offices as well as organisations. LSC do listen to consultation feedback so NfP organisations should ensure that they respond to the consultation.

Martin personally sees the Nfp sectors expertise as being in social welfare law including:

- Welfare Law
- Housing
- Debt
- Mental Health
- Immigration
- Employment

Organisations may have to think through and consider other categories including: family and crime.

**In the future**

- LSC will state the service they want
  - Providers will bid to provide it
  - Allocate/commission those who LSC decided are best suited? to provide it
  - Important to remember that LSC funding is not a grant for what you want to do, it is contracted funding for services LSC wants to buy and see delivered

- Preparing for procurement
- Look at current case performance - volumes
- Understand any underperformance
- Take action to improve performance
- Work to get case levels up

Martin has seen examples of what can be done and in London 30% of organisations meets their target hours. The contract is a useful document as it states what must be delivered and must communicate any problems with delivery with the LSC and seeks to remedy. Martin conceded the Commission might not have a full understanding of the sector workings, as there had not been a good history of discussion with the NfP sector. Think about what performance is about and what is expected.

- Supervision in organisations is key
  - Use to drive performance
  - Draw on file reviews and issues arising from these

- Need to understand this is contractual funding for services LSC wants to procure

**Diversity and the impact of purchasing**

This is an area where Martin acknowledged being less able to provide some of the detail - is a case of wait and see.

- It is a crucial area for the Commission nationally and especially in London
  - may have seen the report by MD Associates which is available on the LSC website that reports the impact on Black and Minority Ethnic (BME) firms of proposals for competitive tendering for ‘criminal lower’ work in London.¹

LSC central teams are carrying out a detailed analysis of impact on both clients and service providers.

**Role of Providers**

LSC are now doing detailed work at supplier level for Carter impacts, for example take the contract size of £50,000 as stated in Carter, LSC are looking at whether this impacts as a PRE-CONDITION or A POST CONDITION. If the LSC gives notice of it being a post condition they may allow organisations say one year to get to £50,000 contract size

Work is being done to understand how this fits into the procurement regime.

There are plans for grant funding:

IT infrastructure - Carter proposes IT grants for private practice to implement revised systems. Why not NfP? Could a case be made?

- Also, costs of potential restructuring, eg organisations merging or growing bigger:
  - Genuinely too early to say on this
  - Personal view is this will/may be done on “wait and see” basis

- Already a number of firms consolidating
- Organisations have to respond to market changes
- May be a particular case to be made by NFP Sector for grant-in-aid
- Feed into consultation to make point

**Costs Control Targets**

- **Macro level** - crime takes significant amount of Legal Aid Budget; work with limited budget. Costs targets agreed with DCA for this
- **Longer term** LSC would see price tendering as potential solution combined with:
  - focus on out-liers of performance (eg more expensive organisations/firms)
  - control through specific contracts of certain specialist cases as seen with the High Costs Cases Unit

In the case of Civil legal aid Tailored Fixed Fee regime has brought price control and costs certainty. Initially TFF regime was not popular but organisations have seen how can make work. Fixed fees are likely to enhance this - Carter reforms bring price competition and potential leverage on costs and efficiencies and strengthen position with the Treasury. Price competition is not something Martin personally feels that comfortable with.

**How will LSC and DCA initiate and sustain reforms in stakeholder relations?**

- Clearly on the table from the consultation documents - Carter
- At national LSC/Government level unable to comment as not in public domain yet - more work on it

Martin’s personal view is that need to think through:

- How LSC work with suppliers in the new environment and in a partnership that means the LSC make demands
- Preferred Supplier and development of that key relationship
- Need to understand the relationship with LSC
  - It is a contracted relationship
  - Expectation that LSC will get what they purchase/commission

Martin emphasised in his closing remarks:

- Period of real change and real uncertainty
- LSC moving speedily to becoming a Commissioning body
- From one to one meetings he has had with a range of service providers
  - Acknowledge difficulties of change
  - How LSC respond to change
  - Also struck by genuine will to work with the LSC to provide:
- Innovative
- Good quality service
- recognising budget constraints

Martin reiterated needed to think about how respond to change and work together and develop the skills sets that are needed for change. He encouraged the sharing of practice and working and taking advice from the advice networks.

3.2 Questions

**Jocelyn Murphy, Disability Law Centre**

Q.  DLC is a niche provider with a contract for less than 1100. Carter proposes minimum size of contract, will there be any flexibility of niche.

Martin An example of an issue that is still open for debate via the consultation. There is a need to define niche.

**Simon Lawson, Hammersmith & Fulham CAB**

Q.  Borough wide structures - good or bad?

Martin Aware of some organisations that already have these structures in place and they seem to work. Too early to say but imagine there will need to be a structure that wont prejudice smaller organisations and equally there may be Borough of London-wide employers. Greatest leverage will be an issue.

**Jackie Peacock, Brent Private Tenant Rights**

Q. Confused over several areas, especially as has heard Minister indicate several assurances that don’t match with what has heard recently - are CLANs really an option? What is the position re splitting cases and if had a recent peer review will the organisation be peer reviewed again?

M. Not adverse to CLANs but need to understand what might look like and how to do it. Looking at both and definitely looking at a CLAC as more advanced in thinking.

Splitting is controversial in the LSC as has a specific meaning associated with cases going over hours but with eg welfare benefits and debt could be a case. However need to think through disincentives and consider carefully. Peer review result remains for 3 years.

**Pip Salvador-Jones, Mary Ward Legal Centre**

Q.  What about the General Quality Mark - is it going to wither on the vine? And what about transition to new contracts when only 30% of NfP suppliers meeting set target?

M. Learn from the organisations that have met 30%. Have picked up some sympathy for a London weighting - NfP organisations need to make the case for that. New contracts will be based on New Matter Starts and not hours and that transition will be a challenge. The SQM is likely to go and in time of change focus will be on contracted supply.
Pippa Mackie, Kingston upon Thames CAB

Q. Are family private practice going to walk away?

M. One of the risks of the new structure is that there is a finite budget and resources will be diverted from private practice into the CLACs. Also got to look at age provide of the supplier base and is there a potential to feed into CLACs and CLANs

3.2 Partnership Working Workshop

The workshop began with a brief introduction from Bobbie Pote and Patrick Cloughley from Citizens Advice as to the reasons why partnership working is important. These included:

- Government emphasis on the voluntary sector in service delivery
- Funders - BLF requesting partnership bids in Advice Plus, Change Up etc
- Sub-regional working
- Sharing of risks
- Innovative and joined up services
- Builds organisational capacity
- Better planning and access to services - especially around diversity issues.

Participants were asked to identify what needs to be in place and what makes a good partnership.

Clear purpose

- Must be a point or a purpose to the partnership that must be owned by the partners. The question is whose point is it? Should not be a forced marriage i.e. one imposed by the LSC or a funder
- Clear outcomes and project plan
- Commonality of interest
- Mutual goals, a bottom up rather than funder down approach.

Communication

- There must be good communication and understanding of what each of the partners do
- Benchmark good practice - share ideas
- Good personal relationships

Equality and diversity

- Shape of the written partnership agreement means that equality issues (of partners) must be dealt with at the outset
- Needs to be an awareness of partners of different sizes and a sensitivity to smaller organisations
- Equality

**Flexibility**
- Partnerships need flexibility - however, this can be severely restricted if the services are limited to franchise work

**Trust**
- Trust - partners must trust each other. This is fundamental.
- Should be willingly entered into not a forced process
- Partnerships cannot be formed where partners are competing for funding or where some partners are feeling insecure about their funding

**Time**
- Time - it takes time to build trust and cannot be forced. There is also a major time factor involved in attending steering group meetings, setting partnerships and so on
- Time allocated for partnership formation and management

**Structure**
- Structures, check lists and frameworks are essential - a visible wrapper, eg lead organisation that is accountable to the partnership through a steering group
- Coherent leadership/management
- Is it a formal partnership with a written agreement or a loose network informal partnership?
- Control - is it the partners who control the partnership or the funders/LSC
- Enforceable partnership agreement
- Partnerships -v- sub-contracting. It must be clear that there is a major difference between a partnership and one organisation sub contracting services
- Lead agency - there was a debate over whether there should be a lead agency and the equality of partner power. One partner will have to take responsibility for receiving any central funds, be the employer if new staff are taken on
- There must be a mechanism to deal with problems - conflict resolution.
- Problem of how to choose partners and do they match up in terms of services skills etc.
Resources

- Partnerships need seed corn money to set up although some of the bigger organisations may be able to provide some resources where there is no seed corn money.

- It costs time and money to set up a partnership. Time and cost of senior members of staff attending meetings etc. Partnerships can deliver efficiencies but are a more expensive way of running a service.

- Money - should funders be on the partnership? Probably not as equal partners otherwise they can become the driving force. They could act as sleeping partners.

- Risk - partnerships share risk but can it be shared equally. Does it mean the lead partner assumes the greatest risk?

- Full cost recovery

- Shared risks amongst partners and funders

- Recognition of how work across borough boundaries may affect project (i.e. funding)

- Financial and project management systems

Review and Evaluation

- Evaluation of the partnership and its performance is essential

- Benefits, barriers and risks all need to be analysed

Bobbie gave a brief resume of research findings into partnerships. He stated that:

- Partnerships can take many forms and that there needs to be clarity as to the type at the very outset.

- The most challenging partnership situations are those where money is involved

- There needs to be a defined purpose and agreement of the underlying values

- Outcomes should be agreed in writing as part of a project plan

- Coherent leadership is necessary and must be agreed by the partners

- An analysis of benefits, barriers and risks

- If money is the sole reason for the partnership then problems or a breakdown of the partnership could occur.

Further information on partnership

- Partnership working with LA - Making it real’, a summary report of the pilot Partnership Improvement Programme, to increase the effectiveness of
partnership working between local authorities and the voluntary and community sector is available via [http://www.idea-knowledge.gov.uk/idk/core/page.do?pageId=5145516](http://www.idea-knowledge.gov.uk/idk/core/page.do?pageId=5145516) and provides useful pointers re: partnerships with Local Authorities.

- [www.ourpartnership.org.uk](http://www.ourpartnership.org.uk) is an NCVO project supported by the Home Office’s Active Communities Unit promotes best practice for individuals and organisations working in partnerships between the voluntary and public sectors.

### 3.3 Peer Review Workshop

The session consisted of a presentation by David Gilmore, an independent consultant.

**Expectations**

Organisations present made comments and indicated the areas they were interested in being covered:

- How does Peer Review compare to transaction criteria (file assessments)
- Consistency - who will be responsible for ensuring it
- Appeal arrangements
- Any common findings and where does the NfP sector need to improve
- How can all organisations get the best rating

David’s response to the final point was that only one third of organisations had achieved ratings 1 & 2 but that the gap between their current level and what was required was really quite small.

**Presentation**

**Background**

Specialist Quality Mark was seen by the Legal Services Commission as a proxy for quality of advice. However, as not a direct measure of quality of advice, peer review was introduced, though key aspects of the SQM eg supervision, file review, complaints, anti-discrimination will become contractual terms.

Institute of Advanced Legal Studies (IALS) were asked to manage a Peer Review Programme independent of the LSC.

**How the system works**

**The peer reviewers**

Audits are carried out by private practitioners recruited by the LSC. NfP peer reviewers should have experience of working in the NfP sector. Peer reviewers must have 5 years PQE and preferably 10 and spend at least 50% of their time in the nominated category and have a minimum of 3 years experience of being a supervisor and 3 years experience of working under an LSC contract.

The supplier is given the names of the peer reviewers prior to the peer review and can raise objections before the audit is carried out.\(^2\)

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\(^2\) The full Peer reviewer list is available on the LSC website at
The suppliers

Organisations to be peer reviewed are selected because of:

- Targeted assessments - eg immigration
- Access reasons - eg if don’t have supervisor in place
- Random assessments - eg to collect performance information
- Gateway assessments - eg to get into preferred supplier

The peer review process

- A stratified sample of 20 files per category is collected via a computerised database
- 15 out of the 20 files are audited
- Linked files should be submitted so the reviewer can get a sense of the whole case

Peer review criteria and guidance

The peer reviewer follows criteria and guidance and looks for:

- Communication with the client
  - A clear note of all interviews confirming the clients instructions, and
  - A clear record of advice provided should be evident

- The advice
  - Reviewers judge the comprehensiveness of the advice eg whether issues other than the immediate problem were identified possibly requiring separate advice or referral
  - Reviews consider the degree to which the adviser used a holistic approach

- The work/assistance
  - Effectiveness eg communication should be accurate, easy to understand and clear
  - Use of resources - the reviewer considers the prospects for success and whether the work was a reasonable use of public funds

Peer review report

The reports are short, generally between two or three pages following the format of:

- Positive findings
- Area for development
- Major areas of concern
- Other areas of concern
- Further comments
- Suggested areas for improvement
- Overall value for money score
- Overall quality of work score
Peer review score

1 - Excellence  
2 - Competence Plus  
3 - Threshold Competence  
4 - Below Competence  
5 - Failure in Performance

1, 2 and 3 are currently sufficient to continue to provide legally aided services but 1 or 2 are required for Preferred Supplier status. A third of suppliers currently rank at 1 or 2.

If scored at 3 an organisation can have a 2nd peer review in 12 months time to see if this score can be improved? approved. David reported that 3 is the most common mark and the steps to progress to 2 are not significant.

A confirmed peer review result is valid for three years.  
A confirmed category 4 rating will result in a second review taking place in 6 months time.  
A confirmed category 5 rating will result in a second review taking place immediately.

Representations can be made against category 3, 4 or 5 results on the following grounds:

- Supplier disputes the overall rating  
- The file sample does not appear to be sufficiently representative  
- Any other reasonable grounds

David urged organisations to make appeals, as they are often successful.

How to appeal

Must submit representations to the LSC within 28 days of receiving the report and files.  
The reviewer and a senior panel member consider representations  
Results may be upheld, revised or a new review requested.

A final decision will be communicated to the supplier within 35 days of the receipt of representations.  
If a second review results in a confirmed fail, the LSC is likely to terminate a supplier’s contract.

A supplier has a further right of appeal to the Contract Review Body (CRB) prior to termination.

How can organisations prepare for peer review?

- Use Quality Profiles

Quality Profiles are reports of the outputs and outcomes (end points) that organisations report to the Commission. The end points are compared with the National Average.

Quality Profiles are the closest method to measuring quality of advice without carrying out a Peer Review. For preferred suppliers, the QP data will be used as a routine off site monitoring tool.
Is important that you receive - if you don’t already, then request quarterly reports

David stressed to exercise caution, as could be unreliable due to data integrity issues but worth using.

QP has risk rating of high, medium and low

High risk - may score 4 or 5 at Peer Review
Medium risk- may score 3 at Peer Review
Low risk - may score 1 or 2 at Peer Review

- Be aware of common peer review findings
  - Poor spelling/grammar
  - Reliance on out of date letters eg use template that has fallen out of date
  - Lack of progress for several months on an individual case despite client providing more information
  - Lack of analysis and indication to client of problems
  - Working as a scribe rather than “adding value”
  - Lack of adequate client care by indicating follow up, confirmation in writing or regular progress reports
  - Caseworkers working “out of their depth”

Conversely, the hallmarks of a good file are

- Continuity of fee earner
- Where there is a change, there is a reasoned explanation
- Update letters at each stage
- Opportunities for the client to have ownership of their matter
- Letters are clear and well written
- Avoidance of jargon
- Where jargon is necessary, an explanation of the term
- Sympathetic and supportive response to clients
- Evidence of supervision
- Attendance notes are clear and legible
- They pass the pick up test - someone else can easily follow on

Preparing for peer review

The whole organisation approach - need everyone to be involved and understand their role

Centralise responsibility - who is responsible for letter/law updates or for legal update with cascading information within organisation

Amend the review forms to reflect IALS Guide to common issue. Theses are guides produced by IALS on issues from peer reviewed files. Crime, immigration and mental health are currently available and social welfare guides will be issued shortly. Check the LSC website www.legalservices.gov.uk for an update.

Key Issues identified by participants

- Obtaining sufficient level of feedback

The peer review reports are very short, generally between one and three pages.
Under the old transaction criteria organisations would receive detailed feedback on individual files that had been reviewed so they knew where they stood in regards to the assessment of each case. Under peer review there are no comments on individual files even though the reviewer would complete a file review sheet for each file. Such sheets used to be made available under the transaction criteria system.

Organisations felt that it would be impossible for them to appeal a peer review outcome without this detailed information. Should a decision ever go to Judicial Review then the file review sheets would have to be declared as part of disclosure so why not release them with the peer review report? The lack of the file review sheets leaves a lack of transparency in the process.

- Need training from the Legal Services Commission

Participants expressed fears that their organisations would not achieve preferred supplier status and therefore be threatened. Training in peer review would be useful.

David stated training was not available but that ASA is delivering peer review courses in October:

ASA are hosting workshops, developed by Independent Peer Reviewers and the Legal Services Commission, on how to improve quality by learning from peer review. The workshops are aimed at debt and welfare benefits supervisors and caseworkers and the London event will be held on 22 November 1.30-4.30pm. Fee £35 plus VAT. Details available from www.asauk.org.uk

4.4 Performance Management Workshop

Georgina Morgan (Director) and Nicola Dean (Senior Solicitor) from Tower Hamlets Law Centre (THLC) facilitated a workshop on performance management that focused on the general principles of performance management and target setting including:

1. Setting targets
2. Working towards targets
3. Monitoring targets
4. Motivation
5. Problems
6. Future and moving to outcomes

1. Setting targets

Share information with the caseworker so they understand the context - THLC integrate performance targets into supervision

Supervisor discusses target that provides an opportunity to discuss, answer questions and ensure targets are understood. The targets are then confirmed in writing via a memo from the Director.

THLC targets take into account other work besides case work eg training or community work.

Managers must also clearly state implications of not achieving targets, i.e. loss of contracts, loss of jobs, closing of agency, loss of service for clients.
New LSC contracts will be payment in arrears, so managers will need to ensure high levels of early performance to maintain funding, and allow for some slippage due to leave/maternity/illness.

2. Working towards targets

Participants were asked to identify what prevents caseworkers working towards targets in organisations ie wastes time:

**Administration**
- Insufficient admin support
- Not returning reference materials to correct place

**Appointments**
- Cancelled appointments
- Going to answer the door (for appointments and callers)

**Case work**
- Losing papers

**Communication**
- Not enough staff meetings so have to repeat info over and over again

**Email**
- Not being able to manage inbox and losing emails
- Volume of emails

**Monitoring**
- Collection of statistics
- Duplicity of requirements
- Completion of LSC forms

**Post**
- Caseworkers having to do own post
- Not using window envelopes
- Not having franking machine

**Phones**
- Having/not having answer phone
- Distraction of internal phones

3. Monitoring targets

Georgina explained about the importance of collecting and producing useful statistics so that managers had a clear idea about efficiency rates of individuals and progress against targets. Georgina shared example statistics from the Law Centre.
THLC staff had found it useful to work with a consultant, David Gilmore to review file practice and also to attend ASA’s *Making Every Minute Count* training

4. Motivation

Georgina introduced the notion of carrots and sticks.

Example of carrots identified by participants:

- Do hours - keep job
- External training and outside of their own area
- Group celebrations eg cakes, drinks, finish early
- Local businesses donate prizes to encourage clients to return satisfaction surveys - could extend this to staff eg a TV
- Bonuses - how could they work in the NfP sector?

Sticks:

- TV with limited channels

Need to progressively increase targets for struggling case workers so that they are not demotivated and are given the chance to build up to sustainable hours.

5. Problems

The workshop considered dealing with problems and highlighted as soon as low performance is noticed in relation to a particular group or individual there is a need to work out what is going on and take steps to improve the situation. In relation to an individual not making the grade the following process was outlined:

**Supervision** - discuss and see if there are any extenuating circumstances

**Additional supervision** - if things don't pick up following this supervision, consider putting on additional supervision sessions

**Training or mentoring** - if the issues is not being able to use the computer efficiently or not knowing how to manage time training may be needed. Also consider getting a struggling caseworker to work alongside a high performing caseworker for a couple of hours so they can see how someone else works

**Underperformance** - if all the above have been done and there is still no improvement then it will be time to decide what to do, remain as are or take steps to replace the worker. Tower Hamlets Law Centre operate an under performance procedure which sets out a specific and agreed process that will be used with any member of staff who is under performing. This is a prequel to the incapacity or disciplinary procedure.

**Incapacity** - if nothing else has worked then legal advice on incapacity or disciplinary matters will be needed.

A query was made of how long to wait until manager initiates an incapacity hearing. General agreement was 2-3 months, as otherwise, hours lost too many for case worker to make up. Managers need to use training to support case workers, threats to warn
against poor performance, and monitoring to ensure that legitimate case times are being recorded.

6. The future and moving to outcomes

Participants identified:

- Lack of analysis of NfP sector - need to demand slow down
- Need further research into diversity issues
- London weighting issue needs to be raised
- Evidencing niche practice will be an issue
- Maximise New Matter Starts - consider partnerships with other organisations - eg if one has long complex cases can a better case mix be gained by working with another more front line organization?
- Roll up contract to lower New Matter Starts
- Concern about time needed for finishing cases rather than new matter starts.

Outcomes to take forward

- Training on contract compliance and new ways of working for case workers and managers.
- Training on new LSC contract structures and requirements.
- Buddying and mentoring systems for agencies to twin organisations that have been successful in achieving contract hours with those that need support.
- Need facts and figures about the amount of time needed to manage contract
- CABx stated that the THLC system was not fully compatible with CABx needs, as many CABx need their case workers to do 1100 hours, while Law Centres tend to have hours spread across staff, (this is not the case in all Law Centres), thus have more flexibility in how time allocated. Delegates wanted a performance management example from a CAB that was achieving its 95% target
- Need more guidance from LSC and networks on splitting cases.
Questions were put to a panel consisting of:

Ian Redding   Association of London Government (ALG)
Ann Lewis   Policy Director Advice Services Alliance
Phil Jew   Policy Director adviceuk
Glenda Terry   Director, Leicester Law Centres
Sophie Brooks   Legal Services Policy Development CitA
Jo Beddow   E Business Legal Services Commission

Noeleen Adams, Manager of LCF London chaired the session.

**ALG Commissioning**

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<tr>
<th>Question</th>
<th>Answer</th>
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<td><strong>Q:</strong> ALG commissioning process - how are you going to do it and what will you do to ensure you fund the right services?</td>
<td>Ian Redding ALG</td>
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</tbody>
</table>

Carter report has thrown own thinking up in the air:
ALG have been consulting on what to fund over the next two years and what priorities to fund. By October hope the priorities will be agreed and have achieved political support for - will now need to revisit following Carter.

View commissioning as a partnership and aiming for a sector shaping agenda - priorities that support development, side by side with other funding streams. A good example of this is work with Legal Services Commission in the past and will continue to do so.

Now feels like regimes changing when looking at own priorities.

Want own funding to complement LSC so want to commission services that make best use of resources.

March 2007 - funding will be agreed by then and commissioning will come into play. Carter may delay this process for up to two years. This is making the advice sector more complex - other sectors maybe simpler.

Quality Assurance

| Pip Salavdor-Jones Mary Ward Legal Centre |
| Q: Carter proposes the Law Society take responsibility for quality assuring solicitors practices. Leaves NfP open - what’s going to happen to the sector? |
| A: Phil Jew - Policy Director Advice UK |

Phil is concerned about the proposals eg.

**Law Society taken on quality assurance responsibility**

(i) Peer review has been developed by LSC and appears to be working reasonably well. It seems ridiculous to transfer that to the Law Society when they are dealing with their own changes brought about by Clementi

(ii) LSC are moving to a twin track approach for solicitors/non solicitors with the Law Society for solicitor agencies and no specific plans for non solicitor agencies. This seems nonsensical.

Another body taking on a regulatory role is not palatable - would favour an independent body outside of networks and outside of Law Society

Real disappointment of way quality assurance has gone, LSC introduced the Quality Mark from information to specialist level and so their quality assurance covered organisations they did not fund. Now seem to have dropped and adopted

(a) twin approach for NfP/solicitor contract specification

(b) Continuation of Generalist Quality Mark is doubtful and not known

Outside of Citizens Advice no advice specific quality assurance scheme exists.

How will agencies badged at General Help fit into CLACs & CLANs plans?

**CLACs**

| Ruth Hayes Islington Law Centre |
| Q: Several questions for Glenda |
What is your experience of tendering for a CLAC and any sense that the funds are being siphoned off from other advice providers.

What were the practicalities

How was the tendering process

A: Glenda Terry

Funding first - tender price sounded a lot - £1 million but in fact was less.

Glenda carried out calculations and taking into account local authority and Legal Services Commission funding of social welfare law - little more than was there therefore not new, bigger and better.

The CLAC process consisted of one public meeting and based on prior discussions that would like to see NfP organisations merging and taking on lead supplier role. In that way pressure was brought to bear. Believe more public meetings held in Gateshead, the other area to experience a CLAC tender.

Targets are greater than previously experienced and estimates a 50% under cost. Has compared Gateshead contract to Leicester and Leicester has greater targets. Have same case matter start targets but Leicester also includes 40% general help that attracts a 10,000 (what?) general help target.

Covers existing services that have contract in plus family and mental health.

Surprised that includes specification about service delivery eg 9am - 5pm opening and out of hours services in addition to new matter starts. This will require greater resource input that isn’t met by the contract.

Own application was assisted by the fact that previously the Law Centre has convened a Compact group and had reached agreement on the vision for a CLAC. This included outreach and mechanisms to target hard to reach groups. This was based on LLC’s own knowledge of the area.

Due to the contracting process taking pace, couldn’t reveal details of proposal but hoped to build on existing provision and some work could be undertaken by other organisations.

In terms of the process, lessons learnt include:

- Collect useful facts and figures including core costs for own service
- Know the average time/matter starts and productivity rate
- Have an awareness of client groups and access and what works
- Use strategic relationships and allies including private practice
- Draw on support from networks and Advice Services Alliance

Supplementary question asked by Pip - Did you have any opportunity to raise questions with LSC?

Once in the tender process could log questions on website but this the only method and no opportunity for dialogue. Others outside the process could query. Gateshead appears to have had more dialogue.

Other questions put to Glenda were:
Before contract is issued bidder will need to identify preferred supplier. Not sure how preferred supplier will work in areas of law that don’t practice.

Who is responsible for quality is a concern. Carter says main supplier will be responsible.

Sought advice from the Law Society re who was liable for quality of other suppliers.

£ comes to supplier and then they subcontract.

Depends on structure. Glenda took advice and if contracts are ending TUPE wouldn’t apply.

The first 6 will be evaluated and reviewed in light of response. Already there are firm rumours re lack of interest with allegedly one application for Leicester and 2 for Gateshead.

Further CLACs are planned for Derby and one in London.

But some local authority areas will not have CLACs and as Martin Seel said in the keynote speech only one currently planned for London.

Pip Salvador-Jones commented on the potential of talking to local authorities to slow down process of them being engaged in CLACs. Lead local authorities to question LSC - how meeting diversity, threats of discrimination and put LSC on the spot. Could be co-ordinated by networks.

Robust uniform consultation important. Too many things going on at once.

Do fit in, but depends on local experience, eg some areas such as Ipswich have informal structure including CAB, other NfPs and solicitors.

(a) ensure private practice are in the radar
(b) if work together consider forming a partnership
Glenda - difficult to know what will attract private practice:

- No business cases
- LA want General Help type services
- Nothing to attract family suppliers into CLACs

**Carter proposals**

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<thead>
<tr>
<th>Patrick Marples Director Lambeth Law Centre</th>
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<td>Q: <strong>Carter stipulates that preferred suppliers will need electronic systems and indicates support for private practice. As an NfP provider, what does this mean? What steps do I need to take and how will I fund the investment?</strong></td>
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<tr>
<td>A: Jo Beddow</td>
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Jo: Lots of challenges for LSC as well as providers. Some of Carters proposals are long term, whereas preferred suppliers are more imminent. Helpful to consider current, short and long term.

The current position is civil forms can be submitted electronically and if not already doing this ought to asap to experience electronic submission.

May have Case Management Systems that are incompatible. Started with up to 50 software suppliers with 5 or 6 being compatible and now 35 are fully compliant.

In April 2007 more changes are heralded, new fee structures will change the scenario together with civil charge forms. New screens will be available and currently speaking to software providers to ensure compatibility.

Longer term Carter will see full move away from current situation and the downloading profile will change - will be collecting specific financial information rather than client.

These changes should not require new hardware as will be similar to import. Will mean upgrading software.

Looking at the information that needs to be monitored remotely and how relationship managers will use. Will only intervene if something out of profile.

What about NfP systems eg AIMs cannot afford professional packages. LASA have been told have to pay to develop the software

Software across all sectors are commercial providers and in respect of AIMs cannot dictate to software suppliers what to do. You are clients - you need to demonstrate need for change. Are talking about 50 software providers, if give money to one, will have to give to all. Only a few software providers are not compatible.

Patrick - why not give each organisation £20-30K - money has been put aside?

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<thead>
<tr>
<th>Zara Riches East London Financial Inclusion Fund</th>
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<tr>
<td>Q: <strong>Why are the NfP sector considered not to be efficient and why are fixed fees such a surprise when proposed in 2005/06?</strong></td>
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<tr>
<td>A: Sophie Brookes</td>
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</table>
Not convinced that one sector more efficient than the other - Carter says so but not comparing like with like hence sceptism.

LSC research Quality and Costs demonstrates differences in work - eg solicitors more used to separate matters and tend to break cases up better - debt is a good example, there are different ways of working.

Vera Baird in her ministerial capacity gave an assurance that could have lots of separate matters and wouldn’t get pulled up.

Another concern is that NfP sector wont be ready for changes by April 2007.

Solicitors can work on certificated work. Solicitors will struggle too and have to work with solicitors.

Glenda - found allies across the sector due to implications of fixed fees.

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**Olufemi Oluleve, Wandsworth Citizens Advice Bureau**

**Q:** How will the proposed fixed fees impact on quality of advice?

**A:** Ann Lewis

Guessing - proposed fees in sustainable future lower than average NfP in and out of London.

If goes through will get less pounds for cases. Three possible responses:

1. Increase efficiency (though there is a separate debate)
2. Alter case mix
3. Compromise quality

ASA's initial response raises issue that clear pattern that some types of cases take longer. Organisations could elect to do less of long and more of shorter cases. This will potentially lead to serving different clients and prioritising straight looking clients and turning away more difficult clients.

Pattern of provision and links with funders Ian referred to the fact that ALG is reviewing its own funding in light of this. Hope is that you will be able to fund other work.

---

**Fosuah Poku, Wandsworth CAB**

**Q:** Isn't there a fourth option - don’t sign up.

**A:** Ann Lewis

Ann: very interested if people feel that strongly - need to know.
Sophie - Has been receiving emails from CABx since the publication of Carter and Sustainable Future consultation and seems to be in equal proportions of leaving and willing to stick with it.

Fosuah - but has to become a point where funding is no longer tenable - need to have a debate.

Bob Nightingale - Have got Management Committees and they have ultimate responsibility. These issues haven’t got to them yet. If did tell them need to deliver more better for less they might have an issue. They are in charge and need to be told everything

Patrick - and what about LSC roles, and boroughs expatriating advice funds from ALG?

Ian - have spent a long time working with sector to achieve good working relationship and have in place a funding mechanism where budget is brought together, which works.

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<th>Patrick Marples Lambeth Law Centre</th>
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<tr>
<td>Q: Private practice carries out less than 30% welfare rights and debt yet they are included in sample and slant the results. Is this grounds for potential legal action?</td>
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<tr>
<td>A: Ann Lewis</td>
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Haven’t reached stage of legal action yet but is a compact issue.
Annex I. Overview of changes

The proposals and their impact on London advice providers

Two documents - Legal Aid: A sustainable future and the final report of Lord Carter’s review of Legal Aid Procurement propose significant changes in the way in which legal aid services are to be brought and paid for by the LSC. It is important that organisations are familiar with these papers and respond to the consultation (see below for details of the papers, consultation and other materials).

Fixed Fees

Carter proposes fixed fees and endorses the LSC’s proposals to introduce fixed fees for legal help in all social welfare categories of law from April 2007. The sustainable future paper (see below) proposes a system of standard fees for the main categories of social welfare law. The fees have been based on claims and Tailored Fixed Fee (TFF) payments in 2005/06 excluding claims that the LSC consider to be “exceptional”.

NfP suppliers have higher average costs than solicitors in some categories of cases but not others. Where they do, e.g. debt, this could be accounted for by a different approach or different mix of cases. There was general consensus at the conference that further research was needed into this differential.

Page 28 of the sustainable future paper states that the LSC could prefer to move to a national fee so allowing them to re-allocate funds, but they recognise the difficulties this would cause for providers in London that tend to face higher costs.

There are separate arrangements for immigration and asylum work and mental health set out in Chapters 8 & 9 of the paper.

The possible implications of the proposals for the NfP sector are set out in a Draft Impact Assessment that accompanies the sustainable future paper:

“We have modelled the impact of NFP organisations moving to the TFF Replacement Scheme if fees are set on a national basis and our preliminary analysis suggests the if NfPs do not increase the numbers of matters undertaken, 92% will experience significant decreases in their publicly funded income, and the total spend with the sector in the categories of work covered will reduce by 50% (£21 million)”.3

Peer review

The Carter report says there should be “a minimum standard of quality for all legal aid practitioners assured by peer review” and states the LSC aim to arrange a peer review of all suppliers between July 2006 and April 2009.

Peer reviews since 1 April 2005 have been carried out according to the published process (http://www.legalservices.gov.uk/docs/civil_contracting/Independent_Peer_Review_Process1105.pdf).

When the Preferred Supplier scheme is launched, providers will be invited to apply to join the scheme. Exact details of how the LSC intend to peer review organisations with multi-categories and when all providers will be reviewed will be contained in the next

3 Draft Impact Assessment para 86
Preferred Supplier publication. Please monitor the LSC website for further details (www.legalservices.gov.uk).

ASA are hosting workshops, developed by Independent Peer Reviewers and the Legal Services Commission, on how to improve quality by learning from peer review. The workshops are aimed at debt and welfare benefits supervisors and caseworkers and the London event will be held on 22 November 1.30-4.30pm. Fee £35 plus VAT. Details available from www.asauk.org.uk

New unified contract

The sustainable future paper sets out a number of proposals for inclusion in the new unified contract, which is proposed to reflect the existing NfP and Solicitors contract from April 2007. These include:

- The introduction of a minimum fund take, either £25,000 or £50,000 per annum as a prerequisite for obtaining or keeping a contract
- A required quality standard consisting of a peer review score of 1 or 2
- The removal of level 1 work
- Power to terminate the contract, on three months notice, in order to introduce Lord Carter’s reforms of CLACs or CLANs

CLACS and CLANs

The Carter report endorses the LSC’s proposals for CLACs and CLANs and recommends that CLACs should be allowed to develop in a way that best suits potential clients. The Carter report also recommends that the LSC should carefully evaluate the impact of the first wave of CLACs.

A number of articles on CLACs have been published

- A group of inner London solicitors’ firms and Not for Profit agencies is planning to develop their own Community Legal Advice Network (CLAN) to test whether the model works. The proposal for a CLAN in inner-London challenges the Legal Services Commission’s view that CLANs will be developed to serve less densely populated areas, with Community Legal Advice Centres (CLACs) being set up in urban areas, and picks up on Carter’s recommendation that existing networks could be built on. See A starter CLAN: shaping the landscape from the Legal Action Group website.

- The August edition of LAG contains an article by Ole Hansen. Ole Hansen predicts a ‘bleak future’ for publicly funded suppliers of social welfare legal services with the introduction of the LSC’s Community Legal Advice Centre (CLAC) and Community Legal Advice Network (CLAN) advice models. See CLACS and CLANS - a new reality

- The tender documentation for the first two CLACs in Leicester and Gateshead provide clues about how CLAC contracts might operate. The tender documentation for Leicester and Gateshead is on http://www.legalservices.gov.uk/civil/tendering/clac.asp

- The Legal Services Commission has recently announced a further CLAC in Derby. The Centre is due to open in the summer of 2007, and local law firms and advice agencies are invited to an open meeting to hear more about the service prior to the tender process being launched in the autumn.
Quality Assurance

The future of the Specialist Quality Mark is in doubt and the Carter report proposes that all quality assurance for solicitors will be transferred from the LSC to the Law Society by April 2009. This proposal could impact on Law Centres and NfP organisations that employ solicitors. The report states that NfP agencies that have legal aid contracts but do not employ a qualified solicitor “will need to consider how best they fall under the new quality arrangements and whether they should develop their own advice standards based on peer review”.

Documentation and further support

The consultation

Legal Aid: A sustainable future - a joint consultation paper published by the Legal Services Commission and the Department for Constitutional Affairs.

This consultation paper has been issued jointly by the LSC and DCA following the recommendations of Lord Carter’s independent review into legal aid procurement (see below). The government and LSC are seeking views from all stakeholders and it is important the advice sector responds - not just the networks but also individual organisations. A point was raised at the conference that as the proposals are so considerable Management Committees should also be made aware of the potential impact of the proposals should they go through.

The consultation has commenced and ends on 12 October 20064

The consultation document and a draft impact assessment can be found at: http://www.dca.gov.uk/consult/legal-aidsf/sustainable-future.htm

You may also want to refer to Legal Aid - a market-based approach to reform - the final report of Lord Carter’s Review of Legal Aid Procurement is available at: http://legalaidprocurementreview.gov.uk/publications.htm

PLEASE COPY YOUR CONSULTATION RESPONSE TO YOUR ADVICE NETWORK.

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4 Please send responses by e-mail, post or fax by Thursday 12th October 2006 to: Emma McGovern Contract Design Team Legal Services Commission Head Office 85 Grays Inn Road London WCQX 8TX email emma.mcgovern@legalservices.gov.uk
Meetings

The Legal Services Commission is holding a series of Carter Information Briefings. The London civil law meeting will be taking place on Tuesday 26th September from 10.30am - 1.00pm at New Connaught Rooms 61-65 Great Queen Street Covent Garden London WC2B 5DA. Chrispin Passmore and Richard Collins will be leading the meeting.

Places need to be booked by 15th September on 0207 759 1750 or email angela.mensah@legalservices.gov.uk

Policy briefings

The Advice Services Alliance has produced a number of useful briefings. The following are available from www.asauk.org.uk Policy 2006.

Carter, the future of legal aid and the NfP sector - ASA briefing
ASA has updated its policy briefing summarising the key proposals in the Carter report and the latest LSC/DCA consultation paper on the future of legal aid. 
Carter, the future of legal aid and the NfP sector - a summary
(September 2006)

Legal aid: a sustainable future? - ASA briefing
This briefing sets out ASA's initial response to the proposed changes in legal aid and invites agencies to respond.

Legal aid: a sustainable future? - a summary
(August 2006)

Case lengths under NfP contracts - a summary
An analysis of average case lengths and why you need to know about them
(June 2006)

Case Lengths under NfP Contracts
This report provides a detailed analysis of the length of cases conducted by NfP agencies in 2004-05 in welfare benefits, debt, housing and employment.

Issues facing the advice sector
A short briefing on issues facing the advice sector as a result of recent changes proposed in relation to legal aid and the CLS.

Issues facing the advice sector - a summary
(June 2006)

If you haven’t already, also consider registering for the ASA CLS Support bulletin as they provide regular updates on LSC contract matters.
Email bulletin@asauk.co.uk