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Parliamentary Brief



The Law Society

Westminster Hall debate

‘Effect of legal aid reform on black and minority ethnic solicitors’

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Overview

The Law Society believes that legal aid is a vital public service which serves some of the most vulnerable members of society. Regrettably, we fear its future is being threatened by the package of reforms proposed by the Government following the Carter Review of Legal Aid Procurement.

If implemented, the plans could pose a serious risk to access to justice for thousands of vulnerable people. An economic analysis of the reforms carried out by LECG¹ has found that between 600 and over 1000 firms are likely to close as a result of the new pressures the plans will impose on them. The existing supply-base is already extremely fragile.

Surveys undertaken by the Law Society have also found that:

- 82% of family practitioners believe that their firm is less likely to undertake publicly funded work in the future
- 78% of mental health practitioners who are considering continuing to represent publicly funded clients think the quality of their service will decline
- 74% of immigration practitioners said their firms were less likely to undertake legal aid work in the future, and 67% thought their service would decline
- 95% of civil legal aid practitioners believe that the proposed fixed fees would make the work non-viable

The concerns of the Law Society and our campaign partners² have been echoed strongly by the recent report of the Constitutional Affairs Select Committee³ following its inquiry into the implementation of the Carter Review. The report concluded that if the reforms were to be introduced as planned, there would be a 'serious risk' for access to justice among the most vulnerable in society. The Committee also shares the Law Society's concerns about the move to competitive tendering, particularly as the 'transitional period' of fixed fees is likely to significantly reduce the numbers of legal aid suppliers. The Committee goes on to express concern that the Government is changing the fee system with little or no evidence about which cost drivers have actually caused the problem. Fundamentally, it is clear to the Committee that the Government has been unwise in attempting to reform the entire system, rather than concentrating on those areas which cause the problem.

Impact of the reforms on black and minority ethnic communities

Of all the issues considered by the Select Committee, the impact on black and minority ethnic (BME) firms was of greatest concern. Such firms will be disproportionately disadvantaged by the Government's proposals. So serious is the risk that the question has been raised whether they would constitute a breach of Race Equality legislation.

The Law Society has argued consistently that the Carter proposals have the potential to impact adversely and disproportionately on BME suppliers and communities. A report commissioned from MDA by the Legal Services Commission (LSC)⁴ to test the impact of competitive price tendering for London found that small firms and BME firms are over represented amongst criminal legal aid contractors. Furthermore, a move to competitive tendering on the basis suggested would have "a disproportionate impact on BME-owned and controlled firms, and also on the employment prospects of BME solicitors who are far more likely to be practising in BME controlled firms than

1 'Review of Proposals for Legal Aid: New Working Arrangements and Best Value Tendering', LECG Ltd, 30 April 2007

2 On 8 November 2006 the Law Society launched its What Price Justice? campaign to raise awareness of the value of legal aid and legal aid lawyers, using real examples of how clients have benefited from legal aid advice. The campaign is supported by a wide range of organisations, including MIND, Shelter, NSPCC, the Refugee Council, Advice UK, and the Child Poverty Action Group

3 Third Report of Session 2006-07, 'Implementation of the Carter Review of Legal Aid', 1 May 2007

4 Research on Ethnic Diversity amongst suppliers of Legal Aid services, MDA, April 2006

their white counterparts".⁵ In addition, the report found that there would be a similar impact outside of London.⁶

The Carter proposals pose similar risks to those identified by the MDA research, as they envisage a significant contraction in the supplier base through the setting of minimum contract sizes and competitive price tendering. The proposals represent the greatest challenge to small firms in respect of which BME suppliers are disproportionately represented. Therefore BME firms, particularly in large urban areas, are more likely to be adversely and disproportionately affected by the Carter proposals. As BME solicitors are more likely to instruct BME barristers, a decline in numbers of the former inevitably will mean a decline in numbers of the latter as well.

There is also likely to be a corresponding adverse impact on BME communities, as it has been established that BME clients are far more likely to instruct a solicitor from a BME-managed firm.⁷ This finding is related to civil legal aid, but it is likely that in many cases the same may be true for criminal work. Research has found that BME clients' choice of solicitor is often influenced by the need for a representative with a shared racial, religious or cultural identity, or linguistic ability. The loss of these firms would make it more difficult for BME clients to choose a solicitor who meets their needs. This will restrict access to justice for BME clients and could potentially lead to greater social exclusion of individuals from black and minority ethnic backgrounds.

The Law Society believes the protection of a diverse supplier base in legal aid is critically linked to public confidence in the justice system overall.

Impact on other population groups

The Society is also concerned that the proposals will adversely affect access to justice for disabled clients. Casework for disabled clients can be extremely time-consuming as more assistance is often required. For example, additional time may be needed in the taking of instructions and explanation of options. There may also be the need to incur additional expenses in relation to sign language interpreters or home visits. Within a fixed fee structure there is a risk that suppliers will have less economic incentive to take on these cases. Even those suppliers who regard this work as part of their public service duty may find that economic constraints significantly restrict the number of disabled clients they can assist.

There is a very real risk that rural communities will also be particularly adversely affected by the changes, as a result of a contraction in the supplier base. It is clear that the market model promoted by the Carter Review and accepted by the Government will favour volume suppliers. Small town high street firms which do relatively small amounts of legal aid work may not be able to achieve the size and capacity required quickly enough to win contracts in the new market. The likelihood is that they will abandon legal aid work altogether in favour of private paying clients or simply close down, leaving large swathes of rural England and Wales without local supply.

House of Commons debate

The Law Society believes it is now crucial that time is set aside for a debate on the floor of the House of Commons on the report of the Constitutional Affairs Select Committee. We have now reached a critical stage in the development of these proposals, and, given the level of concern already demonstrated by MPs, the legal profession, voluntary and representative bodies alike, adequate time to discuss the full-scale of this issue in the main chamber should be granted.

⁵ Ibid, p4

⁶ Ibid, p5

⁷ Ibid