



No change is not an option

The Ministry of Justice's latest proposals for the tendering of criminal legal aid services ("Restructuring the delivery of criminal defence services") aim to set up an "end-to-end service", with a smaller number of large contracts - no more than eight to ten - being tendered for across each criminal justice area.

Contracts would be let for the full range of criminal defence work, from the police station through to the Crown Court, with cases followed through to their conclusion. All contracts would include a share of police station and magistrates' court duty work. "Contract holders would therefore have greater access to the higher value, more profitable work, new ways of working and business tie-ups between solicitors' firms, barristers and their chambers, and potentially other providers," says the MoJ.

The proposals acknowledge that the proposed restructure would affect a large number of small and medium sized firms. They maintain however that "the current arrangements are unsustainable and change is necessary to maximise value for money for legal aid while enabling efficient firms to thrive and make a reasonable return".

In his statement presenting the proposals, Secretary of State Jack Straw acknowledged that the status quo is not an option, a line taken by the CLSA since before Lord Carter was appointed to conduct his review in 2005.

The CLSA is also pleased that the MoJ accepts that "it would not be sustainable to continue to reduce administratively set fees while maintaining the current supply structure" and that "we have already reached the point at which criminal legal aid work has become unprofitable for (some big firms) and it is no longer viable for them to continue to undertake it".

An adversarial criminal justice system in which the public can have confidence also requires the opportunity for those who are arrested or appear in court to have high quality legal advice and representation. That need is met by solicitors and advisors in person dealing with the complex issues that can arise during police investigations and in courts all across the country.

It is interesting that the MoJ talks only about business structures - perhaps understandably in the context of spending public money. The paradox is that reference is also made to the number of solicitors now on the roll having risen from 32,000 to 115,000 over a forty year period. What is omitted is the very important figure that only 5,500 of those solicitors are qualified to undertake criminal law duty representation. About the same number as 40 years ago despite the enormous growth in arrests and prosecutions.

Representation is needed at the point of delivery: police custody centres and courts.

There is no evidence to say that there are too many individuals doing the work which is required around the clock, seven days a week.

Alternative business structures will come into effect in November 2011, and the likelihood is that other businesses employing solicitors will apply for contracts. At the moment, the structure of the profession is disparate, and says CLSA, a way must be found of knitting it together into corporate or business structures with a spread of representation. There may be very large businesses that would be fundholders contracting out to firms all round the country. New businesses must be allowed to grow and reflect new opportunities in the marketplace.

Digby Johnson of The Johnson Partnership says the proposed changes are a "crying shame, and I wish they didn't have to happen". The current system serves clients in the way they want to be served, he said.

However, if there is no will to put more money into the status quo, what must be recognised is that each geographical area has its own special needs and concerns. "We need to look at different systems that provide what people need in the kind of area in which they live. There will have to be different patterns of firms," Mr Johnson said.

CLSA chair Mike Jones said: "The solicitors' profession has consistently demonstrated its ability to adapt to change and we will welcome the opportunity to discuss new ideas with ministers."

In responding to Jack Straw's comment about the number of lawyers Jones added: "We could argue that, given the number of new laws and procedural hurdles in recent years, we have been over legislated and under represented by our politicians."

There is widespread recognition that there must be change. Whatever the outcome of the forthcoming general election, it will only be a question thereafter of what that change may look like, says CLSA director Rodney Warren. There may be differences of view but they will still be in accord with the CLSA opinion that "no change is not an option". And, says Warren, the CLSA must lead the way in any forthcoming consultation.

Advance notice

CLSA's conference

Friday 15th October

Brandon Hall Hotel
near Coventry

Full details to follow

For information about CLSA membership,
contact **Sue Johnson**

Telephone: 01273 676725

Email: sue@clsa.co.uk

or see: www.clsa.co.uk