



'The role of legal NGOs within the new Community Legal Service'

(Response of the Public Lawyers in NGOs Group¹)

Introduction

1. This document has been produced at the invitation of the Director of the Community Legal Service, Crispin Passmore. It follows a meeting which took place between representatives of PLINGO, and the Legal Services Commission on the 14th July 2006, about our future relationship with the Community Legal Service.
2. We note that Lord Carter emphasised that the LSC: *"should ensure its procurement policies support a sustainable supplier base that has the capacity and capability to deliver a quality, accessible service that meets the needs of clients."*² We therefore very much welcome this opportunity to contribute to the development of the Community Legal Service and to explain the unique nature of our organisations and the contribution they can make in the provision of legal services.
3. We also trust that our initial meeting and this paper can mark the start of a constructive dialogue between us. Lord Carter also emphasised that legal services should be: *"procured in a pragmatic and flexible way, so services are delivered in a way that makes sense to both local suppliers and the communities and locality being served."*³ Clearly, there is no sense in forcing high quality, cost effective providers into structures which lack the flexibility to accommodate and preserve these attributes. The same reasoning must apply to organisations such as ours, which have a national, rather than a local remit.

What we currently bring to the CLS

4. We are organisations, mostly charitable, operating on a not for profit basis. Our 'business' is not primarily directed at the bringing in of legal fees, either derived from work within the Community Legal Service, or elsewhere. Many of us see our role as primarily influencing policy, a position that gives us a unique and high level perspective and expertise. Such perspective and expertise is recognised and welcomed by the courts when we do litigate on

¹ This is a group made up of lawyers in national NGOs

² Carter Report, Para 88, page 62

³ *ibid*

behalf of ourselves or our clients, and so far as the justice system is concerned, we bring 'added value'.

5. We fill in gaps within the current provision of legal services. We have a national presence, concentrating on themes such as community care and justice for the excluded, supporting and protecting vulnerable people, protecting human rights and the environment. We are proactive and seek out such gaps with the express objective of filling them. Thus, the Howard League has developed a specialism in the rights of detained children – because no one else does. The Public Law Project has done the same in cases of small community groups having funding withdrawn by public sector funders, Friends of the Earth and Liberty have unrivalled knowledge and expertise in environmental and human rights law respectively. The same is true of our other members in their own particular fields. New areas of law, now in the 'mainstream' have been pioneered by PLINGO members, such as human rights and public law, community care law, and a rights based approach in social security. When seen in this light, the issue of 'competitive tendering' would appear to have no application to us. No-one else does what we do.
6. Our legal teams often undertake work which is not within the scope of the current legal aid scheme, (on account of the subject matter, adjudicating body or on account of the type of client). Indeed, a significant amount of the legal work already has to be funded either by the organisation itself or by other organisations such as the Big Lottery Fund. These additional resources are then made available to members of the public by our participation within the Community Legal Service. The Commission's earlier consultation paper, 'Making Legal Rights a Reality' emphasised the Commission's wish to draw in more funding from 'a wider range of funders'⁴. Thus, a client can access our services through the CLS, and can receive advice and assistance in an area of law which is not provided at all, (or is underprovided) within the CLS - and at no cost to the CLS. The viability of these services which are not funded by the Commission would be put in question if we were no longer able to undertake cases with legal aid.
7. Cases in which our members act are often cases that have significant wider impact such that an area of law that affects a significant group is clarified to the benefit of the public.
8. We wish to continue this work, and see our partnership with the Community Legal Service as key. Our clients are amongst the most disadvantaged and would not be able to access the legal system and bring about change through litigation without the funding and costs protection legal aid can bring.

The position of so-called 'niche suppliers'

⁴ Making Legal Rights a Reality, paragraph 6.3

9. The Carter Report makes reference to so-called 'niche suppliers'⁵ and discusses the role of the 'public law children' suppliers. It recognises the importance of maintaining such suppliers and also recognises that the general proposals within Carter will not achieve this. It goes on to state that if they are to be sustained within the system, then 'there needs to be greater imagination applied, so that a solution is developed'. It suggests using a 'chambers' model. Whilst we would not entirely rule out such an approach for our organisations, there are real difficulties inherent within it.
10. Firstly, it presupposes that we are all 'front line' services, which we are not. Whilst some of us may have what appears to be an 'open door' service, it is only available following an initial diagnostic telephone attendance, or on referral, where an assessment is made as to whether the prospective client meets the client profile of the organisation. That client profile is particular to the individual organisation, (some broader than others) and may change according to the current priorities of that organisation which will itself influence the policy and legal skills that we retain. Appropriate referral arrangements are put in place to deal with those clients we are unable to take on.⁶
11. Secondly, all our organisations work nationally and therefore their potential client base is a national one. All organisations consider it vital to their work and profile to maintain a national presence and becoming subsumed within a 'chamber'; or 'consortium' would militate against this.
12. Thirdly, although our organisations have much in common in terms of structures and models of service delivery, we would appear to be too dissimilar to be able to enter into arrangements with each other, so far as our profile to clients and potential clients is concerned.
13. We suggest that if the CLS wishes its clients to retain access to our services, a different 'solution' needs to be developed. Although Lord Carter appears to be content with the fact ⁷ that many 'Not for Profit' agencies may withdraw from publicly funded work, we cannot believe that he would count organisations such as ours amongst their number.

Contracting with us – a different solution

14. In order to maintain all that is positive in the legal work that we do, we see little choice but to work within a system which is flexible enough to allow us the freedom to continue our legal work. We do however recognise that there are aspects of our work patterns that need to be adjusted and we are willing to address these. For example, we accept that we need to improve our referral

⁵ Carter Report Para 109, page 66

⁶ Note that such an approach is entirely in line with any supplier who needs to refer out because of over capacity or lack of specialism.

⁷ Carter, Draft Impact Assessment, para 100, page 20

systems so as to ensure that clients or potential clients do not drop out of the system with referral fatigue. Discussions are ongoing within PLINGO as to how this may be achieved.

15. However, there are concerns that some of our members may not reach the proposed £25/50K threshold for contracting. We consider that there are very good reasons for excepting organisations such as ours from such thresholds. In addition to the matters raised in this note, it is also worth remembering that where a case has been successful (either after trial or where the defendant settles before trial), the client's legal costs are usually paid *inter partes* and the claim on the legal aid fund is minimal. It cannot be the Commission's intention to provide a perverse incentive against seeking *inter partes* costs, or to punish successful litigators. Indeed, *inter partes* costs provide a useful source of unrestricted funds, which can cross subsidise other functions (including advice work).
16. In respect of our casework services, we cannot see how attachment to individual CLACs or CLANs can improve on what we do. If anything, it will reduce client access, as only those within the locality of the particular CLAC or CLAN would have access to us. However, the availability of our specialised services and general expertise to all suppliers and clients, as is the present position, would appear to be by far the more preferable option.
17. Our strategic approach to cases may, from an uninformed perspective, lead to accusations of cherry picking. However, given the resources available to us (most of our members' legal teams number less than 5) it is inevitable that our work has to be focused on particular cases. But as stated above, (see foot note to paragraph 8), this is the reality. All suppliers filter cases – in terms of the client's means, the strength of their case, the supplier's expertise or because the current matter start allocation has been exhausted. However, we feel that any such criticism can be met by the means described in paragraph 14 above, and in any case is far outweighed by the strategic value of the cases that we do bring and their impact on very many other clients.
18. We would also wish to explore the possibility of our members being funded directly by the Commission to undertake strategic test case work in our own names, as well as bringing cases on behalf of our clients. Although many of our members have been pioneering the greater availability of 'Protective Costs Orders'⁸ (which can give a claimant certainty that he will not be required to pay the other party's costs whatever the outcome of his case), this area of law is still in its infancy. Many strategic issues are better suited for resolution by a court when brought by an NGO rather than an individual client through the legal aid scheme. Few other measures would result in a greater development of the law.

⁸ See the results of the Working Party convened by Liberty and chaired by Maurice Kay LJ

Next steps

19. Further discussions are necessary amongst PLINGO members in relation to some aspects of this paper. Nevertheless, we feel it would be opportune to arrange a further meeting with the Commission so as to explore the issues raised by this paper, and the Commissions response.

*Conrad Haley (Public Law Project) - on behalf of – PLINGO
9 October 2006*

PLINGO Organisations

Action against Medical Accidents (AvMA)

AvMA) is an independent charity which promotes better patient safety and justice for people who have been affected by a medical accident. A 'medical accident' is where unintended harm has been caused as a result of treatment or failure to treat appropriately. This includes where the care has been negligent, but does not necessarily mean that it was. AvMA believes that whatever the cause of a medical accident, the people affected deserve explanations, support, and where appropriate, compensation. Furthermore, we all deserve to know that the necessary steps will be taken to prevent similar accidents being repeated.

Child Poverty Action Group

CPAG is the leading charity campaigning for the abolition of poverty among children and young people in the UK and for the improvement of the lives of low-income families. It undertakes test-cases to extend the interpretation of law in favour of claimants using, where appropriate the European Court of Justice and the European Court of Human Rights.

Disability Law Service

DLS aims to provide up-to-date, informed legal advice for people with disabilities, their families, enablers and carers and to undertake casework representing disabled people at every stage of the legal process. The Service gives specialist legal advice on Community Care, Education, Employment, Welfare Benefits and Consumer/Contract law.

Friends of the Earth

FOE is one of the leading environmental pressure groups within the UK. Its activities include public education, environmental research and educational research and educational projects. It also seeks to improve access to public law in the environmental context, particularly following the UK Government's ratification of the Aarhus Convention. It's Rights & Justice Centre takes on test cases in environmental public law.

Howard League for Penal Reform

The Howard League for Penal Reform is the oldest penal reform charity in the UK. It also provides legal advice and assistance to professionals working with juveniles in prison and also takes on individual cases, advising and representing children in custody.

Liberty

Liberty is one of the UK's leading human rights and civil liberties organisations. In addition to its campaigning and lobbying work it takes on strategic test cases with a particular focus on cases raising issues under the European Convention on Human Rights. Most of its cases are civil (and

therefore come within the public law category) but it also on occasions represents criminal defendants.

MIND

Mind is the leading mental health charity in England and Wales. We work to create a better life for everyone with experience of mental distress by:

- advancing the views, needs and ambitions of people with mental health problems
- challenging discrimination and promoting inclusion
- influencing policy through campaigning and education
- inspiring the development of quality services which reflect expressed need and diversity
- achieving equal rights through campaigning and education.

Prisoners Advice Service

PAS is a national service offering free, confidential advice & information by legal professionals to prisoners, particularly concerning prisoners' rights and the application of prison rules. It takes up prisoners' complaints about their treatment within the prison system, taking legal action where appropriate.

Public Law Project

PLP was founded in 1990, with the object of providing assistance in matters relating to public law to people and groups who historically have had little or no access to public law remedies. The Project has three aims - to increase the accountability of public decision makers; to enhance the quality of public decision making; and to improve access to justice. It undertakes casework, training and research.