



'Preferred Supplier Scheme' (Response of the Public Lawyers in NGOs Group¹)

Introduction

1. As Paragraph 1.1 of the paper makes clear, the scope of the paper (and presumably of the scheme itself) is '*primarily about the business relationship between the Commission and the frontline providers of legal aid services: solicitor firms and advice agencies*'. Unfortunately, the problem for us is that our organisations do not easily fall within either category. In brief, we are lawyers working within the following organisations:

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

¹ This is a group made up of lawyers from Legal NGOs working across England and Wales

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. Liberty is not a charity but its legal work is charitably funded.

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.

2. The following is clear from the descriptions of our respective organisations:

- We are organisations, mostly charitable, operating on a not for profit basis;
- We work nationally rather than being confined to, or drawing clients from defined geographical areas;
- We represent defined groups and/or advocate in respect of defined issues;
- We tend to have small casework teams which provide valuable legal advice and casework services in niche areas of the law, undertake test case litigation, and/or other strategic litigation to further our objectives;
- It follows that the volume of legal aid work that we carry out is relatively low;
- It also follows that legal advice and litigation is not the only activity that we undertake.

Thus, we are not the 'frontline providers' of legal services that the paper describes. Nonetheless, we consider that there is no inherent contradiction between the stated top-line objectives of the Commission (as set out in the Consultation paper) and our continued role as legal service providers. We hope that the Commission will recognise the unique roles that our respective organisations play in our respective areas.

3. It is also clear that we are recognised centres of excellence in our respective fields, and that we have been collectively responsible for very many significant legal cases. Our impact has been wholly disproportionate to both our size and resources. We see no reason (and indeed have been given no reason) why we should not be able to continue with this work within our existing configurations and structures.
4. We note that the Commission recognises that its proposals do give rise to concerns about access and diversity within the supplier base that need to be considered carefully (para. 4.22). We believe that those issues are of particular importance in relation to organisations such as ourselves and are concerned that the Commission does not appear to have a proper understanding of the role that such organisations can play in promoting access to justice in our respective areas. Our response to the Preferred Supplier Scheme must be viewed in this context.

Consultation Question 1 – Quality of Advice Tools

5. The advice tools appear to be proportionate and appropriate. However, the Commission will need to bear in mind that the use of any such tools will need to be proportionate and appropriate to the smaller volume of legal aid casework conducted by organisations such as ours, so as to ensure that their impact will not be too onerous.
6. We understand that peer review will take the place of the current quality assessment process and this is to be welcomed. We were concerned that the paper appeared to suggest that peer review will not be used in ‘smaller categories’ and that a different assessment process will be used instead, (a series of standard questions applied by LSC caseworkers rather than by peer reviewers). However, following enquiries with the LSC, we have been assured that this refers to minor categories in the context of a firm that has its own "major" categories with some additional smaller categories of work undertaken – in other words that it does not apply to firms undertaking only smaller categories of work. We would be concerned if this was not the case.

Consultation Question 2 – Extending Devolved Powers

7. The devolved powers proposals are cautiously welcomed. We note that the paper states that the *‘corollary is that Preferred Suppliers must follow the rules and guidance in these areas and exercise effective and appropriate control over legal aid funding’*. It goes on to warn that sanctions may be applied where the use of such powers has been deemed as inappropriate. We would need further information as to what these will entail for organisations such as ours. This is because the paper is not clear as to what the Commissions considers as a ‘low risk area’ (save for family cases and non-high value cases), and therefore we are not clear the extent to which we might benefit from such an extension.

8. The Commission also needs to understand that many of the cases that we run are complex, and of these, many are at the 'cutting edge'. The implication would appear to be that devolved powers, to the extent that the paper describes, will not be available in such areas.
9. We would hope and expect that the advice and litigation in cases such as these are not subjected to additional scrutiny, and indeed question whether devolved powers should in fact be granted on the basis of the individual supplier's record, rather than by area of law or cost. If that is not to be the case, we note and welcome the Commission's commitment to improved decision making in relation to areas where powers have not been devolved.

Consultation Question 3 – Key Features & Benefits

10. The award of Preferred Supplier status appears to be confined to service delivery within specified geographic areas and to volume of service. This, as described above, seems to exclude niche suppliers like ourselves with small contracts delivering a nationwide service. It has to be said that it is difficult to be enthusiastic about any features of a scheme that appears designed to exclude you from it. That said, the best feature is the extension of devolved powers to legal aid practitioners, (subject again to our notes of caution).

Consultation Question 4 – Proposed Management Framework

11. The performance management framework is once again premised upon the supplier being large and carrying a high volume of cases. However, there is no reason why it cannot be suitably adapted for organisations such as ours, (which tend not have additional personnel charged solely with practice management issues).
12. We do however welcome the proposal for a Relationship Manager and the proposed shift of quality assurance to the Law Society.

Consultation Question 5 - Reduction of bureaucracy

13. The commitment to the reduction of bureaucracy is to be welcomed. We trust that the Relationship Managers will be able to apply themselves to matters that arise in a pragmatic and flexible manner, mindful of the objectives that we all strive for, (i.e. the delivery of quality legal services), and will have a feasible number of suppliers to deal with.

Consultation Questions 6 to 9 – Process and Criteria

14. We must return to our initial points, that the proposed scheme itself, together with the Process and Criteria that are applied in order to guard access to it, are not appropriate for organisations such as ours.
15. The phrase "*need to deliver services at a volume.....to achieve economies of scale*" at para 2.20 does not reflect reality. We understand that the reason (given publicly and verbally by the Commission's employees at the Consultation Event at the Grange Whitehall Hotel on 11th April 2006) for wishing to

exclude small contract holders was that they were too costly for the Commission to manage. This does little for the Commission's credibility or its professed commitment on access to legal advice, if this was to result in the exclusion of organisation such as ours from the legal aid scheme.

16. Presumably, the Commission expects us to enter into arrangements with either other (private sector) suppliers, or with each other. That is unrealistic.
17. Firstly, it presupposes that we are 'front line' services, whereas 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 (and often does) change according to the current priorities of that organisation.
18. Secondly, all 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 see no benefit (for themselves, the Commission or to their prospective clients) to confine themselves to arbitrarily decided boundaries. There would seem to be no real reason for this, save for 'fitting into' the Commission's current preferred model. That is a reason associated with bureaucracy – a triumph of form over substance.
19. Thirdly, although our organisations have much in common in terms of structures and models of service delivery, we are too dissimilar or 'niche' to be able to enter into arrangements with each other. In any event, we might still be too small in terms of volume of work to qualify under the rules as presently drawn. Again, we question why we should be pressed into such arrangements, and again consider this to be a triumph of form over substance.
20. We urge the Commission to review its proposals and consider carefully the position of organisations such as ours. We have achieved much over the years and remain far from convinced that the changes now proposed will allow us to continue this work. It would be a great pity if we are forced into changes against the interests of our clients and our organisations, or be left with no choice but to work outside of the legal aid system.
21. Finally, this consultation, and our response to it, has been undertaken without sight of Lord Carter's recommendations. Clearly, if the terms of this Scheme are to be significantly revised as a result of those recommendations, we would hope and expect to be consulted afresh.

- on behalf of the Public Lawyers in NGOs Group -
12 June 2006