



'Top Slice Review'

Response of the Public Law Project

1. PLP is grateful for the opportunity to be able to put forward its views in this matter, although we wish to make four preliminary points regarding the process set out in the Commission's letter of the 18th August 2005.
 - (a) The Government Code of Practice on Consultation provides that 12 weeks is the minimum period for written consultation. In this case, Specialist Support Providers have been given some seven weeks, commencing in the peak summer holiday period.
 - (b) It is unclear as to whether you are seeking views on the general concept of Specialist Support, on the way it is delivered, the amount it costs or PLP's role within it. This makes a coherent response difficult. The focus of this paper shall be on the first three points, but PLP would expect a further opportunity to make representations if its own role within the Specialist Support Service is in question.
 - (c) The process excludes our clients - the agencies and firms to whom we supply our services. Therefore this process should be extended so as to include them, and in the meantime, regard should be had to their views contained in the Commission's earlier evaluation of the Service, ('Methods of Delivery Specialist Support Pilot - Evaluation Report October 2003'.)
 - (d) It seems odd that one of the terms of reference is another consultation document - 'Making Legal Rights a Reality'. The essence of consultation is that the subject matter does not contain foregone conclusions, and that the body undertaking the consultation has not yet fully made up its mind. However, we are being asked to apply 'Making Legal Rights a Reality' on the basis that it has already been finalised. That seems to us to be 'putting

the cart before the horse'. PLP itself has reservations about elements of 'Making Legal Rights a Reality' in any event, and will be responding to the consultation regarding the proposed new strategy in due course.

2. We would therefore ask that any proposals made by the LSC which would result in significant changes to the Specialist Support Service, should be subjected to a proper consultation process once the Commission's strategy has been finalised, in terms of time frame, parameters, and range of parties consulted, before consideration is given to their implementation.

Introduction

3. The Public Law Project, a national registered charity, 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. PLP has been a feature of the legal and social policy landscape for some 15 years.
4. PLP defines public law as the framework and principles of law which govern the exercise of power by public bodies, including the administration of justice, the roles of central and local government, the provision of public services, the activity of major public corporations and institutions. It is particularly concerned with the processes of decision making and with the exclusion of significant groups of people from justice.
5. Our aim was and remains, to improve access to public law remedies, such as judicial review and non-judicial redress systems, for example, the statutory ombudsman and complaints procedures, for people whose access to them is restricted by poverty, discrimination or some other form of disadvantage. 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.

PLP saw its participation in the Methods of Delivery Pilot as playing a key part in the achievement of these aims, and wishes to continue its participation within the Specialist Support Service.

Background Materials

6. We have considered the LSC Corporate Plan 2005-08, 'Making Rights a Reality'

(the proposed new strategy for the CLS), as well as the 'Methods of Delivery Specialist Support Pilot - Evaluation Report' (October 2003), and 'Improving Access to Advice in the Community Legal Service - Report on Evaluation Research on Alternative Methods of Delivery', (July 2004). The latter two documents are essential reading for anyone charged with the responsibility of evaluating the Specialist Support Service, providing as it does a useful and informative background as to the establishment of the Service, together with the results of a very thorough independent evaluation of it.

7. We have also noted that 'Making Rights a Reality' lists the Specialist Support Service as having been one of the achievements of the CLS¹.

The Corporate Plan

8. The Plan rehearses the objectives of the Community Legal Service:
 - The protection of clients' fundamental rights in the face of action by public authorities and to receive a fair hearing in matters such as criminal, mental health and family proceedings;
 - The resolution of disputes in the most appropriate way - the concept of proportionate resolution;
 - The addressing of problems that cause social exclusion or to help clients move out of social exclusion.
9. The Plan states that these overarching objectives must be attained within a Legal Aid budget which is under ever increasing pressure due to demand (especially in matters of public law involving children & criminal matters), rising case complexity and rising costs.
10. Within these overarching aims, the LSC has set itself 4 corporate priorities. We intend to paraphrase the first three² and explain how it is that the Specialist Support Service assists the Commission in achieving them, within the framework proposed in 'Making Rights a Reality', and within the Community Legal Service.

Priority One - Enabling clients to have access to high quality services which meet their needs.

11. This aim is two fold – Firstly, in civil cases, the LSC aims to direct resources into services that enable people to solve their problems at an early stage and to avoid

¹ Part 2 viii.

² The fourth does not appear to be relevant in this context as it relates to the Commission itself.

court where possible. The priority groups are those at risk of harm or losing life/liberty, those affected by abuse of authority, or whose human rights are threatened, and those who face poverty, disadvantage, discrimination or exclusion. Secondly, All clients should have effective geographical access to services within the Community Legal Service. Thus, the overall target is to increase the number of acts of assistance - to help as many people as possible and also increase the success rate in asylum cases.

12. The Specialist Support Service was established in order to assist the LSC in discharging its statutory responsibility to develop the CLS, (under section 4 Access to Justice Act) as well as to help the DCA meet PSA targets 3 and 6 (2002 - amalgamated as target 5 from 2004), which were to increase access to advice and reduce the number of clients resorting to the courts³.
13. The Specialist Support Service works on the basis that the user (the adviser) passes on advice that the client may not otherwise have been able to access (eg s/he may live in an area where specialist advice of this nature is unavailable). The adviser therefore becomes 'skilled up' and can then deploy the newly acquired knowledge to assist other clients that s/he would not have been able to assist otherwise, or would have had to refer.
14. The evaluation of the Service carried out by the LSC showed that the principal reason for advisers contacting the service was on account of the complexity of a particular case or because they were unsure how to progress a case. Very often, such a situation would come about when additional legal problems⁴ arose for a client already being advised in another area of law - for example benefits/housing within a family matter, public law remedies within a welfare benefits matter. Advisers were also able to access essential background resources such as case reports, journals etc, from the Specialist Support Services, which was a more effective use of their time than seeking these materials out for themselves.
15. It is clear that the ideas behind the introduction of Specialist Support Service, and the way that it is used in practice, dovetail extremely well with the strategy set out in 'Making Legal Rights a Reality'. A continuing theme within this latter document is the need for a seamless advice service to disadvantaged groups. It quotes research which shows that in context of the poor and socially excluded, where there is one problem, the client is likely to have others capable of legal resolution. The Specialist Support Service has been shown to⁵:
 - Help develop expertise in areas where it did not exist before;

³ See Methods of Delivery Specialist Support Pilot - Evaluation Report' (October 2003)

⁴ Para 1.16 supra

⁵ Para 1.2 supra

- Reduces the need for referral;
 - Assists the adviser to be able to deal with multiple problems.
16. Making 'Legal Rights a Reality' acknowledges that 'legal advice deserts' will remain⁶ - 'not every area will have legal and advice services in every category of law. Clients wanting face to face advice will need to travel ...' 'It is unrealistic to expect every town to have a wide range of legal aid practitioners in every area of law'. However, Specialist Support can mitigate the effects of this by providing access to those 'missing' areas of law through existing providers - and has the facility to take referrals by means of the 'Direct Casework' aspect of the service. In addition, it can encourage existing providers to expand the range of services that they provide through a back up support service.
17. As for the future, the Service is also ideally placed to assist in the process of setting up and maintaining excellence within Community Legal Advice Centres, again in its role as a back up resource to them. It can operate in a similar way with the proposed Community Legal Advice Networks. The establishment of either model does not reduce the need for Specialist Support, rather it enhances it. The need for a specialist back up service is especially acute for services orientated more to dealing with large numbers of general enquiries.
18. Thus, Specialist Support will help CLS providers to respond seamlessly to the cluster of problems faced by clients, so as they may offer a range of services from information to initial advice to complex litigation, enabling clients to have access to the high quality services which meet their needs. It can and does enable clients to obtain advice at an early stage - before the matter becomes complex and requires court proceedings.

Priority 2 - To work with suppliers who provide quality, value for money and client focused services ... to improve by working with a network of committed firms, barristers and not for profits that offer quality and value for money.

19. The overall target here is to drive up performance standards.
20. The Methods of Delivery Specialist Support Pilot - Evaluation Report October 2003, included discussions with user groups. It commented that there:

'was almost universal approval of the level and quality of the expertise on offer from all Services ... The relatively instant availability of support was also very important: a single telephone call, answered more or less immediately, was an

⁶ Para 6.6 - Making Legal Rights a Reality

*essential art (sic) of quality.*⁷

*'Overall, users valued three new advantages of Specialist Support - a service funded and designed explicitly for them; an increase in available service making access easier; and a greater range of expertise and choice across the types of support provider.'*⁸

Training was similarly praised as high quality and very relevant to the needs of users'.⁹

21. According to users, the availability of the Service resulted in the following benefits¹⁰:

- Greater confidence in dealing with matters;
- Access to expert advice saves time in the long run (and money);
- A greater/faster development of skills;
- The ability to negotiate better/more timely settlements;
- The ability to avoid costly options;
- The possibility of exploring new aspects of cases or taking cases further.

22. In addition, Specialist Support Providers themselves noted the increasing complexity of questions from users, indicating an increasing sophistication and ability to advise on their own cases, and improvements in their diagnostic skills and knowledge of the law. Specialist Support Providers also noted that their advice meant that weak cases were weeded out early on.

23. Most remarkably, the 2003 User Satisfaction Survey showed that 92% of those that responded said that the Service led to successful outcomes for the client. In summary, the evaluation stated¹¹ that Specialist Support has sufficient positive impacts on both users and their clients case outcomes that the method of delivery should become a permanent feature of the CLS.

⁷ Para 2.6 – see note 2.

⁸ Para 2.21. supra

⁹ Para 2.8 supra

¹⁰ Para 2.22 supra

¹¹ Para 2.51 supra

24. In our view, much more can be made of Specialist Support, with the Providers discharging a more strategic role. They have considerable potential to bind together with users - eg networking with public law suppliers, social welfare suppliers etc to create more joined up advice. It can (and does) act as a catalyst in the identification of test cases on common problems.
25. 'Making Legal Rights a Reality' talks of the benefits of strategic action - raising awareness of the type of problems that can be helped by group action, negotiation with the bodies causing the problems, litigating if this approach fails. Specialist Support providers become aware of repeat problems, either within a discrete locality or on a national basis, and can initiate ways to address them. PLP for example, led a campaign group of advice agencies and Law Centres which resulted in a significant improvement in certain administrative procedures carried out by the Department for Work and Pensions and the Driver and Vehicle Licensing Agency which had been causing particular problems for refugees and asylum seekers. The strategy was one involving training, litigation and lobbying. This approach is echoed in Making Legal Rights a Reality.¹²
26. Thus, there is considerable room for strategic action planning meetings, involving local providers and the Specialist Support Services, either arising ad hoc in relation to local needs or as support to strategies developed by CLACs and CLANs.
27. PLP does however have concerns with aspects of the training element of Specialist Support. Currently, the training is organised by LSC Regional Offices, both in terms of content and administration. We welcome the latter but believe that the former should revert back to the Specialist Support Providers. PLP believes that training should be focused and proactive. Specialist Support Service Providers continuously identify issues that arise either externally in a particular geographical area, (for example endemic Housing Benefit delays in a local council), or within an individual agency or firm, (from a need for training on say, judicial review procedure). They should be free to be able to organise training events within the locality and/or in-house.
28. There should be a shift in emphasis away from training that is organised on the basis of some perceived demand across individual LSC regions, none of which are homogenous in terms of either their demographics or demand for training, and which duplicates that offered by many other providers, (albeit at a higher cost). There should be a move towards more highly targeted sessions responding to needs or problems within an individual supplier or locality, (see the approach described in paragraph 25 above). This will also significantly reduce the workload

¹² Para 2.9 supra – the CLS should be playing a strategic role including test cases 'against parts of government that repeatedly fail to uphold rights or incorrectly refuse benefits ...'

of Regional Offices.

29. Similarly, more can be made of Direct Casework in helping the CLS to provide a seamless service, as well as being a training tool in itself.

Priority 3 – to deliver a sustainable scheme demonstrating value for money, financial control and positive client outcomes

30. The overall conclusion of the evaluation was that¹³:

'Specialist Support does provide a value for money alternative method of delivering access to legal services. The pilot participants have shown themselves to be a pool of dedicated experts who have an important part to play in ensuring clients get timely high quality advice. As has been highlighted in the section on Access, Specialist Support improves client's access to legal advice in a range of ways. The section on Quality demonstrated the number of positive impacts on the user group, their clients and future cases. The Section on Costs demonstrated that the unit cost per advice, casework and training is reasonable per user.'

31. The 2003 Evaluation set out a number of recommendations to further improve value for money, which were subsequently implemented. Thus:

- All contracts have been revised to match funding to actual hours achieved, with projected output agreed at the start of the contract period and then subjected to reconciliation against performance;
- Direct casework is now funded on a work-done basis;
- Training being more closely matched to Regional identified needs, (PLP has concerns about the training aspect of the contract, which I set out above in paragraphs 27 – 28).

32. Moreover, a further round of recent negotiations instigated by the LSC have resulted in further changes, for example by increasing the performance indicators, (and thus lowering the threshold at which recoupment may take place). Specialist Support Providers have engaged with the LSC in a constructive and helpful manner during these negotiations.

33. However, PLP does not believe that a proper evaluation of the cost effectiveness of the Specialist Support Scheme has yet been carried out. The 2003 evaluation used a calculation based upon cost per user, but this ignores the following

¹³ Para 4.5 supra

factors¹⁴:

- Advice leading to the cessation of work on a legally aided case at an earlier point in time than it might have done otherwise.
 - The time saved by suppliers, (and hence not charged to the Legal Aid fund), by being able to consult a specialist with the skills and resources to answer specific points quickly. This is particularly so in complex matters where research time on the part of providers could be reduced from a period of hours to a matter of one contact with the Specialist Support Service lasting several minutes
 - Early advice and intervention leading to the avoidance of appeals and other litigation stages, with quicker and better settlements being achieved.
 - Reduction of the need to instruct counsel under the legal aid scheme in order to progress a case.
34. Thus, an evaluation of the cost effectiveness of the Specialist Support Service cannot properly be made without regard to the wider context – the impact the Service has on providers generally and the consequent savings to the Legal Aid budget as a whole.

The Public Law Project

35. PLP has undertaken work under contract with the LSC since the inception of the Methods of Delivery Pilot. We believe that the provision of advice on public law matters is a fundamentally different skill to that of providing advice on a field of substantive law. It requires knowledge of judicial review procedure and public law principles (which include the rights now given effect to by the Human Rights Act, as well as rights established under the common law). It also requires the ability to undertake an analysis of the provisions of the substantive law applicable to the case, which itself must then be viewed through the lens of public law principles.
36. We may be consulted over a relatively straightforward matter such as the serving of witness statements within judicial review proceedings. However, in our experience, queries tend to be far more complex. For example, we may be consulted over a possible challenge to a decision to exclude a pupil from school. This requires an analysis of the legal provisions which govern school exclusions, together with an examination of the appeals structure (if any). The facts of the

¹⁴ Paras 2.22 to 2.51supra, discuss these issues though they are not costed.

case are then examined in this context, the decision making process tested to see if it is fair, and then the decision itself is tested to see if it was lawful, reasonable and/or proportionate. We may then advise on suitable remedies, and further advice may also be given in terms of the potential availability of public funding.

37. Much our time is spent on complex cases such as these, (and the trend is that this amount is increasing). These cases are also approached by our advisers as a teaching tool, to improve the level of public law expertise amongst contracted suppliers. This adds an extra dimension to our work. We are also keen to combine such work with training on a localised basis.
38. In addition to assistance with public law matters, we deliver training courses, (perhaps the more obvious teaching tool). We have of course delivered a series of 'set piece' courses jointly with Liberty, but have found that the trend amongst suppliers is for them to request 'bespoke' courses, rather than to book themselves onto courses where the content has already been settled. That is of course entirely right, (and the approach that we encourage), but this does demand from us far more time in terms of preparation and development. Nevertheless, we see this as the way forward – collaborating with suppliers to assess training needs, developing courses to suit those needs, and collaborating also with other Specialist Support Suppliers to assist, (an example being the course we delivered in Bournemouth which included Citizens Advice, as well as a contribution from the Dorset Race Equality Council).

Conclusion

39. By having access to the Specialist Support Service, the Community Legal Service is assisted in its aim of ensuring that clients have effective geographical access to a seamless legal information and advice service, promoting proportionate dispute resolution, in the most cost effective way. It would be sheer folly to discontinue it now.

Conrad Haley
Public Law Project
27th September 2005