

# **REVIEW OF LEGAL AID DELIVERY AND GOVERNANCE**

**By Sir Ian Magee CB**

## CONTENTS

Executive Summary .....	3
Part 1 - Introduction .....	5
Part 2 .....	10
2.1 Background .....	10
2.2 – Current Arrangements .....	18
2.3 – LSC Finances .....	25
Part 3 - Relevant reports, reviews and guidance.....	30
Part 4 - Evidence .....	39
Part 5 – Analysis and Options .....	51
5.1 Analysis .....	51
5.2 Options .....	62
Part 6 – Recommendations .....	70
Part 7 - Conclusion .....	78
Annex A - LSC 1999-2009.....	81
Annex B – The Commission: Subsidiary boards, committees and groups.....	87
Annex C – Process Maps .....	89
Annex D - Glossary .....	98
Annex E – List of Contributors .....	101

## Executive Summary

This review was set up because of concern from Ministers about the effectiveness of Ministerial accountability for and policy direction of legal aid; and of the transparency of financial management arrangements. I was asked also to identify appropriate delivery models for legal aid; and to explore the possibility of separating the Criminal Defence Service (CDS) from the Community Legal Service (CLS).

The first four parts of this report explain the approach taken; explore the background to the issues; describe other relevant reports and reviews; and summarise the evidence I have collected. Part 5 analyses the problems and explores options for change; Part 6 contains my recommendations; Part 7 is my conclusion.

The Legal Services Commission (LSC) was created more than ten years ago through the Access to Justice Act 1999. The sponsor Department was then the Lord Chancellor's Department. The current sponsor, the Ministry of Justice, has much wider responsibilities.

Much else has changed in that time. There have been several policy reviews. There has continued to be concern about the quantum and the focus of expenditure on legal aid. The financial climate in 2010 is considerably more challenging than in 1999, and is likely to remain so. The LSC has undergone considerable change and reform as it has moved to commissioning, procuring, and paying for services. It has moved a long way from its roots in the Legal Aid Board as personnel and focus have changed. Its role has developed piecemeal. In short, the role, leadership, and political background to the delivery of legal aid have all changed. There is a lack of clarity in the supplier base as to who is now calling the shots over policy. This may be inhibiting effective delivery of Ministers' policy intentions.

In the light of all this change, it is surprising that there has been no previous review of the LSC's purpose, governance, and relationship with its parent Department. An evaluation, and an opportunity to clarify, is long overdue.

The Ministry, in some respects, has become more interventionist towards the LSC. There is though inconsistency within the MoJ about how it monitors the activities of and supports the LSC, with a number of different Director-General commands involved, and some evidence of "man marking". There is evidence too that some corporate focus over financial accountability has been lost with many changes in personnel and structures over the past few years.

## Review of Legal Aid Delivery and Governance

The governance of the LSC does not reflect current best practice. There is confusion about whether Commissioners' role is primarily executive or advisory. There is evidence that financial forecasting, important both to the Ministry and to the LSC, lacks transparency. As this review has gone on, increasingly concerns have surfaced about the LSC's financial systems and processes. There are opportunities for simplifying the dialogue over policy; and for efficiencies, perhaps through better use of shared services, and involvement of the market for transactional processing. There is also a need to think again about relationships with the legal aid market, and interaction with contracted suppliers.

My recommendations are intended to allow Ministers to decide afresh the nature of the relationship they desire between their policy and delivery arm. None of the fundamental structure changes are simple to achieve. However, there has been such fundamental change since the LSC was first set up that a fresh start may be necessary. In addition, some immediate steps should be taken to address weaknesses around policy focus, systems and governance within the Commission; and within the Ministry, to clarify how the continuing relationship is best taken forward. Establishing a climate of trust between Ministry and operational arm is essential if the difficulties of recent months are to be avoided.

The terms of reference for this review ask me to explore the separation of the CLS and CDS, for which there already exists power in the Access to Justice Act 1999. This is done in Part 5. I conclude that there is no compelling argument for separation; however, exploring in more depth the option for local or pooled delivery of advice services may offer a promising way of meeting Ministers' objective of providing more focus on social welfare.

## Part 1 - Introduction

### The need for review

1. Last year marked the 60th anniversary of the creation of the legal aid system in England and Wales. Along with the NHS, state education and the welfare benefits system, the creation of legal aid formed part of the major post-war reforms that have shaped modern society. Legal aid enables application of the principle of equality before the law, one of the fundamental principles of a democratic society. Legal aid was established by the Legal Aid and Advice Act 1949. The Access to Justice Act 1999 established the Legal Services Commission (LSC), a non-departmental public body now sponsored by the Ministry of Justice (MoJ), with effect from April 2000.
2. The present arrangements have been in place for ten years. The environment in which they operate has changed significantly over that period. In evidence to the Justice Committee, a Director General at the Ministry of Justice said that “the nature of the Commission’s task has changed significantly since the Access to Justice Act was passed. As time goes on it becomes much more a body which is engaged in procurement and commissioning and contract management, which certainly was not the position at the time the legislation was passed.”<sup>1</sup> Furthermore, as the Institute for Government, in its study into arms-length bodies to be published shortly, reasons, it is timely to review the arms-length organisation (and sponsoring department) every 3 - 5 years. There has been no external review of the LSC in its 10 years of operation.

### Terms of reference for the review

3. To assess the delivery and governance arrangements of the legal aid system and make recommendations to:
  - explore the separation of the Criminal Defence Service (CDS) and Community Legal Service (CLS) and options for doing so effectively and efficiently should that be the recommended way forward
  - provide for effective and transparent financial management of both funds and their administration
  - provide for effective ministerial accountability and policy direction in respect of both the CDS and CLS, while continuing to ensure that every

---

<sup>1</sup> See: [http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/uc1016/uc10\\_1602.htm](http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/uc1016/uc10_1602.htm)

## Review of Legal Aid Delivery and Governance

application to the CLS and CDS funds is decided fairly, within the criteria, at arm's length from government

- identify appropriate delivery models for both the CDS and CLS and their relationship with the Ministry

4. I have looked at the overall delivery model, at the efficacy of the governance arrangements and at what the Commission delivers as well as how it does so. I should emphasise that neither the terms of reference nor my interpretation of them involves any review of legal aid policy.

### **The wider context**

5. Legal aid is interconnected with other legal and social provision and decisions beyond the remit of the LSC, and indeed of the MoJ, can impact upon it. For example, with regard to criminal justice:

- Central Government policy resulting in new legislation, new offences, new procedures, or tougher sentences creates extra legal aid costs
- Changes in police practice or capacity, for example by dealing with more or less cases through measures such as cautions, can have a profound effect on expenditure
- Crown Prosecution Service (CPS) decisions to charge on police recommendation, speed in progressing cases through the court and volume of evidence used will all impact upon the extent of legal support required
- Judiciary/court decisions on numbers of hearings, delays, evidential rules and experts used will again impact upon the extent of legal support required
- Serious fraud prosecutions represent some of the most expensive cases and so policy decisions on the part of the Serious Fraud Office may translate into additional calls on the criminal legal aid budget

6. With regard to civil and family justice:

- Central Government policy/legislation – creating new rights, legal status or procedures impact on the demand for legal aid. Examples include the Mental Health Act 2007 which created new Tribunal rights and the introduction of Working Families Tax Credits where early mistakes in administration led to a surge in demand for welfare benefits advice.
- Policy decisions by local authorities and other bodies such as the NHS in relation to clinical negligence, the family courts advisory service

## Review of Legal Aid Delivery and Governance

(Cafcass) in relation to the welfare of children or the UK Border Agency in relation to asylum will also impact on demand for legal aid.

- Court decisions on numbers of proceedings and hearings, length of process and court fees will again affect the legal aid required.

### Role of the Legal Services Commission

7. The LSC was given wide powers under the Access to Justice Act. It commissions the services people need from solicitors, barristers and advice agencies, and remunerates them for work done. The LSC is responsible, on behalf of the Government, for the Community Legal Service (CLS) and the Criminal Defence Service (CDS). The CLS is a network of organisations which funds, provides and promotes civil legal services. These services have developed to include information, telephone and face-to-face advice and representation. The CDS guarantees that eligible people under police investigation or facing criminal charges can get legal advice and representation.

### Legal aid expenditure

8. In 2008-09, legal aid resource expenditure was £2.09 billion, with £0.91 billion spent on 1.3 million civil acts of assistance, and £1.18 billion on 1.6 million criminal acts of assistance. £124.4 million was spent on administration.<sup>2</sup> The current Government's policy is to rebalance legal aid spending towards civil legal aid. The Commission has worked to control the amount of expenditure incurred on criminal legal aid. This has fallen in real terms by 12 per cent over the past five years.<sup>3</sup> The Commission has primarily controlled criminal legal aid expenditure by implementing a series of significant reforms to the remuneration of and eligibility for criminal legal aid, which have not always been welcomed by the legal profession. The Government has stated its intention to move towards a system of Best Value Tendering for the procurement of criminal legal aid, under which the market price would be determined by competition between suppliers.

### The CDS and the CLS

9. Throughout the passing of the Access to Justice Act 1999, there was uncertainty as to how distinct the CLS, CDS and the LSC would be, specifically in relation to their budgets.<sup>4</sup> The terms of reference for this

---

<sup>2</sup> Legal Services Commission Annual Report 2008/09, p.9.

<sup>3</sup> The Procurement of Criminal Legal Aid in England and Wales by the Legal Services Commission, NAO, p 5  
URL: <http://www.nao.org.uk/idoc.ashx?docId=b5e109ab-3268-4040-a685-cf63f52b16d4&version=-1>

<sup>4</sup> For example: Mr Paul Stinchcombe, Hansard, Access to Justice Bill, 14 April 1999  
URL: [http://hansard.millbanksystems.com/commons/1999/apr/14/access-to-justice-bill-lords#column\\_307](http://hansard.millbanksystems.com/commons/1999/apr/14/access-to-justice-bill-lords#column_307)

## Review of Legal Aid Delivery and Governance

review require me to look at the arguments for separating the funds. I look at this in the analysis section of the report in Part 5.

10. The 1998 Modernising Justice White paper proposed:

*'The Criminal Defence Service will be a separate scheme from the Community Legal Service described in chapters 2 and 3, and its budget will not form part of the CLS fund. Separating the two schemes in this way reflects the fact that they are responsible for providing different types of service in very different types of case; and that each scheme has its own distinct objectives and priorities.'*<sup>5</sup>

11. These comments demonstrate that the Government initially intended the CDS and CLS to be quite separate, recognising that they have different objectives and modus operandi. It was impossible accurately to forecast separate budgets and evident that the CDS would have to be demand led while the CLS would not. It was therefore provided that the respective budgets would not be ring-fenced but would form different sub-heads on the Lord Chancellor's departmental vote. However, there was an expectation that in due course, as the systems became more established, they might be better administered separately. This was provided for in the act but separation was not implemented at the time because of:-

- The inability to forecast specific budgets for each scheme until they became more established as separate schemes
- The uncertainty as to how different the two schemes would ultimately develop to be in the future
- The desire to retain the experience and partnerships of the then Legal Aid Board

### My approach

12. Legal aid enables the principle of equality before the law, both civil and criminal. In exploring options to improve the efficacy and efficiency of current arrangements I have been conscious of the need to ensure that nothing I propose could inadvertently have an adverse effect on those who are entitled to receive it, bearing in mind the complex interrelationships between legal aid and other parts of the wider justice system.

13. I consulted and met a wide range of individuals and organisations who contribute to, have an interest in, or are on the receiving end of, current delivery arrangements, including a number of those in the wider justice

---

<sup>5</sup> Modernising Justice: The Governments Plans for Reforming Legal Services and the Courts, (London, HMSO, December 1998), p. 61. para.6.11.



## Review of Legal Aid Delivery and Governance

system. We invited organisations who wished to do so to submit views in writing, and a number have done so. We have also consulted representatives of organisations with public sector governance arrangements which are different from the LSC's. A detailed account of the views expressed in meetings or submissions is at Part 4. A full list of those who commented, either in personal interviews or in writing, is at Annex E.

14. My team has carried out an analysis of many documents, including Annual Reports of the LSC; an Ernst and Young report commissioned jointly by the Ministry of Justice and the LSC into forecasting; the reports of the National Audit Office's value for money studies; and relevant reports of the Justice Committee. We have looked at patterns of legal aid spend, both programme and administrative, over a period of time. We have also considered the arrangements for the provision of legal aid internationally, to ensure that we have taken account of any salient points. We spoke to the Treasury; and to the team within the Treasury considering the governance arrangements for "arms-length bodies".
15. In addressing the terms of reference, it has been necessary to look at the arrangements, current, past and proposed, for the oversight by the sponsor Department of the LSC, and at the interaction between the MoJ and the LSC.

## Part 2

### 2.1 Background

16. Legal aid began as a pro-bono service provided and administered by the legal profession. It was transformed in the post-war years into a more structured, comprehensive service to complement a growing welfare state and has developed into a key public service with a budget of £2.1bn.
17. The scope of the legal aid scheme has increased significantly over the last thirty years particularly in relation to the breadth of civil legal aid. Up until the 1970s, legal aid provision largely focused on crime with the majority of civil provision focused on matrimonial disputes. Building on the creation of Law Centres in the 1970s, there was sustained pressure to increase the provision of social welfare law advice to deprived communities, and from the 1980s legal advice provision has diversified to include a network of advice services provided by the third sector.
18. As the scope of the scheme grew, the 1980s and 1990s saw an increased focus and concern over rising costs as well as an administrative approach which did not appear to exercise adequate control over legal aid spend. In fact, the numbers of people benefitting from the scheme had started to decline while costs continued to rise. The new government in 1997 expressed concern that there was an apparent 'inability to control legal aid and target it on real legal needs, within a budget the taxpayer can afford'<sup>6</sup> in both civil<sup>7</sup> and criminal<sup>8</sup> legal services. The continued rise in cost coupled with the falling numbers of acts of assistance ultimately led to the Access to Justice Act 1999 and the creation of the Legal Services Commission.

---

<sup>6</sup> Modernising Justice: The Governments Plans for Reforming Legal Services and the Courts, (London, HMSO, December 1998), p.13. para.2.1

<sup>7</sup> 'The old civil legal aid scheme had to change because of several problems. Expenditure on civil legal aid was increasing year on year, while the number of people being helped was not. There was no way of targeting expenditure on the areas of greatest need, and no connection was made between legal aid expenditure and other funder's spending on legal and advice services. Lawyers had no incentive to provide services cost effectively or to provide the services that people really needed. Anxiety was increasingly expressed that too many weak and unmeritorious cases were receiving funding.'

David Lock (The Parliamentary Secretary), Hansard, Community Legal Service, 6 July 2000. URL: [http://hansard.millbanksystems.com/westminster\\_hall/2000/jul/06/community-legal-service#column\\_110wh](http://hansard.millbanksystems.com/westminster_hall/2000/jul/06/community-legal-service#column_110wh)

<sup>8</sup> For cost comparisons see Modernising Justice: The Governments Plans for Reforming Legal Services and the Courts, (London, HMSO, December 1998), p. 60. para. 6.6ff.

**Statutory roles and responsibilities of the Legal Services Commission and the Ministry of Justice**

**The Access to Justice Act 1999**

19. The Access to Justice Act passed into law a wide-ranging programme of reform to legal services and the courts described in the Government's White Paper, *Modernising Justice*, published a year earlier. The Act provides for the creation of a Community Legal Service and the Criminal Defence Service.
20. The Act created the LSC to run the two schemes as a non-departmental public body, now reporting to and sponsored by the Ministry of Justice. The Lord Chancellor and Secretary of State for Justice is accountable to Parliament for its performance.
21. The Legal Services Commission and the Community Legal Service came into operation on 1 April 2000. The Criminal Defence Service came into operation on 2 April 2001. Both the Community Legal Service and the Criminal Defence Service apply to the law of England and Wales. The Act established a new body because it was considered necessary to reflect the "fundamentally different nature of the Community Legal Service compared to civil legal aid"<sup>9</sup>
22. In addition to establishing the two services and the Commission to administer them, the Act includes provisions intended to promote value for money and to assure the quality of the services provided. These were intended to address what were felt to be the inadequacies of the previous legal aid system which resulted in neither the Government nor the Legal Aid Board being able to exert adequate control over expenditure nor determine the priorities for that expenditure.<sup>10</sup>
23. The Act provides the LSC and the Lord Chancellor with a range of broad statutory responsibilities as well as specific duties and functions in relation to the administration of the two services. These are illustrated in the table below

<b>The Access to Justice Act 1999</b>	
<b>Lord Chancellor:</b>	<b>LSC:</b>
<b>May</b> give orders and guidance to the Commission about the	<b>Must</b> establish, maintain and

<sup>9</sup> Explanatory Notes Access to Justice Act 1999 p.12. para.50

<sup>10</sup> Explanatory Notes Access to Justice Act 1999 p.8. para.35

## Review of Legal Aid Delivery and Governance

<p>discharge of its functions</p> <p><b>Must</b> determine how much to pay into the CLS fund for the provision of services</p> <p><b>Must</b> pay what is required for the provision of CDS services</p> <p><b>Must</b> pay the LSC what he determines appropriate for the exercise of its functions (other than the provision of services) and administrative costs</p> <p><b>May</b> give directions about the Commission's priorities for CLS funding</p> <p><b>May</b> make orders about the criteria for funding in, and other functions relating to, the funding code</p> <p><b>May</b> set financial eligibility limits and require financial contributions, in both CLS and CDS cases</p> <p><b>Must</b> set rates for direct payments for representation (non-contracted providers) in CDS cases and may make other funding orders in both CLS and CDS cases</p> <p><b>May</b> make directions or regulations bringing into scope of CLS funding cases which would otherwise be excluded</p> <p><b>May</b> authorise funding in individual CLS cases, following a request from the Commission</p> <p><b>May</b> make orders about whether</p>	<p>develop a CLS</p> <p><b>Must</b> establish, maintain and develop a CDS</p> <p><b>May</b> do anything necessary or appropriate to the discharge of its functions</p> <p><b>Must</b> aim to obtain the best value for money in the provision of CLS services</p> <p><b>Must</b> set priorities for CLS funding</p> <p><b>Must</b> prepare a funding code setting criteria for the funding of individual CLS cases</p> <p><b>May</b> enter into any contract, make grants (with or without conditions), make loans and invest money</p> <p><b>May</b> publicise its functions</p> <p><b>May</b> undertake any inquiry or investigation which it may consider appropriate in relation to the discharge of any of its functions</p> <p><b>May</b> give the Lord Chancellor any advice it considers appropriate in relation to any of its functions</p> <p><b>Must</b> prepare an annual report for Parliament</p> <p><b>Must</b> prepare an annual plan for Parliament</p> <p><b>Must</b> keep accounts, to be certified by the Comptroller and Auditor General</p>
--	---

## Review of Legal Aid Delivery and Governance

and how the Commission should delegate certain functions	<b>Must</b> provide the Lord Chancellor with the information he requires about the exercise of its functions
<b>Must</b> appoint members and Chair of Commission	<b>May</b> delegate any of its functions
<b>May</b> alter the number of Commissioners	<b>Must</b> appoint a chief executive
<b>Must</b> approve the appointment of the chief executive	
<b>May</b> set up two bodies, one for the CLS and one for the CDS, in place of the LSC	

### The Community Legal Service (CLS)

24. The Legal Services Commission has two main duties in respect of the Community Legal Service (CLS):
- (a) It manages a Community Legal Service fund, which is used to secure the provision of appropriate legal services, within the resources made available to it and according to priorities. The intention was that the LSC would build on work carried out by the Legal Aid Board's Regional Legal Services Committees in order to establish systems for determining (i) the need for legal services at regional level, and (ii) the ability of providers to supply those services, to the required standard, within the available resources.
  - (b) The Commission also takes the lead in developing the wider Community Legal Service, i.e. services beyond those supported by the CLS fund. It co-operates with local funders and others to develop local, regional and national plans to match the delivery of legal services to identified needs and priorities.

### The Criminal Defence Service

25. The purpose of the Criminal Defence Service (CDS) is to secure the provision of advice, assistance and representation, according to the interests of justice, to people suspected of a criminal offence or facing criminal proceedings. The Act established a wider role for the Legal Services

## Review of Legal Aid Delivery and Governance

Commission in respect of the Criminal Defence Service than the Legal Aid Board had in respect of criminal legal aid.

26. The Legal Services Commission is empowered to secure these services through contracts with lawyers in private practice, or by providing them through salaried defenders (employed directly by the Commission or by non profit-making organisations established for the purpose) by employing people to provide advice and assistance; by establishing and maintaining separate bodies to provide it; and by making grants to individuals to allow them to purchase services directly.
27. Under the Act, the Lord Chancellor is required to provide the necessary funding of criminal defence services in recognition that the CDS is a demand-led scheme.

### **The Legal Services Commission**

28. The LSC took up its role in April 2000 when its predecessor, the Legal Aid Board, was abolished. Its statutory responsibilities are broad and include:
  - Maintaining and developing the Community Legal Service (CLS)
  - Maintaining and developing the Criminal Defence Service (CDS)
  - Funding legal advice services in England and Wales
  - Identifying where there are unmet legal and advice needs
  - Developing suppliers and innovative services to meet the priority needs identified
29. The LSC commissions and funds services from solicitors, barristers and advice agencies as part of the CLS and CDS via the Unified Civil and Crime contracts.
30. There are currently around 1,700 staff working in 13 offices across England and Wales, with a head office in London.<sup>11</sup> Regional offices have specific responsibilities for relationship management, audit, case management and the processing of payments to providers. The LSC Wales Office has a Director for Wales with a specific responsibility for stakeholder engagement in Wales and responsibility for the LSC's Welsh language scheme. LSC Head Office exercises a number of central functions, including the development of commissioning strategy and policy for legal services, a quality framework and the design and implementation of fee schemes as part of the unified contract.

---

<sup>11</sup> See: [http://www.legalservices.gov.uk/aboutus/how/our\\_organisation.asp](http://www.legalservices.gov.uk/aboutus/how/our_organisation.asp)

31. Annex A provides an overview of the LSC from 1999 to the present and I cover its performance in Part 5 of this report. The delivery of both the CLS and CDS has become more closely aligned, beginning with an organisational review in 2004, which reduced the number of regional offices and created a more centralised administration model. In addition, the introduction of unified contracts for civil and criminal work and more recently, the implementation of the Carter reforms post-2007, has seen the introduction of comparable fee schemes across both the CLS and CDS. These reforms were viewed as the first step in achieving greater control of legal aid spend following which greater price competition would be introduced to the procurement of legal services. As a result, the LSC has increasingly identified itself as a commissioning organisation and has worked to develop the requisite business and processing functions which support this.

### **The Commission's governance structure**

32. A board of independent Commissioners oversees the work of the LSC. Commissioners are appointed by the Lord Chancellor and Secretary of State for Justice. They are responsible for establishing and maintaining the overall strategic direction of the LSC, within a framework agreed with the Lord Chancellor.
33. The Commission currently consists of a Chair and 11 members. They work part-time and the Commission meets 10 times each year, once a month apart from August and December. The Commission's Terms of Reference are:
- 1) To ensure that the LSC fulfils its statutory duties set out in the Access to Justice Act 1999
  - 2) To ensure that the LSC fulfils the aims and objectives set by the Secretary of State
  - 3) To establish the overall strategic direction of the LSC
  - 4) To ensure high standards of corporate governance at all times
  - 5) To promote the efficient and effective use of financial, human and other resources by the LSC
34. Between them, Commissioners have experience and knowledge in:
- providing services under the CLS and CDS
  - the work of the courts
  - consumer affairs
  - social conditions
  - management

### **The executive team**

35. Responsibility for the day to day management of the organisation lies with the Chief Executive. The Chief Executive is responsible to the Commission for the exercise of all its functions and is also the Commission's Accounting Officer. The Chief Executive is supported by an Executive Team currently consisting of three Executive Directors. A member of the Executive Team leads each of the LSC's present three directorates.

### **The LSC's corporate governance systems**

36. The following corporate governance arrangements are in place:
- A separation of the roles of Chairman and Chief Executive – these are clearly defined
  - A board
  - An Audit Committee
  - Independence of external auditors – the National Audit Office (NAO) is the LSC's external auditor
  - Maintaining standards of financial reporting – the NAO audits the LSC's accounts before they are published as part of the annual report
  - Adoption of a code of ethics – the LSC has codes of conduct for both Commissioners and staff, as well as for staff of the LSC who provide services as part of the CDS through the LSC's Public Defender Service
  - Guidelines for conduct of directors, in particular, requiring avoidance of conflicts and disclosure of benefits – the LSC maintains registers of interests, conflicts and gifts and hospitality
  - Identification of risk and risk management – the Executive Risk Management Committee is responsible for coordinating risk management within the LSC

### **Accounting Officer responsibilities**

37. The Permanent Secretary of the Ministry of Justice is accountable to Parliament for the issue of any grant or grant-in-aid to the Commission as part of his responsibility as Accounting Officer for the Ministry as a whole. The Permanent Secretary designates the Chief Executive of the Commission as the Commission's Accounting officer and may withdraw this designation if the incumbent is no longer suitable for the role. In particular the Ministry's Accounting Officer must ensure that:
- The Commission's aims and objectives support the Ministry's wider strategic aims and current PSA targets



## Review of Legal Aid Delivery and Governance

- The financial and other management controls applied by the Ministry to the Commission are appropriate and sufficient to safeguard public funds
  - The internal controls applied by the Commission conform to the requirements of regularity, propriety and good financial management<sup>12</sup>
38. The Chief Executive of the Commission, as designated Accounting Officer, is personally responsible for safeguarding the public funds for which s/he has charge; ensuring the propriety and regularity in the handling of those public funds; and for the day-to-day operations and management of the Commission.

### **The Ministry of Justice**

39. The Ministry of Justice's creation on 9 May 2007 brought together, for the first time, responsibility within the justice system for the courts, prisons and probation services. It works closely with other government departments and agencies to reform the criminal justice system, to serve the public and support the victims of crime. The Ministry has a budget of £9.2bn<sup>13</sup> for this financial year of which legal aid represents almost a quarter.
40. Within the Ministry, the Access to Justice Group (AtoJ) currently has strategic oversight of the administration and delivery of legal aid as part of its role to promote, regulate, fund and provide services through which people can resolve their legal problems and disputes. It also provides the sponsorship function for the Legal Services Commission.
41. AtoJ, including its family of agencies and arms length bodies, also oversees the fair and effective delivery of criminal justice, particularly through Her Majesty's Courts Service, Legal Services Commission, Tribunals Service and the Parole Board. It is not, however, responsible for criminal justice policy, nor for that part of the Ministry which houses the Office for Criminal Justice Reform. Part 2.2 provides more detail.

---

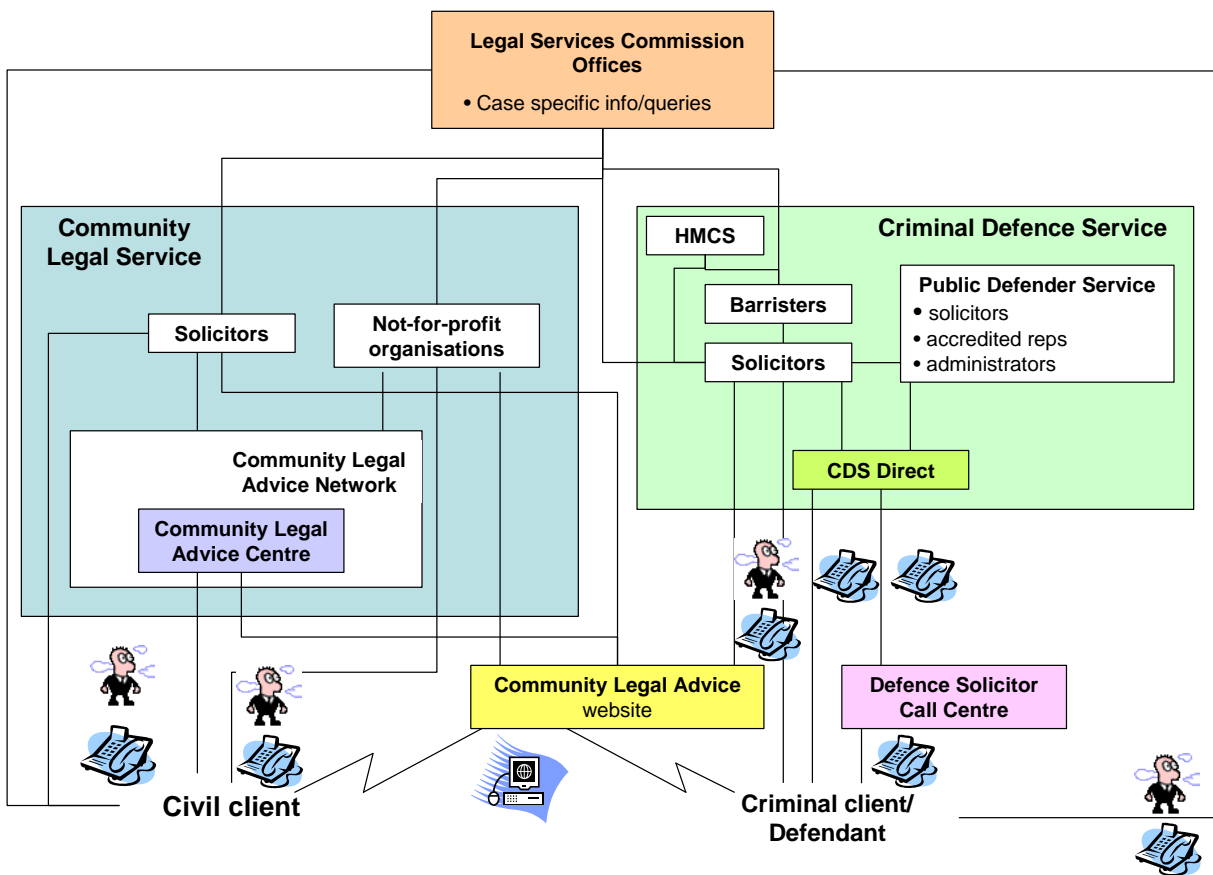
<sup>12</sup> Legal Services Commission Framework Document. Department for Constitutional Affairs. 2004. p.7

<sup>13</sup> See: <http://www.justice.gov.uk/about.htm>

## 2.2 – Current Arrangements

### Delivery of legal aid

42. The last decade has seen many developments in the way in which legal services are delivered. This includes greater use of new technologies such as the use of secure video links within courts, developments in telephone advice and greater use of online legal information resources.
43. The legal aid delivery network is illustrated in the diagram below. It shows the main client access channels and those involved in delivering legal aid.



44. The high level process flow for the management of civil and criminal legal aid cases is illustrated in Annex C – Process Maps. This demonstrates the process and the “hand-offs” as cases move through the system and so is important to understanding the role of the LSC.
45. The maps and associated text highlight the steps carried out by the LSC and by Her Majesty’s Court Service (HMCS) on behalf of the LSC in both civil and criminal cases. The majority of the work carried out by HMCS is covered by service level agreements (SLAs) with the LSC. Civil bills

## Review of Legal Aid Delivery and Governance

assessed in the County Courts are the exception, where fees are charged and paid from the legal aid fund. In 2008/09 HMCS received £24.7m for their work on legal aid.<sup>14</sup>

46. HMCS considers requests for funding in the Magistrates' Court and the Crown Court. For Magistrates Courts this consideration covers both means and merits (the Interests of Justice test is described in Annex C) and for Crown Court it covers merits only, although this will change to include means assessment as part of Crown Court Means Testing (CCMT) roll out. This 'granting' of legal aid traditionally sat with the courts as originally it was a judicial function and initiated a hearing. With the (re) introduction of means testing several years ago it was accepted that the 'grant' decision was administrative.
47. HMCS also assesses criminal and civil bills, the original rationale being that the court is familiar with the case, has access to the evidence, and so is better placed to assess costs. Notwithstanding that logic, there is an argument that the assessment of costs should include only a limited exploration of the particular case so as to preserve impartiality. Further, as these cases have already concluded, the assessment is not time critical in terms of the administration of justice. Reductions in the HMCS role are planned, for example, in assessing family cases as a result of the introduction of fixed fees and as a result of transferring Advocate Graduated Fee Scheme claims from HMCS to the LSC.

### Changes in operational processes

48. The LSC is undergoing a process of major change as it seeks to transform the legal aid system to maximise the number of people who can be helped within the limited legal aid fund and budget.
49. The process by which the LSC's administrative budget is set involves the Ministry collating three-year forecasts from all business areas based on their workforce plans, workload plan, projected savings, plans for investment and inflation assumptions. From 2005/06 to 2008/9 the LSC's administration expenditure increased by £27.5m from £96.9m<sup>15</sup> to £124.4m.<sup>16</sup> Since 2006/07, these increases have been driven by the need to resource and deliver a challenging change programme. This has included change-related head office relocation, redundancies, new IT systems and

---

<sup>14</sup> Source: Legal Services Commission

<sup>15</sup> Legal Services Commission Annual Report 2005/2006. p.91. Figure provided is resource spend. NB. This figure includes the cost of a SLA with the courts and the normal pension contribution so as to be comparable with the 2008/09 figure. As a result it differs from the figure provided on p7.

<sup>16</sup> Legal Services Commission Annual Report 2008/2009. p. 9. Figure provided is resource spend.

## Review of Legal Aid Delivery and Governance

project-related short-term staffing. This investment in change was intended to deliver efficiency returns in 2009/10 and beyond.<sup>17</sup>

50. The reform programme has been successful in halting an 8-10% year on year growth in Legal Aid Fund expenditure. For the last three years expenditure has remained stable at around £2.1bn. This has been achieved through the introduction of various reforms including revised fixed, standard and graduated fee schemes. The LSC estimate that if growth had continued at previous levels the potential level of Fund expenditure would have risen to £2.6bn<sup>18</sup> by the end of 2008/09.
51. Running in parallel to Fund reform has been an internal LSC reform programme that aims to streamline systems and processes. Key components of this were the development and implementation of "LSC On-line" to support new fee schemes and the restructure of the LSC in 2008/9 into three directorates which it was claimed would better position the organisation for the future and make it easier for providers to do business with them. The restructure was the first phase in a number of activities intended to improve operational efficiency and reduce the number of full time equivalent (FTE) staff employed by the LSC.
52. The LSC reform programme also covers the redesign of processes to make efficiency savings in the way the legal aid fund is managed and to reduce administration for providers through:
  - Introducing simplified billing processing
  - Giving more power to providers
  - Being less intrusive with contracted providers
  - Introducing e-business with all providers
53. This programme requires significant investment, particularly in IT. The LSC anticipates that simplifying processes and moving to e-business should enable them to reduce their workforce by approximately 600, from 1700 to 1100. From 31/3/08 to date the number of full time equivalent (FTE) staff has reduced by 218 (12.5%).<sup>19</sup> This excludes Public Defender Service (PDS) and Criminal Defence Service (CDS) contractors.
54. The implementation of a challenging reform programme over the period accounts for the bulk of the increases in administrative expenditure and staff whether as a result of new fee schemes being introduced, investment

---

<sup>17</sup> Legal Services Commission Annual Report 2008/2009. p. 31

<sup>18</sup> Source: Legal Services Commission

<sup>19</sup> Source: Legal Services Commission

## Review of Legal Aid Delivery and Governance

in IT infrastructure or revised Service Level Agreements with HMCS. The table below, using data from the LSC annual reports and management accounts shows the trend in overall administrative expenditure during the period including the cost of the reform programme and the Service Level Agreement (SLA) with HMCS as well as the cost of delivering business as usual. It also shows the trend in average FTE staff over the same period.

Annual Administration Expenditure										
	2005/06		2006/07		2007/08		2008/09		2009/10 <sup>20</sup>	
	£m	%	£m	%	£m	%	£m	%	£m	%
<b>Cost (Resource)</b>	96.9 <sup>21</sup>	100	102.0 <sup>22</sup>	100	113.5 <sup>23</sup>	100	124.4 <sup>24</sup>	100	123.8	100
<b>Avg FTE</b>	1716 <sup>25</sup>		1602 <sup>26</sup>		1624 <sup>27</sup>		1690 <sup>28</sup>		1508	

### Developing legal aid policy

55. Working together, the LSC and MoJ have delivered a significant agenda of legal aid policy reform, for example, policy changes resulting from the Carter review in 2006. Reforms in legal aid policy have delivered specific ministerial legal aid priorities and have brought legal aid spend more under control (see 2.3 – LSC Finances). Nevertheless, there is still significant pressure on the budget; and the likelihood must be that this pressure will increase as Government seeks to reduce expenditure.
56. Legal aid policy making is complex, involving a wide range of stakeholders and interests. Those mainly involved, or with a particular interest in legal aid policy making are illustrated in the diagram below.

<sup>20</sup> Forecast numbers provided by the LSC

<sup>21</sup> Legal Services Commission Annual Report 2005/2006. p.91

<sup>22</sup> Legal Services Commission Annual Report 2006/2007. p.85

<sup>23</sup> Legal Services Commission Annual Report 2007/2008. p.94

<sup>24</sup> Legal Services Commission Annual Report 2008/2009. p.9

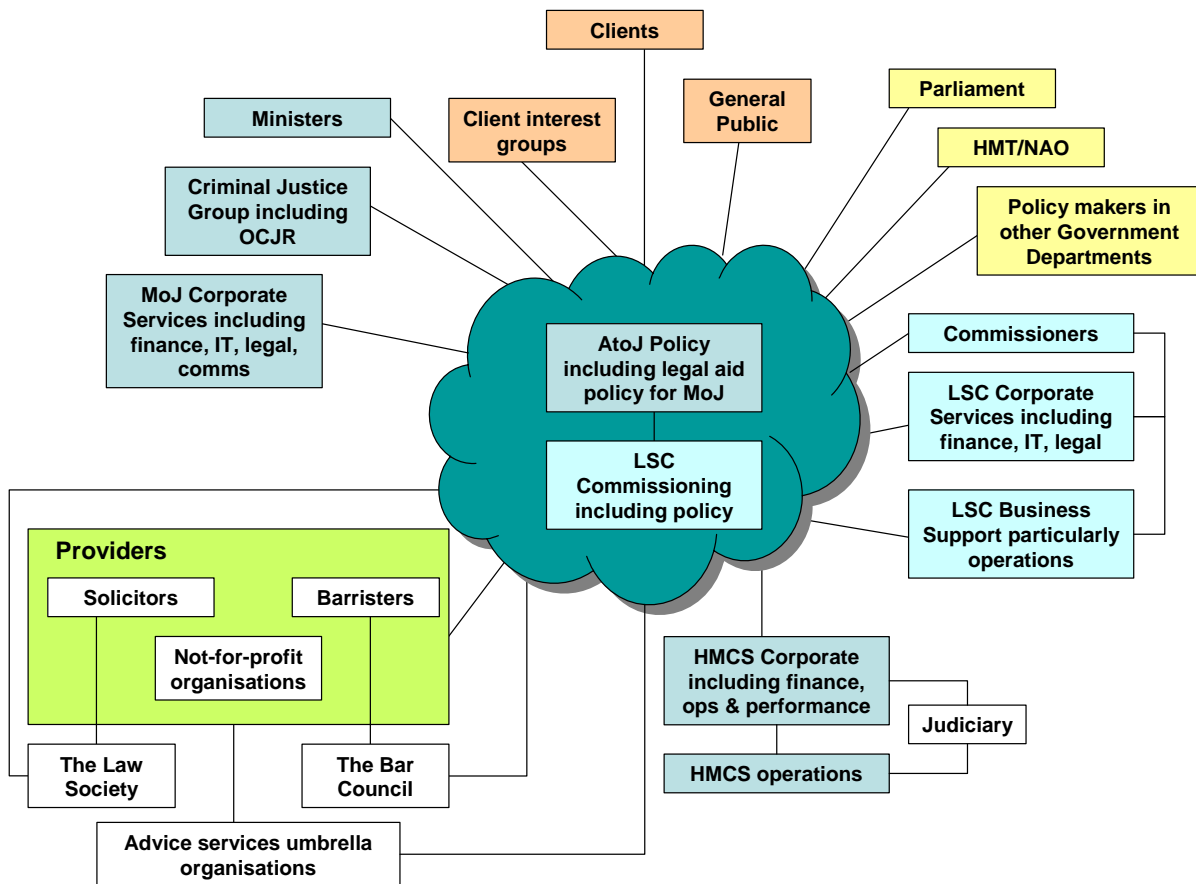
<sup>25</sup> Legal Services Commission Annual Report 2006/2007. p.92

<sup>26</sup> Legal Services Commission Annual Report 2006/2007. p.92

<sup>27</sup> Legal Services Commission Annual Report 2008/2009. p.81

<sup>28</sup> Legal Services Commission Annual Report 2008/2009. p.81

## Review of Legal Aid Delivery and Governance



57. Within the Ministry, the Access to Justice Group currently has strategic oversight of the administration and delivery of legal aid as part of its role to promote, regulate, fund and provide services through which people can resolve their legal problems and disputes. It also provides the sponsorship function for the Legal Services Commission.
58. The Access to Justice Group shares responsibility with the Ministry's Criminal Justice Group for delivery of DSO 4: Ensuring a more effective, transparent and responsive criminal justice system for victims and the public. The Ministry of Justice shares responsibility for the criminal justice system with the Home Office and the Attorney General's Office. The three CJS departments work in partnership, supported by the Office for Criminal Justice Reform (OCJR), which is part of the Criminal Justice Group.
59. OCJR supports and facilitates partnership at a national level through the National Criminal Justice Board and at a local level through Local Criminal Justice Boards (LCJBs).

## Review of Legal Aid Delivery and Governance

60. Consultation with key stakeholder groups and the public at large is a key part of the legal aid policy making process. The views of different stakeholder groups are considered when formulating and delivering new policies.
61. The formulation of new policy is complex. For example, the policy can come from an overall strategy, from ministerial initiative (strategic/manifesto) or reactive to developments, from stakeholder pressure, from research and evidence gathering (for example, relating to past performance or future requirements) or from financial pressure.
62. Diversity impact assessments are also carried out as part of delivering new policy to ensure that the impact or potential impact of policy change on diverse groups is properly understood.
63. Both the LSC and MoJ have already introduced process and structural changes to support more efficient and effective legal aid policy making. For example:
  - Joint project boards involving those from both MoJ and LSC in directing particular policy developments
  - The restructure of the LSC in 2008/9 into three directorates with policy and strategy forming part of 'Commissioning'
  - The creation of the new 'AtoJ Policy' directorate in 2009 which integrated legal aid policy with other elements of AtoJ policy
64. However, it is clear that there is still significant scope for improving the legal aid policy making process. The process is outlined below.

### **The legal aid policy making process**

65. The legal aid policy making process and the roles, responsibilities and accountabilities within it are not clearly defined.
66. There are two sets of teams involved in legal aid policy making, one in the MoJ and one in the LSC. Annex C provides a simplified, high level process map which illustrates the policy making process and a table describing the roles of the MoJ and the LSC within it. Both were developed by MoJ and LSC policy makers and others as part of this review.
67. In practice, the policy making process is far more complex than portrayed and the process and the roles and responsibilities within it have varied depending on the particular policy reform involved. Currently roles and responsibilities between MoJ and LSC for legal aid policy making also vary between jurisdictions and parts of jurisdictions.

## Review of Legal Aid Delivery and Governance

68. The inconsistencies in roles and responsibilities for policy formulation and delivery appear to have evolved historically with no clear rationale. For example, prior to the creation of the new AtoJ policy function in 2009, integrating legal aid policy with broader AtoJ policy, the MoJ appeared to have a very light touch approach towards civil legal aid policy with legal aid policy being developed almost entirely by the LSC with minimal involvement from the MoJ. The MoJ role then appears to have been largely confined to a 'watching brief'.
69. Moreover, it is unclear how wider criminal and civil justice policy interests are brought to bear. For example, changes to policy and process within the wider civil, family and criminal justice systems, in particular, can have a major impact on the demand for legal aid. Likewise, the way in which legal aid is administered – the current fee structures and contractual arrangements – create incentives and instil behaviours amongst providers that impact upon the justice process.



## 2.3 – LSC Finances

### Trends – overall spending on legal aid

70. In the 20 year period from 1979/80 to 1999/00, legal aid expenditure rose by an average of 9.6% a year. In 2000, the previous administering body, the Legal Aid Board, was replaced by the Legal Services Commission (LSC). The budget rose from £1.7bn to £2.1bn between 2000/01 and 2003/04 but has since remained stable at this level.
71. The largest increase in expenditure on legal aid has been in criminal legal aid, with net cash expenditure growing from £872m in 2000/01<sup>29</sup> to £1.2bn by 2004/05,<sup>30</sup> a year on year increase of 8.2%. Since then it has remained relatively stable with a total spend in 2008/09 of £1.19bn.<sup>31</sup>
72. Total cash spending on civil legal aid rose from £792m<sup>32</sup> in 2000/01 to £846m<sup>33</sup> in 2004/05. In 2008/09 this figure had reached £914.1m.<sup>34</sup> This represents a 2% year on year increase since 2001.
73. Family legal aid cash expenditure has grown by an average of 5% per annum from 1999/00 and 2008/09, accounting for £624m of total in 2008/09<sup>35</sup> –the highest level of expenditure in family legal aid to date.
74. Expenditure on civil non-family has reduced by an average of 3% since 1999/2000, with a total cash spend in 2008/09 of £206m.<sup>36</sup> This is in part due to the removal from scope of most Personal Injury claims in 2000.
75. Immigration and Asylum resource expenditure fell significantly from £179.6m in 2003/04 to £83m in 2004/05.<sup>37</sup> It has since remained stable, costing £85.6m in 2008/09.<sup>38</sup> This is due to the reduction in the number of asylum applications received and a range of legal aid reforms implemented in this area in 2003/4.

---

<sup>29</sup> Legal Services Commission Annual Report 2000/2001. p.1 This comprises £450.4m on the CDS and £422m on crown court and higher court representation.

<sup>30</sup> Legal Services Commission Annual Report 2005/2006. p.7

<sup>31</sup> Legal Services Commission Annual Report 2008/2009. p.56

<sup>32</sup> Legal Services Commission Annual Report 2000/2001. p.1.

<sup>33</sup> Legal Services Commission Annual Report 2004/2005. p.6

<sup>34</sup> Legal Services Commission Statistical Information 2008/2009. p.3.

<sup>35</sup> Source: Legal Services Commission

<sup>36</sup> Source: Legal Services Commission

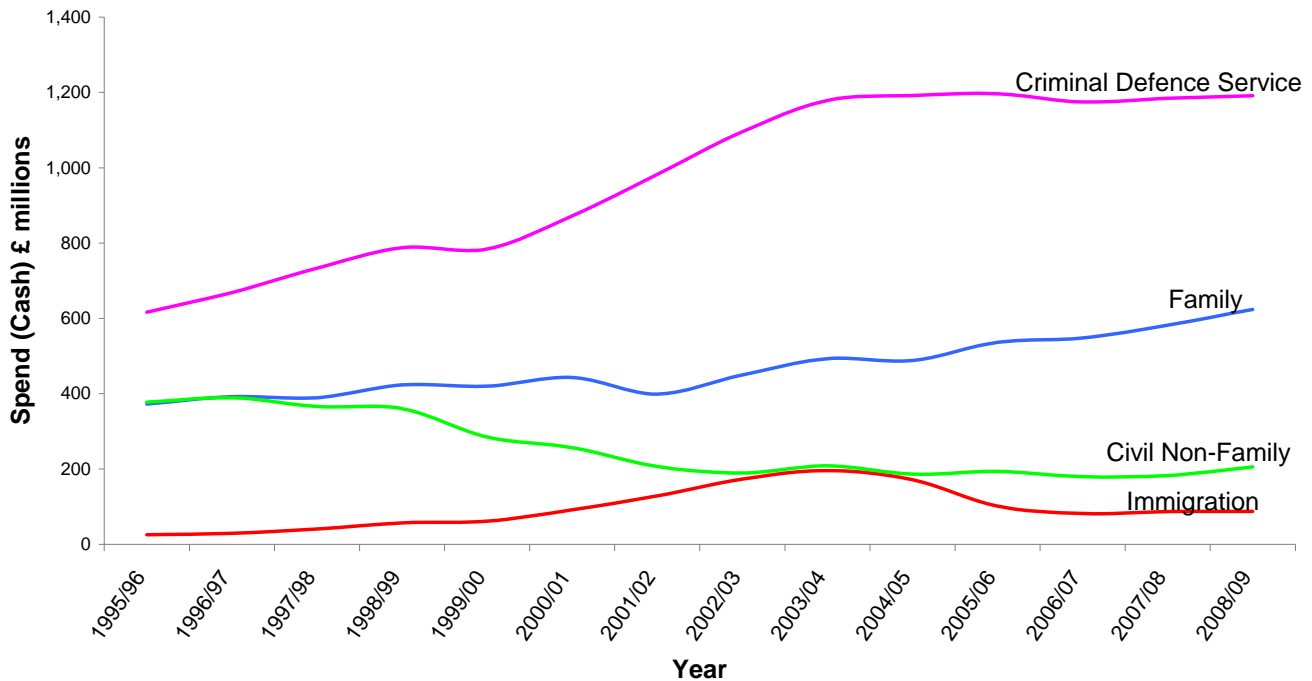
<sup>37</sup> Legal Services Commission Annual Report 2004/2005. p.108.

<sup>38</sup> Legal Services Commission Annual Report 2008/2009. p.60.

## Review of Legal Aid Delivery and Governance

76. Between 2006/07 and 2008/09 there has been a 13.4% increase in expenditure on social welfare law, from £108.1m to £122.6m in 2008/09<sup>39</sup> but a 10.4% increase in the number of acts of assistance (Comprising New Matter Starts and Civil Certificates granted), up to 494,000 in 2008/09.<sup>40</sup>
77. The graph below shows the trends in different categories of legal aid expenditure since 1995/6.

**Legal Aid Spending: 1995/96 - 2008/09**

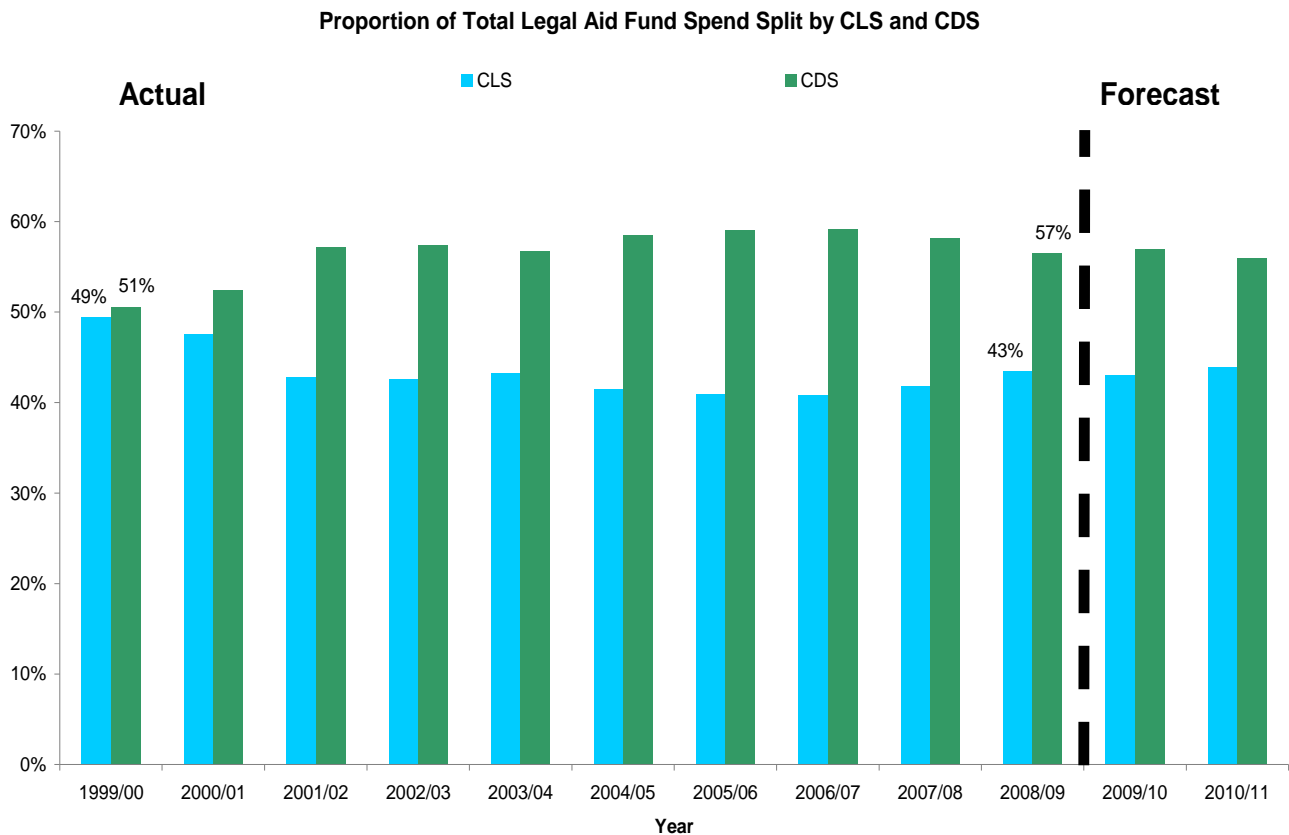


78. The combination of reduced spending on Non Family Civil – largely as a result of the removal of Personal Injury from scope – and significant increases in expenditure on criminal legal aid, means that there has been a 6% change in proportional spending away from CLS to CDS over the last 10 years. This is illustrated in the bar chart below. After an initial rise in criminal spending, the spread of expenditure between the Community Legal Service and the Criminal Defence Service has remained relatively stable since about 2001/02.

<sup>39</sup> Source: Legal Services Commission. These figures exclude Telephone advice.

<sup>40</sup> Source: Legal Services Commission. This figure excludes Telephone advice.

## Review of Legal Aid Delivery and Governance



### Forecasting legal aid

79. Given that legal aid expenditure (£2.1bn in 08/09) represents almost a quarter of the MoJ's overall budget, accurate forecasting of expenditure on legal aid is key to effective financial planning and management for the Ministry overall.
80. MoJ and LSC share responsibility for legal aid forecasting although the bulk of activity involved in the forecasting process is carried out by the LSC. This is because forecasting is currently an operationally focused, detailed, 'bottom-up' process involving the LSC in extracting a vast range of data from LSC operating systems (and elsewhere) and developing many detailed models and tools, including manual spreadsheets, to enable them to produce forecasts at individual scheme level and below as well as for legal aid expenditure overall.
81. The MoJ role in forecasting is largely confined to providing information on policy changes which are likely to impact on legal aid expenditure (whether originating within MoJ or other Government Departments (OGDs)) and

anticipated business volumes; and to challenging assumptions. They also have a role in ensuring that legal aid forecasts are properly reflected in CSR bids and budget allocations, through negotiation with HM Treasury, and for negotiating appropriate fund transfers from OGDs when they make changes that impact the legal aid fund. The LSC produces an overall forecast, and the more detailed forecasts for each scheme, for each financial year. They review these on a quarterly basis. A key part of this process is a quarterly review meeting with MoJ policy makers, finance, HMCS and others at which forecasting assumptions are challenged.

### **Impacts of policy changes**

82. All organisations (including OGDs as well as MoJ) involved in developing policy which might impact on legal aid expenditure are required to carry out a Legal Aid Impact Assessment with the assistance of the MoJ and LSC. However, this does not always happen as policy makers do not always understand that the changes they are making may have implications for the legal aid budget. This can mean that the LSC are unaware of a policy change which their forecasts need to take into account. For example, early mistakes in administration of Working Families Tax Credits led to a surge in demand for welfare benefits advice.
83. As part of the Legal Aid Impact Assessment process or less formal consideration of potential policy changes by policy makers, the LSC Forecasting team is asked to produce specific forecasts to enable the likely potential impact of such policy changes on legal aid expenditure to be understood.
84. The range of data, models, systems and processes involved in forecasting at the detailed level required presents challenges. It can be difficult for the LSC to respond in a timely manner and the process is so detailed and complex that the process, by its nature, is not transparent. This can reduce confidence in the likely accuracy of the forecasts.

### **External factors**

85. The demand led nature of much of the legal aid business can make forecasting difficult. It is important to understand and take into account all of the drivers likely to have an impact including environmental factors such as economic and demographic trends. The current models largely rely on historical data and management judgement and do not fully take such factors into account.
86. Work has recently been initiated between the LSC and MoJ to develop 'macro models' that will more readily enable such factors to be taken into

account in developing forecasts. This will enable a 'top-down' approach to forecasting which will complement the operationally focused and detailed, 'bottom-up' approach currently in place.

### **Managing finances**

87. The LSC has been undergoing significant change in its financial management processes and systems. For example, there has been a shift in measurement and reporting from Cash to Resource Accounting and Budgeting (RAB) and more recently to Near Cash.<sup>41</sup> There have also been significant changes to finance and reporting structures within MoJ, for example, with the creation of AtoJ Finance and Resources in addition to MoJ Corporate Finance and the creation of the AtoJ Sponsorship and Performance Unit.
88. Within the LSC the forecasting unit has moved away from finance within the Corporate Services directorate to the Commissioning directorate to be closer to policy development and implementation. The LSC is also currently recruiting a permanent Financial Director who will be part of the Executive Team (the Director of Finance currently reports via the Director of Corporate Services).

### **The financial management process**

89. The LSC does not currently have a fully integrated transaction based financial accounting system and is dependent on a range of systems and processes and very many sources of data, including manual spreadsheets.
90. The LSC produces financial forecasts and reports throughout the year covering the legal aid fund and LSC administration. It also produces an annual report,<sup>42</sup> which includes financial accounts, and the National Audit Office is the external auditor.
91. The LSC has a Finance Committee which meets four times a year and its membership includes Commissioners with attendees from the executive. Its role is to monitor the Commission's financial performance, oversee the corporate and business planning process, oversee operational policy developments and work to improve communication between the LSC and external stakeholders such as Government departments and the legal profession. The LSC Chair is also Chair of the Finance Committee.

---

<sup>41</sup> See definitions of Resource Accounting and Near Cash in the Glossary

<sup>42</sup> See: [http://www.legalservices.gov.uk/archive/archive\\_about.asp](http://www.legalservices.gov.uk/archive/archive_about.asp)

## Part 3 - Relevant Reports, Reviews and Guidance

92. We have considered a cross-section of reports, reviews and guidance which are relevant to the terms of reference. These include recent NAO reports, relevant research, reviews into other aspects of legal aid policy and delivery and guidance produced by the Cabinet Office and HM Treasury into corporate governance and structural arrangements for public bodies. Comparisons have been made to other arms length bodies within the UK government and with legal aid delivery arrangements overseas.

### NAO reports

93. In 2002/03 the NAO undertook a Value for Money review of the introduction of civil contracting which led to a Public Accounts Committee hearing in December 2002. There were concerns over delay in clamping down on suppliers that over claimed and gaps in the pattern of service provision.
94. In 2009 the NAO review of *The Procurement of Criminal Legal Aid in England and Wales by the LSC* found risks to value for money from the way the LSC administers and procures legal aid for criminal cases. In 2008-09, the Commission spent more than £1.1 billion on criminal legal aid. The NAO recommended that the LSC should do more to understand the market for criminal legal aid to make the most of its ability to control price and quality. In particular, they found that while the Commission holds good information locally about its suppliers it does not bring this information together centrally. They suggested that better use of this information would help the LSC to establish whether it is paying a fair price for criminal legal aid and forecast the impact of changes it makes.
95. An NAO survey of solicitors also revealed tensions in the relationship between the profession and the LSC. Of those who responded to the NAO, survey, 36 per cent of solicitors perceived the LSC as 'unhelpful' and 29 per cent believed the LSC did not fully understand the legal system, although firms were more positive about the knowledge levels of the Commission's local relationship managers.
96. The NAO, as part of its annual audit of the Legal Services Commission, identified an estimated total overpayment error in the Commission's accounts of £24.7 million in 2008-09.<sup>43</sup> Of this, £6.4 million were payments made to solicitors where legal aid had been provided to claimants where

---

<sup>43</sup> Community Legal Service Fund And Criminal Defence Service Accounts for the year ended 31 March 2009: Report Of The Comptroller And Auditor General to the Houses Of Parliament on the Community Legal Service Fund and Criminal Defence Service Accounts for the year ended 31 March 2009. p.2

there was no evidence that they were eligible to receive it. The remaining £18.3 million of erroneous payments relate to overpayments made to solicitors across both the civil and criminal schemes, the majority of which went through the CLS.<sup>44</sup>

97. The highest level of financial error was in relation to solicitors working on Family and Immigration claims. Within this area, the NAO's testing showed that 25 per cent of the claims examined were incorrect or unsupported. For many cases, the error resulted from solicitors claiming against an incorrect category of work or for an incorrect level of work carried out. For example, the NAO identified a number of instances where the solicitor had incorrectly claimed a fee for an asylum case instead of the correct, and lower, fee for immigration work.<sup>45</sup>
98. As a consequence of the 'material error in payments to solicitors' the NAO qualified the 2008/9 accounts of the LSC.<sup>46</sup>

### **Justice Committee: Family Legal Aid Reform. Eighth Report. July 2009**

99. The Justice Committee's report to Parliament raised concerns about the future of family legal aid provision, in particular concerning the proposed harmonisation of the fees paid to both solicitors and advocates in family proceedings. The Committee's reports stated amongst other things that:

*The Commission is proceeding at speed with inconsistent data, a weak evidence-base and a poor understanding of the shape, the cost drivers, other motivating factors, and the structure of its supplier market.*<sup>47</sup>

*The Government and the Commission must not drive the system towards the endgame identified by Lord Carter faster than the existing pattern of legal services provision can bear...the legal aid structure being designed by the Legal Services Commission seems to be based on a pattern of supply which simply does not yet exist.*<sup>48</sup>

### **Forecasting, accounting and financial management**

100. Ernst & Young LLP were engaged jointly by the MoJ and the LSC to report on the methods and procedures used to forecast and manage the legal aid fund. They issued their report on October 29th 2009. The report

---

<sup>44</sup> Ibid. p. 3

<sup>45</sup> Ibid. p.6

<sup>46</sup> Ibid. p. 1

<sup>47</sup> Justice Committee: Family Legal Aid Reform, Eighth report July 2009. Para. 67.

URL: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/714/71408.htm>

<sup>48</sup> Justice Committee: Family Legal Aid Reform, Eighth report July 2009. Para. 68.

URL: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/714/71408.htm>

## Review of Legal Aid Delivery and Governance

commented on the existing fund forecasting and financial management processes, as well as considering alternative accounting treatments that might be acceptable under International Financial Reporting Standards (IFRS).

101. The Ernst & Young LLP report indicated that the ability of LSC and MOJ to make informed decisions is likely to be significantly impaired because they do not have access to appropriate forecasting processes and financial information. Some of the Ernst & Young specific observations included:

- The fund forecasting process is inefficient and labour intensive with heavy reliance on over 200 models and tools (including off line spreadsheets). The existing modelling environment is complex and inefficient. The process involves over 200 models and tools, including manual analysis where the use of spreadsheets would be expected. This creates a lack of transparency which limits management's ability to interrogate data and exercise control and review over the process
- The forecasting methodology is based on extrapolating from historical observations and trends with only limited reference to external factors (e.g. economic/demographic) through systematic econometric demand forecasting. Additionally there is limited testing and validation of model assumptions against external data. This increases the risk of the forecasting being inaccurate
- The annual cash payment profile of the fund has been relatively stable and over the last 2 years the Legal Aid Fund's actual total cash out-turn was within 2% of its total forecast cash at the beginning of the year. However, when analysed further - at scheme level and below - there are significant unexplained differences when comparing forecast to actual out-turn and forecast to forecast. This leads to uncertainty regarding the predictive ability of the respective models and which is not routinely checked

102. There is no fully integrated transaction - based financial accounting system within the LSC for legal aid.

### **HM Treasury ALB review**

103. The Pre-Budget Report 2009 committed to reducing duplication between organisations and streamlining Arms Length Bodies (ALBs). As a first step, *Putting the Frontline First: smarter government* announced a rationalisation of over 120 ALBs across government, including reducing the number of bodies performing advisory or related functions by over 25 per cent, subject



to the necessary legislation and consultation. By Budget 2010, a review will identify options for rationalisation of Arms Length Bodies.<sup>49</sup>

### **The Carter Review**

104. To address the rise in legal aid spending, in 2005 the Government asked Lord Carter of Coles to devise a system of legal aid procurement that would deliver a number of key objectives:
- Provide good quality legal advice and representation for clients
  - Maintain a sustainable, effective and efficient supplier base
  - Represent value for money for the taxpayer
  - Contribute to the efficient, speedy and proportionate operation of the criminal justice system
105. Lord Carter's report, *Legal Aid: A Market-based Approach to Reform* (July 2006) proposed a series of fixed and graduated fees to cover payment in almost every area of legal aid, as a precursor to a system of Best Value Tendering, based on quality, capacity and price. Following consultation, *Legal Aid Reform: The Way Ahead* (November 2006) set out the Government's response. The Government accepted Lord Carter's proposals, but with some adjustments to the timing, sequencing and detail.

### **Jackson Review**

106. Lord Justice Jackson has recently concluded an independent review of civil litigation costs commissioned by the Master of the Rolls. As part of his review he has considered the use of contingency fees as a method of funding litigation, where their use is currently prohibited, and ministers are currently considering his recommendations.

### **Research**

#### **Legal Advice at Local Level (LALL) Study**

107. This study was undertaken by a Ministry of Justice project team between January and June 2009 under the oversight of a steering group chaired by Lord Bach. Project team members travelled to fifteen different areas of England & Wales, hearing the views of advice providers and funders. The study focused on the impacts of the recession on the justice system, fixed

---

<sup>49</sup> 2009 Pre-Budget Report. Chapter 6: Protecting Public Services. Treasury 2009. Paragraph 6.45. p108

fees, the initial experience of Community Legal Advice Centres and trends in how advice services were funded.

### *Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs)*

108. The LALL study undertook a preliminary assessment of the 5 CLACs which currently function. It was too early to assess CLACs generally, but the study found significant increases in the numbers of New Matter Starts in an area following creation of a CLAC, and that CLACs delivered more NMS than the average solicitor or NfP provider. The study concluded that opening CLACs in areas which generally had poor provision<sup>50</sup> 'appears to be working well'<sup>51</sup> and 'Customer feedback on CLACs indicates that they are responding very effectively to the needs of their customers.'<sup>52</sup> Establishing CLACs is not without problems however and lengthy set up times, the fragmentation of funding and too much bureaucracy all contribute to their slow development nationwide.
109. The Ministry of Justice subsequently published an implementation plan outlining:
- Better monitoring processes for removing perverse incentives from fixed fees and assessing the impacts of establishing CLANs
  - That working groups will be established to consider improvements to complex cases, difficult clients and payment schemes
  - Work to improve back office capacity within the third sector and reduce monitoring and administrative burdens

### **International comparisons**

110. Making comparisons of international justice systems is complex, not least because of significant differences in the methodology and reporting of data associated with justice systems and in the systems themselves. Research<sup>53</sup>

---

<sup>50</sup> 'Only 1 of the five areas where CLACs have opened so far previously had LSC funded provision across all five social welfare law categories (Derby), and none had a single provider offering all five categories of law.' Legal Advice at Local Level, Ministry of Justice, June 2009. p. 64.

URL: <http://www.justice.gov.uk/publications/docs/legal-advice-local-level.pdf>

<sup>51</sup> Legal Advice at Local Level, Ministry of Justice, June 2009. p. 71.

URL: <http://www.justice.gov.uk/publications/docs/legal-advice-local-level.pdf>

<sup>52</sup> Legal Advice at Local Level, Ministry of Justice, June 2009. p. 66.

URL: <http://www.justice.gov.uk/publications/docs/legal-advice-local-level.pdf>

<sup>53</sup> 'European judicial systems - Edition 2008: Efficiency and Quality of Justice' European Commission for the Efficiency of Justice (CEPEJ), Council of Europe, September 2008

URL:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1041073&SecMode=1&DocId=1314568&Usage=2>

suggests that expenditure on legal aid in England and Wales is considerably higher than in other countries. In particular:

- The number of cases per capita supported by legal aid in England and Wales is higher than for other countries, for both criminal and civil cases
- A higher proportion of suspects are brought to court in England and Wales, and a higher proportion of this group is legally aided
- Spending per case in England and Wales is higher than in other study countries in both civil and criminal matters, with the sole exception of criminal cases in the Netherlands
- The combined effect of higher case volumes and higher average costs makes expenditure in England and Wales per head of population higher than elsewhere

111. There are a number of possible explanations for the higher level of spend per case in England and Wales. These include complex court rules and procedures, procurement arrangements and composition of the caseload. For example, criminal cases are handled differently in England and Wales than in other EU countries, giving rise to more court hearings and hence higher demand for legal aid.

### **Guidance**

112. We have also considered guidance issued by both HM Treasury and the Cabinet Office concerning corporate governance arrangements.

#### *Managing Public Money: HM Treasury*

113. This outlines the working partnerships that public sector organisations may establish in order to deliver their objectives and provides some high level principles which departments should apply in managing relationships with their NDPBs.

#### *Corporate governance in central government departments: Code of good practice. HM Treasury*

114. This code helps to guide central government departments, focussing on the role of departmental management boards and how they can support ministers and heads of departments.

---

'International comparison of publicly funded legal services and justice systems', Roger Bowels and Amanda Perry, (York University, October 2009)  
URL: <http://www.justice.gov.uk/publications/docs/comparison-public-fund-legal-services-justice-systems.pdf>

115. Where part of the business of the department is conducted with and through arm's length bodies (ALBs), the department's board should ensure that there are robust governance arrangements with each ALB board, setting out the terms of their relationship, in order to promote high performance and safeguard propriety and regularity.

*Public Bodies: A Guide for Departments. Cabinet Office*

116. This guidance covers all considerations from the setting up and classification of a public body to financial accountability and policy arrangements. It also provides guidance on reviewing a public body.

### **Comparable delivery structures**

117. We have looked at different delivery structures across government. There are a number of delivery models which have been created to manage policy, strategy and operational boundaries effectively. All are intended to enable ministerial oversight and accountability to Parliament and balance responsibility for strategy and policy with operational independence in the delivery of large public services or allocation of funding to individuals or commercial bodies.

118. Cabinet Office guidance<sup>54</sup> sets out the common attributes and functions of the Agency and Non-Departmental Public Body (NDPB) structures.

### **NDPBs**

119. The term 'NDPB' has been in existence since 1980 when it was coined by Sir Leo Pliatsky in his 'Report on Non Departmental Public Bodies'. An NDPB is described as:

*" A body which has a role in the processes of national government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers."*<sup>55</sup>

120. NDPBs have a national or regional remit and carry out a wide range of important functions. I found no guidelines as to circumstances in which a sponsoring Department might opt for a NDPB as opposed to an Executive Agency or non-Ministerial Department.

121. There are very few Executive NDPBs with a comparable budget to the LSC. The most notable, which also have a similar mix of responsibilities to the

---

<sup>54</sup> Public Bodies: A Guide for Departments. Chapter 2: Policy and characteristics of a Public Body. Cabinet Office. June 2006

<sup>55</sup> Public Bodies: A Guide for Departments. Chapter 2: Policy and characteristics of a Public Body. Cabinet Office. June 2006 p2

## Review of Legal Aid Delivery and Governance

LSC, include the Higher Education Funding Council for England, The Learning and Skills Council and The Housing Corporation. These Executive NDPBs all make decisions around funding grants either to education establishments or in the case of the Housing Corporation the funding of new affordable housing and the regulation of housing associations in England.<sup>56</sup> These organisations make these funding decisions at arms length from Ministers. Ministers make directions in relation to the public funds allocated to these bodies.

### Executive Agencies

122. Executive Agencies were created to enable executive functions within government to be carried out by a well-defined business unit with a clear focus on delivering specified outputs within a framework of accountability to Ministers.
123. The areas of business specifically suitable for consideration for executive status include those which are:
  - Clearly designated units within departments which are responsible for undertaking the executive functions of that department, as distinct from giving policy advice and are sufficient in size to justify major structural change
  - Independently accountable within their department. They must have agency-specific targets, which are reported to Parliament. They must also produce annual reports and accounts<sup>57</sup>
124. There are a number of Executive Agencies with similar functions to the LSC. The following Agencies make decisions on individual cases at arms length from government.

#### *Department for Work and Pensions (DWP)*

125. Jobcentre Plus, The Pensions Agency, Child Support Agency and the Disability Careers Directorate are all Executive Agencies sitting within DWP which focus on the operational delivery of welfare benefits and support. They all have a Chief Executive who has direct accountability to Parliament and line accountability to the Permanent Secretary who is the principal accounting officer. These agencies share corporate functions such as HR,

---

<sup>56</sup>The Housing Corporation has recently been abolished and its functions divided between the [Tenant Services Authority \(TSA\)](#) which will act as a new watchdog for social tenants and the [Homes and Communities Agency \(HCA\)](#) which will bring together responsibility for both the land and the money to deliver new housing, community facilities and infrastructure.

<sup>57</sup> Public Bodies: A Guide for Departments. Chapter 2: Policy and characteristics of a Public Body. Cabinet Office. June 2006

Finance, IT, legal Services and communications with DWP. An appeals mechanism against individual decisions exists through the Social Security and Child Support Tribunal.

*The UK Border Agency, Home Office*

126. The UK Border Agency was created to strengthen border controls, by bringing together customs and immigration powers, and to ensure that newcomers to the United Kingdom earn the right to stay. In creating the Agency, certain border customs and detection functions were transferred from HM Revenue & Customs. The confidentiality provisions around customs information necessitated arms length arrangements to distance Ministers from the decision process. The Agency applies the immigration rules to individual applications and makes decisions on behalf of the Home Secretary. An appeals process is in place for immigration cases and appeals are to the Asylum and Immigration Tribunal. The Home Secretary remains accountable to Parliament for border and immigration matters.

**Non-Ministerial Departments**

*HM Revenue & Customs (HMRC)*

127. HMRC is also a useful example of a non-Ministerial Department. Staff within HMRC are civil servants but HMRC has statutory independence and Ministers are completely removed from case law and operations (to preserve the confidentiality of taxpayer information).
128. Core functions of HMRC are expressly excluded from the operation of the Ministers of the Crown Act 1975 so that these functions cannot be transferred to ministers by order. Commissioners of HMRC are Crown appointments under Letters Patent on the recommendation of the Civil Service Commission. Under the 2005 Act, the Commissioners appoint staff—officers of Revenue and Customs—who work under their direction rather than that of a minister. Appeals against tax decisions are heard by the First-tier Tribunal (Tax).
129. HMRC is bound by an annual public remit from the Chancellor of the Exchequer, preserving accountability to Parliament, and the Treasury retains strong control over tax policy and strategy.

## **Part 4 - Evidence**

### **Feedback and qualitative evidence submitted to the review**

130. The team has conducted a series of interviews with those who contribute to and are impacted by the current delivery arrangements for legal aid. These have included officials within the Ministry of Justice and the Legal Services Commission and those with responsibilities for the running of the justice system, including the judiciary, HM Courts Service, CPS, Tribunals Service and CAFCASS. I have also met representatives of the legal profession and advice services sector. A full list of those whom I met, or who responded to the invitation to submit evidence, is at Annex E. Here is an analysis of this feedback. It incorporates the submissions received from organisations and individuals responding, when the review was announced, to the invitation to provide evidence.

### **Little consensus**

131. Legal aid benefits a broad range of clients. On the civil side are those who may face what they see as life threatening risks in relation to asylum through to those involved in family disputes. On the criminal side we may find petty, perhaps vulnerable, criminals on the one hand and those who are suspected of participating in serious fraud on the other. The spectrum of providers is equally broad with everything from high profile law practices through to local advice centres staffed partly by volunteers.

132. There was little consensus as to what changes need to be made - although there was a good deal of support for the view that some changes in the way in which the delivery chain operates were required. However, there were two areas of significant agreement. The first is that all decisions relating to individuals must be taken independently of Ministers. The second is that the relationship between the Ministry of Justice and the Legal Services Commission seems to external observers, and even to some inside the Ministry, to be unclear, creating confusion among those who work with them, a lack of transparency in relation to governance and decision-making and potential inefficiencies because of duplication of effort.

### **LSC and the MOJ**

133. The National Audit Office observed recently that the MoJ has a closer relationship with the Legal Services Commission than is typical between a

sponsoring department and a non-departmental public body.<sup>58</sup> This may reflect the significance of legal aid expenditure of over £2 billion to the Ministry of Justice's total annual budget of £10 billion. The NAO<sup>59</sup> found that 'the current division of policy responsibilities between the Ministry and the Commission is confusing and poses a risk of duplication on some issues and a lack of coverage of others.' According to the NAO, the Ministry spends approximately £2 million annually on legal aid policy work which is in addition to the Commission's own administration budget, despite recent reductions. I recommend in Part 6 how the confusion over policy responsibilities might be minimised, how governance might be made more transparent and how the resources required for policy purposes could be used as efficiently as possible. This has also involved looking at the role of Commissioners; the potential for the introduction of a differently-constituted Commission with non-executive as well as executive input; and the adequacy of the arrangements, both in the MoJ and within the Commission, for financial oversight of what by any measure is a very large budget.

134. The key themes raised by those who were consulted and submitted views were:

- Ownership of legal aid
- Independence
- Financial management, forecasting spend and accountability
- Perceptions of LSC performance
- Legal aid providers and the legal services market
- Criminal spend threatening civil provision
- Alternative delivery models

### **Ownership of legal aid**

135. This is a key theme running through the evidence gathered as part of the review. The Access to Justice Act 1999 attempted to reconcile a new vision for legal aid - and the creation of the Community Legal Service - with the status quo; the established ways of working with and procuring services from the legal profession. The Act created multiple powers and responsibilities for the delivery of legal aid which are currently shared between the government department, the executive team within the LSC

---

<sup>58</sup>The Procurement of Criminal Legal Aid in England and Wales by the Legal Services Commission. Report by the Comptroller and Auditor General. HC 29 Session 2009–2010. 27 November 2009 p. 4

<sup>59</sup> Ibid. p. 8



## Review of Legal Aid Delivery and Governance

and the LSC board, which is made up entirely of non-executive members. All parties have dealings with the legal profession who have a powerful influence over the way in which legal aid is currently delivered.

136. All those consulted felt that lack of clarity around these arrangements, and the way they had evolved over time, had produced real practical difficulties and created tensions in the relationships within and between organisations. There was a particular concern over who is responsible for what in terms of policy and a sense of frustration that both the MoJ and LSC want to consider new ways of doing things. Often, however, the governance and decision-making arrangements frustrate efforts, cause confusion, contribute to delays, and inhibit progress unnecessarily. Accountability for the different elements of the business is often unclear as a result. There was a strong view that the interdependencies between the administration of legal aid and the efficacy of the justice system required a “whole justice system” approach to legal aid policy.
137. Both the Law Society and the Bar Council observed that the LSC and MoJ lacked one coherent policy voice. This policy disjoint, they felt, resulted in mixed communications, poor implementation and an inability to prioritise and plan policy changes effectively.
138. There were some specific concerns raised around governance arrangements for Wales and whether current delivery models enabled proper consideration of Welsh Assembly Government interests. Respondents questioned whether the approach to delivering legal aid in Wales took proper account of the different public administration and service arrangements in place following devolution which impacts particularly on the work of providers within the CLS.
139. Specific feedback included:
  - Confused decision-making arrangements and responsibilities between:
    - Ministers and LSC Board
    - MoJ Corporate Board and LSC Executive Team
    - Strategic and operational policy
    - Civil and crime spending priorities
  - Governance structures in place are difficult to manage
  - Governance arrangements reflect ad hoc policy responsibilities between the LSC and MoJ and these do not necessarily support the priorities or outcomes of the two services

## Review of Legal Aid Delivery and Governance

- Too much change compounded by lack of a central vision and joint planning has resulted in lack of clarity on priorities and LSC not being properly accountable for the basics, i.e. getting their payments right
- This has led to frustration amongst stakeholders and vulnerability to challenge
- Policymaking is too disjointed and legal aid policy making is too disconnected from wider justice system policy
- The implementation of legal aid policy does not always deliver the outcome intended

### **Independence**

140. This is a constant theme and the one on which there appears to be most consensus. All feedback has been clear that ministers should not be involved in individual decisions on the granting of legal aid, nor on influencing the way in which individual contracts are operated. There is however a difference of view as to the extent to which this independence needs to extend to the status of the body responsible for the delivery of legal aid, its core responsibilities, and in particular the status and role of its Board and Executive Team. Some of those consulted argued that at a macro political level where issues of broad principle were at stake – such as the decision to fund legal aid for particular groups in society or to fund cases challenging government legislation - then the delivery body must be seen to be fully independent of government in developing its policies and resulting operational solutions for administering these. Others pointed out that there were many examples of arms length bodies across government whose staff take executive decisions on funding or process without ministerial input, and with the safeguard of an appeals mechanism.

141. Those consulted raised a number of issues:

- All parties accept the need for independence in deciding individual grants
- Economic climate and scale of legal aid spend are such that it is right for ministers to be involved in setting priorities for funding as well as how this fund is administered
- Some providers and representative groups feel that legal aid should be administered entirely at arms length of government and that LSC should lead on policy

142. Suggestions to clarify accountability included:

- Clarity on LSC Board's role and decision-making capacity
- LSC CEO to sit on MoJ Corporate Board

## Review of Legal Aid Delivery and Governance

- LSC Accounting Officer to report directly to Permanent Secretary as opposed to via the Director General Access to Justice
- LSC CEO to sit on the LSC Board
- Fewer commissioners
- LSC Board to have smaller committees with focused tasks - audit, financial management, appeals
- Independent Board to oversee individual awards and appeals only – suggest something akin to Borders and Immigration Agency
- More direct access for LSC Board and Executive Team to ministers could be beneficial to provide reassurance and enable open discussion of issues

143. Suggestions around accountability for legal aid delivery in Wales included:

- The creation of an LSC Commissioner for Wales reporting to the Secretary of State for Wales and the Lord Chancellor
- Devolution of some elements of CLS to Wales to reflect areas where Wales exercises legislative competence including children and family, education, health, housing and welfare services
- Devolution of the whole of legal aid to the Welsh Assembly Government

144. Suggestions around policy direction included:

- Clarity on policy and decision-making responsibilities to improve relationship
- An integrated policy and sponsorship team within the MoJ
- Criminal legal aid policy to sit within Criminal Justice Group and not Access to Justice
- MoJ to ensure that LSC's operational expertise feeds into the policymaking process

### **Financial management, forecasting spend and accountability**

145. The legal aid fund represents almost a quarter of the Ministry of Justice's annual budget and all consultees felt that clear and robust governance arrangements need to be in place both in the Ministry and the Commission to monitor this spend effectively. These arrangements have come under the

## Review of Legal Aid Delivery and Governance

spotlight more recently as a result of the NAO's qualification in October 2009 of the LSC's accounts for the first time.

146. Commentators made a number of observations and suggestions. Many respondents questioned whether the right checks and balances are in place to support the effective management of the fund both within the MoJ and the LSC. There were suggestions that the MoJ need to provide better support; and that the LSC need to give greater focus to internal financial planning and management.
147. On forecasting, several of those consulted challenged the notion that because the crime spend is demand-led it is difficult to forecast spend effectively and suggested that it is possible to apply a model across all categories of legal aid spend which takes account of both macro economic trends as well as the LSC's operational trend data.
148. The feedback included:
- Financial management and accountability not given appropriate profile within LSC Executive Team
  - Financial accountability and governance arrangements unclear within Access to Justice Group and the wider MoJ
  - There are currently multiple forecasting models in use: forecasting process is not adequately co-ordinated and understood by those contributing to it
  - Concern that decision-making guidance not applied consistently which can make system vulnerable to fraud and payment errors – more robust financial controls and accounting arrangements are needed
  - No central accounting system with data gathered from different systems held across the organisation and not collated in a compatible format
149. Suggestions included:
- Finance Director to sit on the LSC Executive Team
  - LSC forecasting to link to models used by wider CJS agencies
  - Crime forecast to learn from other demand spend forecast methodologies, for example DWP for benefits spend
  - Open book relationship between LSC and MoJ Finance
  - LSC to adopt Treasury Green Book approach<sup>60</sup>

---

<sup>60</sup>See: [http://www.hm-treasury.gov.uk/d/green\\_book\\_complete.pdf](http://www.hm-treasury.gov.uk/d/green_book_complete.pdf)

- More transparent negotiation and engagement early on between MoJ and LSC

### **Delivery mechanisms for the CDS and the CLS**

150. A key element of the Review's Terms of Reference is to identify appropriate delivery models for both the CLS and CDS, which includes reviewing the current performance of the LSC. Many of those interviewed and those who submitted evidence began by offering their perceptions on the LSC's performance.

### **Perceptions of LSC performance**

151. Most consultees recognise that the LSC's remit is challenging. There was recognition by some that the LSC had done a good job in these circumstances to increase acts of assistance whilst controlling the crime budget successfully. Many recognised the LSC's achievements; in particular, the commitment to try new ways of delivering services, embrace alternative dispute resolution methods and develop new ways of accessing services for clients.
152. LSC staff emphasised the enormous amount of change which the organisation has had to manage over the last few years and some suggested that this had resulted in a lack of focus and direction in some areas. Reference was made to the rising administrative costs of the LSC in implementing recent reforms such as the introduction of fixed fees and preparation for best value tendering.
153. Legal services operate in a complex environment. However, that does not mean that the resulting contracts, decision-making guidance and fee structure must themselves reflect that complexity. Providers felt that the LSC had created unnecessary administrative burdens and needed to implement a lighter-touch more risk-based monitoring and audit regime.
154. Many LSC staff and providers were keen "to get the basics right" and simplify business processing as far as possible. It was suggested that the LSC's business processes have improved significantly in the past 12 months. However, the targets that have been met were based on increasing payment turnaround for providers rather than improving the process itself. Many felt that this would come with the introduction of electronic case management.
155. The feedback included:

## Review of Legal Aid Delivery and Governance

- Reforms are perceived as piecemeal and knee-jerk rather than resulting in a more sustainable, efficient service
- The application of complex systems and rules is resource-intensive for LSC case managers and providers
- Providers complain that the process is too bureaucratic, constraining and decision-making by LSC is too slow
- Need for greater focus on meeting principles of good regulation: proportionate fair, transparent, consistent and targeted
- KPIs for delivery, fund management and policy achievement are not complementary
- LSC is often reluctant to tackle poor performing firms because of their fear of losing coverage in an area

### 156. Suggestions included:

- Improve and strengthen business planning process between MoJ and LSC to prioritise reforms and manage change effectively. MoJ to carry out scenario planning exercises with ALBs
- LSC to focus on improving its core business processes to become more efficient and accountable – LSC should take over administration of the HMCS court taxing process
- LSC to move towards electronic case management to improve efficiency, strengthen audit trail and provide more robust Management Information
- Tighter management over the discretionary elements of the fund such as expert fees and reports
- A slimmed down “LEANer” centre – pushing as far as possible for what can be transactionalised and outsourced
- Move towards shared services with the MoJ and, where feasible, other parts of government- for IT, legal services, HR and finance

### **Legal aid providers and the legal services market**

157. Many of those consulted as part of the review referred to the difficult relationship between the MoJ, LSC and the legal profession. Those outside the profession frequently perceived the profession as being resistant to reform and usually successful in lobbying government against change. There was recognition that the LSC has a tough remit to encourage the market to reform and engage in best value tendering. Others felt that until the regulatory framework which will support Alternative Business Structures

## Review of Legal Aid Delivery and Governance

is fully in place and greater competition exists in the legal market, best value tendering for services is not a reality.

158. There was a mixed response from providers in the legal profession and advice sector about the future commissioning direction with many of those consulted seemingly pragmatic about forthcoming change and wishing to engage with the LSC and MoJ constructively. Many recognised that there would be increasing consolidation of the market and new business and operating structures emerging which could provide services in different ways. Some felt that to be an effective commissioning body, the LSC needed to get much better at setting the parameters for the quality and scope of legal services but allowing providers the flexibility to deliver in the ways they felt best or simply “to get on with it” as they always have. This flexibility was the “quid pro quo” for government demanding more from legal service providers with less funding available.
159. The Law Society and Bar Council questioned the LSC and MoJ’s knowledge of the legal services market. They felt that lack of knowledge has led to the micromanagement of providers and stymied the market’s ability to respond as it felt best to the needs of clients. Both organisations wanted to see this knowledge developed and reflected in the LSC’s commissioning strategy and operations.
160. Specific issues were:
  - More time is needed for the market to respond to the new regulatory framework provided by the Legal Services Act 2007
  - Policy makers do not understand the real costs of change on providers and the evidence collated is weak
  - Policy makers are trying to deliver too much change before the market is ready
  - Providers are not given enough flexibility to innovate and re-structure their businesses and therefore become more efficient
  - Too much focus on measuring inputs as opposed to outcomes as part of LSC contract management
161. It was suggested that there was a need to improve focus, skills and resource into developing knowledge of the market and to build and implement an effective commissioning strategy.

### **Criminal spend threatens civil provision?**

162. A key element of the terms of reference was the exploration of separating the CDS and CLS and options for doing so. The latter derives in large part from a long-held assumption that the crime fund will always have the potential to threaten provision allocated to the civil fund. The qualitative evidence collected as part of the Review was generally not in favour of separating the budgets or the administrative apparatus for the two schemes. The exception was some of the feedback received from the not-for-profit advice sector that suggested that there could be real benefits in separating out the spend used to support the provision of social welfare law advice and indeed that these services might be administered and delivered differently.
163. It was important to test this assumption to move on to considering in more detail the delivery models which might be appropriate for civil and criminal legal aid services. There was little appetite for formally separating budgets and no evidence was presented that this would assist in protecting the civil spend from rising criminal demand. The legal profession were particularly keen to avoid splitting the administration of the two elements of the legal aid budget as many providers carry out a mixture of civil and criminal work. Others suggested that creating two or multiple delivery bodies may prove more expensive and less efficient.
164. There were some interesting and constructive discussions around the appropriate role of the courts and the judiciary in the administration of legal aid and suggestions for how local client needs could better influence the delivery of CLS services to communities.
165. The following issues were raised:
- Any discretionary budget is vulnerable when public spending is restricted and the civil fund will always need to be capped
  - Having one budget maintains flexibility and allows the Ministry to set priorities taking into account all funding available for legal aid
  - Crime is generally under control and low level crime work has reduced in cost with introduction of fixed fees
  - The demand-led areas of civil spend also need to be managed (these include public law family, immigration and asylum, mental health)
  - Need for better control over very high cost cases in family and crime – the rest of the spend is more able to be controlled and has been over the last few years



## Review of Legal Aid Delivery and Governance

- Many legal aid practitioners do both criminal and civil work: have established and positive relationships with LSC contract and relationship managers and do not wish to have to liaise with an additional body

166. Suggestions included:

- A devolved 'Social Welfare Law Fund' delivered through not-for-profit organisations or through local authorities
- Joint budgets: link funding for Social Welfare Law services to OGD welfare support & advice services budgets (or cross-government budget) for children and family services to include legal aid for public law children
- Family fund transferred to the courts
- A foundation funding model for civil spend

### **Alternative delivery models**

167. Consideration of this issue was influenced by the views held about the LSC and its performance to date. There were differing perspectives as to what the purpose of the Commission was – suggestions ranged from a payments processing organisation, a commissioning body to a body responsible for a whole range of services and relationships and which owned the future strategy and policy direction for legal aid. Many suggested that until its purpose was made clear, it was difficult to consider alternatives. The majority of respondents made reference to an increasingly centralised delivery model over the last few years with fewer regional offices and less regional direction over the services procured.

168. Many respondents referred back to the founding vision for the Community Legal Service and a desire to see services being delivered by organisations and bodies firmly rooted in local communities. Other respondents mentioned the possibility of combining budgets and delivery with other public bodies with complementary remits and responsibilities.

169. Some of those interviewed were not convinced of the case for new delivery mechanisms but rather felt that existing governance arrangements and responsibilities simply needed clarification.

170. The following issues were raised:

- An increasingly centralised administrative model has brought the CLS and CDS more closely together: unified contracts and contract management, quality framework and fixed prices apply across both civil and criminal schemes

## Review of Legal Aid Delivery and Governance

- Some categories of law such as prison law fall within scope of the civil and criminal schemes and therefore their administration should be unified
- CLS should be guided by local priorities and local provision and there is currently not enough local accountability for spend
- Some in the advice sector felt not enough done to harness the existing infrastructure of provision which is already adapted to local needs
- Family has its own distinctive features and public law particularly should be more closely aligned with other elements of the family justice system
- Much of the administration including checking merits of case, costs and eligibility is not sufficiently tailored to meet issues pertinent to different categories of law
- Delivery model for legal aid should incentivise the right behaviour amongst practitioners

### 171. Suggestions included:

- Operational functions for both CDS and CLS to remain with the LSC
- An Executive Agency might be a more suitable delivery model for a budget of £2.1bn
- Need more robust checks and balances across the justice system which to ensure that legal aid is used appropriately
- One body to administer the payment of fixed costs or the “bare bones” with alternative oversight of more complex elements such as Very High Cost Cases (VHCCs)
- Potential to expand the use of the Public Defender Service (PDS) to handle some or all VHCCs
- An integrated family justice agency to comprise of CAFCASS; LSC; bits of HMCS; bits of OGDs.
- Focus CLAC provision in areas where there is very little existing supply but utilise existing ecology of CLS provision within communities of adequate supply
- No new structure needed but new governance and accountability arrangements to allow a “fresh start”

## Part 5 – Analysis and Options

### 5.1 Analysis

#### Departmental sponsorship

172. The MoJ's Access to Justice Group sponsors 31 Arms Length Bodies (ALBs) including executive agencies, executive and advisory NDPBs. This follows a decision earlier in the year to bring all of the MoJ's ALBs under the oversight of this one sponsorship team. AtoJ is currently accountable to the Secretary of State for reporting on the performance of all of them.
173. The sponsorship team is working to develop a comprehensive performance management framework which is consistent across all MoJ ALBs. The approach is based on the current HM Treasury and Cabinet Office principles of sponsorship.<sup>61</sup> Further guidance is likely to be developed following the outcome of the Treasury's review of arms length bodies expected to report with Budget 2010.<sup>62</sup> Sponsorship arrangements are formally set out in the framework agreement and monitored through the performance management framework.

#### The Framework Document

174. The relationship and respective roles of the Ministry and LSC are formally documented in the framework document. The framework document is a standard agreement between a sponsor department and an NDPB and is important in establishing the nature of the relationship between the Ministry and the LSC.
175. Each NDPB has its own specification depending on its particular responsibilities. There are standard headings including:
- Purpose
  - Governance and accountability
  - Management and financial responsibilities
176. The LSC's framework agreement was last revised in 2004. Another revision is being prepared. It focuses on the high-level governance arrangements and reporting lines, the reporting timetable and financial accountabilities

---

<sup>61</sup>Managing Public Money. HM Treasury. 2009

<sup>62</sup> 2009 Pre-Budget Report. Chapter 6: Protecting Public Services. HM Treasury, p. 108.

## Review of Legal Aid Delivery and Governance

between the two bodies. Currently, it includes the following key roles, responsibilities and reporting requirements:

### *Roles and responsibilities*

- The Department agrees the Commission's performance framework in the light of the Department's wider strategic aims and current PSA targets.
- The Secretary of State approves the Commission's strategic objectives and the policy and performance framework within which the Commission will operate.
- The Sponsoring Team within the Delivery Unit [Access to Justice] is the primary source of advice to the Secretary of State on the discharge of his/her responsibilities in respect of the Commission and the primary point of contact for the Commission in dealing with the Department. The Delivery Unit advises the Secretary of State on how well the Commission is achieving its strategic objectives and whether it is delivering value for money.
- Members of the Commission establish the overall strategic direction of the Commission within the policy and resources framework set out by the Secretary of State. Members ensure that the Secretary of State is kept informed of any changes which are likely to impact on the strategic direction of the Commission or on the attainability of its targets, and determine the steps needed to deal with such changes.

### *Reporting and communications*

- The Secretary of State will meet the Chair and Chief Executive of the Commission formally to discuss the Commission's performance and plans. The Secretary of State will meet the Chair of the Commission regularly to discuss the Commission's performance.
- A review meeting will be held at least quarterly to discuss any issues relating to the relationship between the Departments and the Commission.
- The Delivery Unit will inform the Commission of relevant Government policy in a timely manner; advise on the interpretation of that policy; and issue specific guidance to the Commission as necessary.
- The Commission will operate management information and accounting systems which enable it to review in a timely and effective manner its financial and non-financial performance. The Commission's performance in helping to deliver Ministers' policies, including the achievement of key objectives, will be reported to the Department on a regular basis.

## Review of Legal Aid Delivery and Governance

- The Commission shall provide to the Department, as a minimum, information on a regular basis of: its cash management, its draw-down of any grant/grant-in-aid, forecast outturn by resource and cash headings.
- The Commission will take the initiative in informing the Department of changes in external conditions which make the achievement of objectives more or less difficult, or which may require a change to the budget or objectives set out in the Corporate or Business Plans.

177. The financial memorandum sets out in greater detail certain aspects of the financial framework within which the Commission is required to operate, including: the LSC's financial management and internal control; financial controls and authorities; grants; and accounting arrangements.

### **Performance management framework**

178. The sponsorship team requests quarterly reports from all ALBs on their performance, based on a balanced scorecard approach. The LSC is also asked to report issues and risks with regard to their ability to meet their targets. The LSC provides monthly performance updates to the sponsorship team against a number of KPIs which include:

- Targets for responding to duty calls in the police station
- The delivery of 1 million acts of assistance
- Maintaining minimum coverage of SWL and Family providers within each procurement area
- Reducing their overall debt
- Maintaining customer service targets

### **Issues arising from sponsorship role**

179. The stated principles of sponsorship from the Treasury and Cabinet Office include:

- Robust governance arrangements
- A clear understanding of the terms of the relationship
- The promotion of high performance (through a performance management framework)
- Safeguarding the appropriate stewardship of public funds

## Governance

180. I have found that current governance arrangements between MoJ and LSC are not robust. There appear to be confused decision-making arrangements and responsibilities between:

- Ministers and the LSC Board
- MoJ Corporate Board and the LSC Executive Team
- Strategic and operational policy
- Civil and crime spending priorities

181. Current governance arrangements seem to reflect ad hoc policy responsibilities between LSC and MoJ rather than those designed to enable the delivery of Ministerial priorities. Specific concerns were raised with me about governance arrangements for Wales and whether current delivery models enable proper consideration of Welsh Assembly Government interests. Governance arrangements have come under the spotlight more recently as a result of the qualification of the LSC's accounts for 2008/09 for the first time.<sup>63</sup> A significant amount of work has been done already to identify areas for improvement in response to the NAO's concerns and I understand that an action plan is being implemented. A widely accepted governance model requires clarity on four dimensions and will offer a valuable test of the action plan proposals:

- Responsibility: The entity that does work to complete the task. There can be multiple responsible entities
- Accountability: Entity answerable for the correct and thorough completion of the task. There must be one accountable entity (person or group) for each task
- Consultation: Those entities whose opinions are sought. Two-way communication
- Information: Those entities that are kept up-to-date on progress. One-way communication.

182. The terms of the MoJ/LSC relationship also present problems. There appears to be ambiguity in the roles, responsibilities and accountabilities for financial management between the LSC and within the Ministry with some duplication and bureaucracy in financial management and reporting processes. This no doubt contributes to the frequent interventions at different levels which I have observed and had brought to my attention.

---

<sup>63</sup> Legal Services Commission Annual Report 2008/09. p. 48

## Review of Legal Aid Delivery and Governance

This is evidently frustrating for all concerned. There also appears to be a lack of trust in the relationship.

183. As to performance, it is not entirely clear whether the reporting systems in place, or the KPIs against which the LSC report, enable effective oversight or adequately capture concerns and key performance risks associated with LSC systems and processes. Financial reporting requirements have already been covered in Part 2.
184. The current framework document causes concern:
  - It is unclear as to how the decision-making process works between the LSC Board and the Ministry of Justice and in particular, what is the mechanism through which any urgent problem or concerns can be appropriately escalated
  - It does not define the respective policy responsibilities of the two bodies nor provide clarity as to the process through which the Ministry will set the policy framework or direction out of which the LSC must develop its strategy
  - It is silent on the proposed role of the sponsor in supporting the LSC to perform effectively. This is particularly evident in relation to the LSC taking the initiative to inform the Ministry of any problems in meeting its objectives where there is no explicit arrangement for how the organisations will work in partnership to resolve these
185. The Ministry's strategic policy has significant impacts for both criminal and civil LSC business and delivery targets. Clear communication on progress against these is essential but the performance management framework does not appear fully aligned with policy delivery. Concerns were expressed to me that the current performance framework does not quantify performance against specific Ministerial priorities, nor is it clear to what extent wider criminal justice policy priorities are reflected.
186. Relationships at a personal level between the LSC and the sponsorship team seem good. However, with regard to process, there is evidence of lack of co-ordination particularly in relation to the number of reporting lines. For example the respective roles and accountabilities between Access to Justice and MoJ corporate finance are unclear. This has produced parallel governance systems between MoJ Corporate and Access to Justice Finance and a myriad of oversight committees and approval processes. This risks performance information being requested, processed and interpreted within different parts of the Ministry, with the potential to arrive at different conclusions. All this suggests that the MoJ is not as effective as it might be in its sponsorship of the LSC.

## **LSC Governance**

187. Governance within the LSC raises additional and serious concerns. The LSC has a number of different Committees designed to provide assurance. However, the Board includes no executive membership. There is no evidence, from scrutinising the LSC Board minutes, that the Board exercises a true non-executive function in holding its executive to account. Concerns have been raised that financial reporting and accountability and financial management processes are inadequate. And the Chair of the LSC Audit Committee told me that there was a lack of clarity about the role of Commissioners. There was, he believed, a blurring of the lines between executive and non-executive roles. Some Commissioners, for example, carry regional responsibilities and spend many more days per annum in discharging their duties than might be expected of non-executives in any other Board setting.

## **Legal aid delivery**

188. Over the last ten years, the LSC has developed from a body which paid for services largely on the basis of the existing provision available, to a commissioning body that increasingly sees its role as shaping the market to deliver the legal services its clients need. In reality, it is operating somewhere between the two. The LSC is an organisation with ambitious vision, commitment to change and transformation but still doing much of its business in the same way as ten years ago.

189. It is clear that the LSC carries out many transactions (with over 2.9m acts of assistance in 2008/09) largely successfully, and has established and makes effective use of providers and provider networks in the delivery chain (including solicitors, not-for-profit organisations, barristers and HMCS).

190. An increasing amount of resource (particularly the Legal Aid Fund) has focused on the demand driven business, particularly criminal legal aid and family, and this has clearly had an impact upon the resource available elsewhere.

### *Separation of the CLS and CDS*

191. This may suggest that that there would be benefit to customers in separating the fund and/or administration of civil and criminal legal aid. However, the trends on legal aid expenditure do not appear to justify the fear that crime threatens civil, particularly since spend on criminal legal aid has flattened whilst spend on civil legal aid has risen.



## Review of Legal Aid Delivery and Governance

192. We have considered whether any action could be taken that would protect the civil fund from any increased demand on the crime side and whether such action would be appropriate. Separating or ring-fencing funds is unlikely of itself to achieve this: it has for example proved useful on occasion to vire between the funds, and separation of itself presents problems: at what level are the initial budgets set? Might there be a danger that they are allowed to wither on the vine? What is more important is to continue to improve the ability to foresee and tackle such pressures effectively by improving fund forecasting and policy making processes.
193. True to the original vision for the CLS, the LSC has attempted to ensure social welfare law advice, in particular, is embedded within a local service and funding infrastructure. However, the roll out of the LSC's CLACs and CLANs has been much slower than originally envisaged and the not-for-profit providers outside these arrangements claim that the unified civil contract does not enable them to work and deliver local services in the way their other funders do.

### *Service improvement and efficiency*

194. Many innovations and improvements to LSC delivery processes have been introduced, some only in parts of England and Wales so far, with many others planned. Innovations include the development and expansion of the Community Legal Advice telephone service, the roll out of family mediation services and the Public Defender Service.
195. The LSC is now positioned as essentially a procurement and payment organisation. The evidence is that the providers – Bar, solicitors, and not-for-profit sector – would welcome an approach from the LSC which, as the Law Society described in their written evidence to this review, involves “less micro-management by the LSC”. They wrote of “the intrusive manner in which it (the LSC) runs legal aid contracts, often by specifying the minutiae of how things should be done”. Whether fairly or not, there was a near-universal perception among providers that the necessary balance between the protection of public money and over-regulation, especially of small businesses, had gone too far.
196. There are serious concerns over financial management and governance associated with LSC operational processes.

### **Legal aid policymaking**

197. Justine Stratton, who has worked with my team during this review, carried out an analysis of the respective policy functions for the Director General of AtoJ and the CEO of the LSC in autumn 2009. The paragraphs below

## Review of Legal Aid Delivery and Governance

summarise her main conclusions. I agree with them, based on the further evidence and interviews from this review.

198. Within the current structures, there is significant scope for making things work better, for sometimes delivering better outcomes for end users and reducing the time and frustration for those involved. Currently the whole appears to add up to 'less than' rather than 'more than' the sum of the parts.
199. There is a great deal of knowledge and expertise both within the LSC and the MoJ as well as strong loyalty and commitment which will be essential to retain in any delivery model moving forward. Having two sets of teams involved in legal aid policy making within separate organisations, the MoJ and LSC, with their own objectives (albeit broadly aligned) and governance arrangements, has inevitably led to a more complex process with more hand-offs, layers of decision making and rework. There are also two sets of legal teams involved in legal aid policy, one within the LSC and the other within MoJ, providing legal advice from different perspectives. Not surprisingly this is reported as sometimes resulting in a disparity of legal advice to their respective policy teams making it more difficult for the two policy teams to agree on the appropriate way forward.
200. Together with inconsistency (between jurisdictions and elements of jurisdictions) and lack of clarity in roles, responsibilities and accountabilities it is not surprising that this sometimes creates a perception of conflict between the teams, generates significant rework, delay and frustration for those involved and results in a less efficient and effective process overall.
201. Legal aid policy has generally been considered separately rather than as an integral part of policy and strategy more widely for each jurisdiction through 'whole system' thinking. In spite of legal aid impact assessments being carried out this means that the impacts of policy change on the legal aid fund and administration of legal aid are not always properly understood. It also means that opportunities for using legal aid to influence behaviour within the justice system are not always taken.

### **Legal aid fund forecasting**

202. Over the last few years the forecasting process appears on the face of it to have resulted in a relatively accurate forecast overall, with the legal aid fund's actual cash outturn being within 2% of its forecast cash at the beginning of the year. However, there has been significant volatility in the forecasts at scheme level and below which raises questions over the efficacy of the forecasting process. Moreover, the outturns and inputs are sometimes measured in different currencies.

## Review of Legal Aid Delivery and Governance

203. The current approach to legal aid fund forecasting is extremely complex, detailed and time consuming. It involves extracting vast quantities of data from LSC systems and using very many, complex models to produce forecasts for the future which take account of past performance/trends and future policy changes (where known). Forecasting models do not adequately take account of changes in the macro environment such as the economy and demographics. Also, in spite of the legal aid impact assessment process, those involved in policymaking in MoJ and in other government departments do not always understand that the changes they are making will impact on the legal aid fund. This means that those involved in forecasting, are not always aware and able to take account of all the policy changes that will impact on their forecast and the legal aid fund. The current forecasting models, while providing reasonably accurate overall forecasts in the last few years, do not represent good practice for the future. The Ernst and Young Report mentioned in Part 3 bears this out.
204. Effective forecasting needs a clear policy and strategy for each jurisdiction and an operating model to be defined with cause/effect levers/impacts on legal aid clearly understood. In other words, for legal aid fund forecasting to be fully effective, legal aid needs to be part of 'whole system' thinking which currently is not the case. Forecasting models also need to consider changes in the macro environment.
205. The nature of the forecasting process means that it is not transparent and scenario planning is very difficult and time consuming. There appears to be a lack of understanding of the limitations of the forecasting process within MoJ and the contribution that MoJ policy makers and others need to make to enable a more effective forecasting process. This, together with the lack of transparency in the process and the importance of legal aid fund forecasting (given the size of the legal aid fund compared to the overall MoJ budget), appears to have added to the lack of trust in the LSC and MoJ relationship.

### **Financial management**

206. Other reviews have highlighted significant concerns over the LSC financial accounting and controls environment. The LSC accounts for 2008/09 were qualified as a result of concerns over LSC financial management and reporting. Such concerns have also been highlighted by many of those interviewed during this review.
207. The LSC does not have the fully integrated transaction based financial accounting system in place that one would expect given the size and complexity of its business and is dependent on a range of systems and

## Review of Legal Aid Delivery and Governance

processes and very many sources of data, including manual spreadsheets. The definition and accounting treatment of some financial items is also questionable, for example, near cash and work in progress (WIP). Re-classification between balance sheet items (WIP provision, debtors/creditors) also affects the levels and presentation of near cash. This means that the LSC (and in turn MoJ) does not have the information it needs on which to make sound financial decisions. It also means that the system is opaque rather than transparent and presents challenges for the LSC, not only in controlling and managing its finances, but in its relationship with MoJ.

208. This is of particular significance given the size of the legal aid fund in relation to the overall MoJ budget and raises issues over the financial controls and governance arrangements in place at all levels within the Commission and the MoJ. There appears to be ambiguity in the roles, responsibilities and accountabilities for financial management between the LSC, AtoJ and MoJ with some duplication and bureaucracy in financial management and reporting processes. There also appears to be a lack of trust in the relationship.
209. All this suggests that the financial governance arrangements in place within the LSC are not effective. It also suggests that the MoJ needs to pay attention to the financial aspects of its sponsorship of the LSC. The current most senior structures within the LSC consist of an Executive team made up of the Chief Executive and executive directors and an LSC Board made up entirely of non-executives. This does not appear to be consistent with best practice on corporate governance which recommends a mixture of executive and non-executive Board membership. Given the potential for changes in the legal aid fund forecast and expenditure to have a significant impact on overall AtoJ and MoJ finance, it is not clear that legal aid finance has a sufficiently high profile within the financial reporting and management of MoJ.
210. The LSC and MoJ have already initiated a joint project to address many of the accounting and financial management issues highlighted. It needs to be pursued with more pace and urgency given the gravity of the problems.

### **Financial risk**

211. It is beyond the remit of this review to explore in detail the operations of the various functions of the LSC. However, my terms of reference do cover financial management of the two funds and their administration and there appear to be serious gaps in both management and administration arrangements. The qualification of the 2008/9 accounts and the report by

## Review of Legal Aid Delivery and Governance

Ernst and Young, which are both referred to in Part 3, sound alarm bells over the finance function. It is surprising that, with responsibility for such large sums of public money, the LSC appears to have no overall system of integrated internal financial control. Responsibility for controls seems to be dispersed across the Directorates and the finance team has only a residual role in financial control, rather than having overall responsibility as would be expected. Basic financial controls over fund expenditure are lacking and this presents a significant financial risk to the organisation. As mentioned above, the LSC does not have a conventional accounting system. The Oracle general ledger is old and partially implemented. With no conventional accounting system, there is a risk that the LSC will be unable to prepare appropriate accounts.

## 5.2 Options

### Introduction

212. There is too much that requires fixing to leave things as they are. Furthermore, times have changed. The Commission's role has evolved in more than ten years since it was established, and successive changes from Government and from within the Commission mean that it is time to take stock, and for Ministers to reflect what they want from an organisation delivering an important service.
213. The following options are not mutually exclusive. Options cover process, structural, relationship and behavioural change to differing degrees. Sometimes structural change is necessary to enable changed behaviours and relationships and to embed process change successfully. Some of these options would, I am advised, require primary legislation. Other changes, necessary in my view, could and should be made quite quickly; see the recommendations in Part 6.

### **Option 1: maintain existing arms-length arrangements but sharpen arrangements for governance, accountability and more effective use of resources**

214. I have found a confused, and in places overlapping, set of decision-making responsibilities between the Ministry of Justice and the LSC. This option would streamline some of the decision-making arrangements currently in place, ensuring better accountability as well as a source of independent advice and challenge of the LSC and MoJ's administration and performance. It would have the following features: LSC would continue to undertake all current functions but with the boundary and relationship issues resolved including clearer accountability for policy, forecasting and financial management arrangements. Criminal legal aid policy would also sit within Criminal Justice Group. I am advised that these changes would not require primary legislation.
215. There may also be scope for better use of shared services for finance; legal; estates; information technology and human resources. Critically, where such services remain separate they must be capable of interaction- between information technology and financial systems in particular.

### *Benefits*

- Better management of the legal aid fund. Less duplication, clearer responsibilities and accountabilities, and more efficient communication

## Review of Legal Aid Delivery and Governance

and decision-making processes should improve the effectiveness of both organisations

- No surprises – issues and risks can be managed and escalated more effectively
- Legal aid more clearly aligned and accountable for meeting MoJ corporate strategic targets for civil and criminal justice
- ‘Whole system’ approach in the development of CLS and CDS policy
- LSC focus more on becoming expert commissioning body and improving its procurement efficiency
- Better targeting of resources in a challenging financial climate
- Improved customer focus through improved policy making process

### *Risks*

- Existing ways of working and lack of trust persists
- Potential for staff change and unrest

### *Costs*

- Probably only one-off and negligible adjustment costs

## **Option 2: create a new Executive Agency**

216. I have considered the implications of changing the status of the LSC to an Executive Agency so that legal services policy and delivery is no longer at arms length and becomes part of the MoJ “family”. This would ensure one ‘policy voice’ and different accountability arrangements. Independence around individual funding decisions would be preserved and would operate as happens elsewhere in Government, for example within Jobcentre Plus or HM Revenue and Customs with appropriate adjudication and appeals processes. Arrangements for a non-executive Chair and Board composition could be made. To change the status of an existing NDPB without substantially changing its functions would be unusual. However, we have seen that these functions have indeed changed substantially over a decade. I am advised that this option would require primary legislation.

## Review of Legal Aid Delivery and Governance

### *Benefits*

- Legal services provision would be part of the MoJ family of agencies making it easier to assess the impact of legal aid against demands of the whole system
- Economies of scale would see a reduction in policy and other corporate resources
- Independence effectively maintained through an independent appeals and adjudication processes
- Improved clarity for the market as to who calls the shots over policy

### *Risks*

- Potential for staff change and unrest
- Potential adverse implications associated with perceived reduced independence of case by case funding decisions, although the creation of a new tribunal would deal with this

### *Costs*

- The Transfer of Undertakings (Protection of Employment) Regulations 2006 (also known as TUPE) costs are likely to apply. These aim to enable existing staff broadly to retain their prior terms and conditions, including in relation to pensions
- Costs associated with the wind up of the existing LSC Board and creation of a new Agency Board
- Establishing and running a new 'Legal Aid' tribunal to hear complaints and appeals about legal aid operational matters and provide an adjudication service. Following discussion with the Tribunals Service we anticipate these costs might be around £120,000 to establish a new tribunal. Its running costs might be in the order of £500,000-£1,000,000 depending on case volume and complexity

### **Option 3: Transferring legal aid delivery to HM Courts Service**

217. Some or all delivery functions could be transferred to or merged with an existing Executive Agency, such as HM Courts Service, with HMCS undertaking, as happens now, some of the fund administration. Suggestions made to the review point to the courts being in a good position to observe the work of solicitors and advocates and ensure their contribution to effective case management. Ministers would need to consider how this impacted upon judicial independence, court capacity and efficiency. I am



## Review of Legal Aid Delivery and Governance

advised that if all LSC functions transferred to HMCS, this would require primary legislation. Some existing LSC functions within the Access to Justice Act could be delegated to HMCS by the LSC or the Lord Chancellor without recourse to primary legislation.

### *Benefits*

- Greater checks and balances in the management of the funds
- More effective case management by the courts and potential for some legal aid funding efficiencies if HMCS and existing LSC systems more closely aligned

### *Risks*

- Impact on efficiency of courts and independence of judiciary in managing the legal aid budget
- There is a risk that administration of legal aid fund becomes fragmented and more complex administrative functions emerge for different elements of the process
- Increased cost of any separate or new processing arrangements

### *Costs*

- Same as under Option 2. Judicial system might be adversely affected depending on the nature of any changes affecting the interface between the LSC and HMCS

### **Option 4: To outsource fund administration to the private sector or bring into shared service arrangements**

218. Given the scale and complexity of the LSC's administration, I have looked at the possibility of legal aid business processing, to identify straightforward transactional activities and pursue opportunities for shared services with the MoJ and, where feasible and cost effective, outsourcing these activities to the private sector. This could apply to the work currently undertaken by HM Courts Service on behalf of the LSC as well as the opportunities afforded by the forthcoming roll out of electronic case management. Experience of outsourcing suggests that processes would need to be embedded and streamlined to realise maximum benefit. I am advised that this would not require primary legislation.

### *Benefits*

- Challenges the LSC and HMCS to manage fund processing as efficiently as possible and there may be additional benefits through the streamlining of transactional processes in advance of outsourcing

## Review of Legal Aid Delivery and Governance

- Encourage efficient approach and innovation in managing transactional elements of the business – previous studies have shown that outsourcing all or part of a public sector service results in operational cost savings ranging from 6%-12%. These savings would apply to LSC expenditure on processing transactions. Savings of the same magnitude may be realised if transactional services were brought under shared service agreements with similar functions in the Ministry

### *Risks*

- Costs of making changes to funding schemes, which are frequent
- Outsourcing bulky and complex scheme to private sector could be more expensive

### *Costs*

- Costs of contract re-negotiation or making changes to current contracts, which may be frequent
- Continuing monitoring and management costs to ensure that the outsourced transactional activity providers meet agreed standards of service

## **Option 5: Separate CDS and CLS budgets**

219. A key element of the ToR was to explore whether the separation of the CDS and CLS budgets would provide clearer responsibilities and accountabilities. The combined legal aid budget currently sits within the Ministry's Departmental Expenditure Limit (DEL) and funding pressures across the Ministry need to be met from within this agreed settlement with the Treasury. There is no separate vote in Parliament for the CLS and CDS budgets although they do have separate budget headings and any in-year transfer of funds between the two will go through Parliament as a supplementary vote.
220. We have considered separating budgets through the application of different accounting arrangements. This option might include:
- Re-classifying the CDS budget as Annually Managed Expenditure (AME) so that increased demand would not impact on the rest of the Ministry's settlement
  - Ring-fencing the CLS to protect it from increased demand for criminal legal aid and other Ministry spending pressures
  - Introducing separate votes through Parliament

## Review of Legal Aid Delivery and Governance

221. All these options would require Treasury approval. This option could lead to the creation of two separate delivery bodies to manage the two funds and it is important to consider the disadvantages this would bring to the administration of legal aid. Respondents to the review pointed to the potentially negative implications of administrative cost increases, additional reporting and processing requirements for providers and the potential loss of coherence and continuity of legal aid services for clients.

### *Benefits*

- Demand-led criminal legal aid would not impact on funding available for civil legal aid
- Greater transparency provided through separate reporting requirements

### *Risks*

- Economic downturn has potential to increase demand for both civil and criminal legal aid
- Potential loss of flexibility in managing these pressures if budgets separated and ring-fenced

### *Costs*

- Impacts on macroeconomic objectives, risk management and on financial management and spending efficiency incentives would need to be quantified

## **Option 6: Devolved or pooled budgets**

222. I have also considered the case for managing and delivering some aspects of CLS and CDS spend differently. This option builds on some of the qualitative evidence submitted to the review which suggested alternative delivery models for civil and criminal legal aid.

223. Devolution or pooling would apply in particular to the social welfare law budget rather than wider fund spend, and especially to aspects of social welfare law spend outside of representation at court. Social welfare law expenditure totalled £136m in 2008/09. This budget covers issues relating to community care, debt, housing, employment and welfare benefits. Advice on these issues can be provided by bodies such as Citizens' Advice. Legal aid funding is also used to provide mediation services and other non-court dispute resolution services.

## Review of Legal Aid Delivery and Governance

224. In practice this could involve devolving funding or pooling funding with local level organisations. This may involve establishing Local Area Agreement frameworks and also engaging with local criminal justice boards, local family justice councils and local strategic partnerships to identify and agree priorities. These arrangements could enable local courts to join up with local authorities and the voluntary and community sector. There may be other contracting models to consider, such as regional contracts with a lead contractor, which would reduce the numbers of bodies which the LSC is currently contracting with while yielding the benefits of the local-level delivery structure described above.
225. It is possible within existing legislation for LSC to devolve administrative functions to other bodies, which would enable funding to be delegated to another distribution body. Thought would need to be given as to how local distribution channels would work with national provision such as through telephone help lines and services such as the PDS. The lessons from the CLAC/CLAN commissioning model will be important here and these may well prove to be the best model for delivering social welfare advice services in partnership with local authorities.
226. Devolving or pooling funds must be considered within the broader context of current legal service provision and the changes afoot in the market which go beyond the remit of this review. Much will depend on the shape and speed of change in the legal services market following the Legal Services Act 2007 and commissioning and funding frameworks will need to respond appropriately to how provision is organised.
227. Options include:
- Pool SWL funding available to CAB with OGDs, such as BIS, and allocate to CAB as grant-in-aid for distribution to local offices
  - Channel resource through local authority Local Area Agreement framework to fund local advice services
  - Allocate some areas of funding through local courts overseen by criminal justice boards, family justice boards and local strategic partnerships
  - Regional contracts with lead providers (lead providers would sub-contract with smaller, locally based services depending on client need and provision in the area)

### *Benefits*

- Better able to achieve efficiency through exploiting local synergies between delivery bodies
- Responsive to local priorities and customer need

## Review of Legal Aid Delivery and Governance

- Potential to leverage other sources of investment more effectively
- Increased flexibility to respond to local need and might facilitate innovation in specific areas

### *Risks*

- Potential for funding to be used for generalist advice at the expense of the more specialist provision secured through unified civil contract
- Potential to encourage other funders to reduce funding
- Heavy-handed monitoring requirements or multiple organisational procedures for providers to navigate
- Lining up provision with existing telephone services and specialist legal advice services to ensure a 'triage' approach
- Capacity of local and third sector bodies to manage funding

### *Costs*

- One-off costs of prior business transformation and a period of adjustment in which staff productivity might fall and there may be some streamlining of existing processes to be done
- There are likely to be continuing administration costs and these could be higher than under existing centralised arrangements if economies of scale were lost
- There is evidence from the public health sector of inconsistencies in service provision across regions where budgets are devolved. To some extent this reflects different requirements in different areas but increased monitoring and managing costs may be incurred in relation to the quality of advice to ensure that service standards are maintained

## Part 6 – Recommendations

### Summary

228. These recommendations address each element of the ToR. They consist of suggested immediate steps to clarify key responsibilities between the Ministry and the LSC; and some suggestions for more far-reaching, longer term change. I am recommending a staged approach, partly because several of the more far-reaching options identified in Part 5.2 require primary legislation. I make recommendations below for immediate implementation, or for further work.

### Main options identified

229. As to the main options in 5.2, I recommend the following: -

- **Option 1 (retain the LSC, but take immediate steps to sharpen governance and accountability)**. This offers in the short term a way, albeit limited, to address the urgent need for action to which some compelling evidence points. More specific detail is below. This could be done as an interim step towards more fundamental change.
- **Option 2 (bring delivery closer to the MoJ)**. Reconstituting the LSC as an Executive Agency is probably the most promising way to align policy and delivery, and may be thought especially attractive if Ministers consider that a fresh assessment of how best to deliver legal aid policy well into the 21st Century is required. Primary legislation would be necessary; and some difficult staffing issues need resolution. It would be necessary to retain the experience of LSC staff to ensure continuity of service provision and expertise. There would need to be appropriate safeguards against Ministerial involvement in individual cases, such as an appeals mechanism for which there are precedents elsewhere in Government. There is, as the Institute for Government points out in work currently underway, no overwhelming rationale behind decisions to create executive bodies as Agencies; NDPBs; or non-Ministerial Departments. The critical question for Ministers is, however, how “arms-length” they desire their operational body to be. The National Audit Office observed recently that the current relationship was “closer than normal between a Department and an NDPB”. By that, it appears they referred to the frequency of interactions between the two bodies; and to the confusion that the evidence from this review suggests undoubtedly exists over policy formulation.

However – and this cannot be emphasised too strongly – recommendations for any structural change will succeed only if there is a

clear and well developed relationship characterised by trust between all parties. From my many interviews and observations, I do not believe that exists at present. Moving towards an Executive Agency, together with corresponding changes in the Ministry, may give the opportunity for a fresh start.

- **Option 3 (transfer the LSC's responsibilities to HMCS).** The arguments against this seem to me to be substantial, and I do not recommend it. Primary legislation would also be required. HMCS itself is still going through much change; it may need to concentrate on its core functions.
- **Option 4 (possibilities for outsourcing some functions).** I recommend that the market is tested for outsourcing the substantial payment and other straightforward functions currently carried out by the LSC. I also recommend, in that context, that the MoJ, with HMCS and the LSC, examines the current service level agreement between the two organisations for those legal aid functions which HMCS performs to determine whether they offer value for money, and whether there is opportunity also to test the market in respect of them. There may also be scope for further efficiencies, for example through sharing services.
- **Option 5 (separation of the CLS and CDS).** Ministers have made it clear that they are concerned to ensure that there is an appropriate focus on social welfare. There is power in the Access to Justice Act to separate the funds, though it has never been exercised. The data provided to me suggests that in recent years, there has been no diminution of civil legal aid provision at the expense of criminal. This may largely be because the LSC has taken significant steps over that time to control criminal legal aid expenditure. The not-for-profit sector organisations whom I consulted were more in favour of separation, though by no means universally so, than either the Law Society or Bar Council.

The advantages and disadvantages of separation are set out in 5.2 above. There is no conclusive evidence suggesting that there would be significant advantage in separating the funds, and there may be some disadvantages – loss of flexibility; the prospect of a ring-fenced fund withering on the vine - which are significant. Given Ministers' interest in promoting social welfare, they may nonetheless wish to go ahead, though it is essentially their call.

If, however, Ministers decide to proceed, there are no advantages in creating separate organisations for the administration of the funds as 5.2 makes clear. However, Option 6 below may offer some scope to meet Ministers' concerns about social justice.

- **Option 6 (devolved or pooled budgets)**. There has not been time properly to evaluate these possibilities during this brief review. There may be real scope, as a number of not-for-profit organisations said to us, to deliver social welfare advice differently and in partnership with other providers.

230. In summary, therefore, I believe that there are four key areas for action: -

- The immediate changes proposed below
- Evaluating further the scope for pooling and devolving social welfare budgets
- Considering the case for an Executive Agency to replace the LSC
- Examining the possibilities for outsourcing non-core functions, and for making further efficiencies through shared services

### **Recommendations for immediate action**

231. The areas on which I make recommendations below for immediate implementation, or for further work, are: -

- Relationship between LSC and Ministry
- Governance within the LSC
- Policy focus
- Legal services market and providers
- Financial controls
- Forecasting
- Efficiencies and shared services

### **Relationship between LSC and Ministry**

232. The National Audit Office observed recently that the relationship was “closer than normal between a Department and an NDPB”. By that, it appears they referred to the frequency of interactions between the two bodies; and to the confusion that the evidence from this review suggests undoubtedly exists over policy formulation. If Ministers accept these recommendations, I suggest that the MoJ looks at its internal structures to provide as far as possible a single point of contact with the delivery organisation. While recognising the multi-faceted nature of the business and policy inputs, steps should be taken to ensure that double-handling of requests for advice, information, and clarification are avoided. More specifically, I recommend: -



## Review of Legal Aid Delivery and Governance

- That the MoJ considers as a matter of urgency reconciling the policy focus of their relationship with the LSC, with a view to minimising the points of contact and information-gathering, and adopting a common approach to civil and criminal matters
- That the framework document clarifies the decision-making processes and sets out the mechanisms through which any urgent problems may be escalated
- That the Permanent Secretary and the LSC Chair become jointly responsible for fostering constructive, supportive, trusting, and challenging relationships between the organisations at all levels. It seems to me no coincidence that an apparent deterioration in the relationships has accompanied independent expressions of concern about the LSC's financial management

### **Governance within the LSC**

233. Immediate steps are necessary to sharpen the arrangements for financial management and accountability within both the Ministry and the Commission.
234. Within the Commission, the structures do not appear fully to support the Accounting Officer. As the Chairman of the Audit Committee pointed out to us, there is confusion as to whether the Commissioners are operating in executive or advisory fashion. Some Commissioners, for example, have regional responsibilities and spend much more time (upwards of 80 days) on the work of the LSC than would normally be expected of a non-executive Director in public or private Boards.
235. The Commission and Executive team operate as separate bodies. The CEO and her seniors attend all Commission meetings: but an examination of the minutes over a year reveals that the Commission's discussions are largely about implementation of legal aid policy, and not about holding the Executive to account. To address this, I recommend: -
- that the CEO and the Finance Director are appointed to the Board;
  - that a requirement for the Board to hold the CEO to account for its performance and for financial management be built into the Framework agreement;
  - that the Permanent Secretary of the MoJ and the Chair of the Commission, taking into account principles of good governance as applied to other public bodies, jointly consider the responsibilities of individual Commissioners, the nature of their non-executive role; and whether there need to be as many Commissioners.

## Review of Legal Aid Delivery and Governance

236. There were concerns raised around governance arrangements in Wales and whether these enabled proper consideration and focus on Welsh Assembly Government interests and responsibilities following devolution. I recommend that the MoJ and LSC consider the suggestions made to this review on providing a greater focus on issues and interests pertinent to legal aid delivery in Wales.

### **Policy focus**

237. The Chairman of the LSC, in a message to his staff before Christmas, emphasised that it was Ministers' responsibility to make policy. I recommend that change is made to embed this, by:-

- taking every step necessary to ensure that all staff in both the Ministry and LSC recognise that policy responsibility rests clearly within MoJ;
- the MoJ, in concert with the LSC, examining the scope for streamlining the policy arrangements, eradicating duplication, and making the necessary efficiencies;
- ensuring that the MoJ consults LSC, to understand the operational implications of proposed policy change;

### **Legal services market and providers**

238. I recommend that the LSC focuses on developing its expertise and capacity as a commissioning body. In the light of providers' views that LSC processes are still bureaucratic, slow and unduly burdensome, I recommend that the LSC look at whether there is more scope for giving providers space to deliver services while still maintaining adequate control over public funds.

### **Financial controls**

239. Having regard to the evidence in Parts 3 and 4 and the analysis in Financial Management section 5.1 of this report, I recommend that the CEO of the LSC, under the guidance of its Audit Committee Chair and Finance Director, and working with the MoJ Finance Director, takes urgent steps to provide assurance to the Department's Accounting Officer that the LSC has the necessary controls in place to address the potential deficiencies outlined in this report.

### **Forecasting**

240. Recognising that within the LSC there are many detailed and different forecasting models which do not necessarily represent best practice, I

## Review of Legal Aid Delivery and Governance

recommend that the Director-General, Finance, in the MoJ works with the CEO of the LSC to develop a different model based on best practice elsewhere within and outside Government.

### **Efficiencies and shared services**

241. Part 2.2 Delivery of Legal Aid and Annex C: Process Maps, highlight the critical role that HMCS plays in the delivery of legal aid via a SLA with the LSC. I recommend that the Ministry, together with the LSC and HMCS, considers whether the division of responsibilities between HMCS and LSC is as it should be and whether processes and administration could be made more efficient.
242. I also recommend that the Ministry and LSC look at the case for further efficiencies, perhaps through sharing legal, financial, human resource, information technology, and estates services.
243. I recommend that the Ministry invites a brief independent review of progress towards implementing these recommendations in six months' time.
244. I recommend that an independent review takes place as to how any new delivery arrangements are working in 3-5 years time.

### **Summary of recommendations**

*For immediate implementation:*

- That the MoJ considers as a matter of urgency reconciling the policy focus of their relationship with the LSC, with a view to minimising the points of contact and information-gathering, and adopting a common approach to civil and criminal matters.
- That the framework document clarifies the decision-making processes and sets out the mechanisms through which any urgent problems may be escalated.
- That the Permanent Secretary and the LSC Chair become jointly responsible for fostering constructive, supportive, trusting, and challenging relationships between the organisations at all levels.
- That the CEO and the Finance Director are appointed to the LSC Board.
- That a requirement for the LSC Board to hold the CEO to account for its performance and for financial management be built into the Framework agreement.

## Review of Legal Aid Delivery and Governance

- That the Permanent Secretary of the MoJ and the Chair of the Commission, taking into account principles of good governance as applied to other public bodies, jointly consider the responsibilities of individual Commissioners, the nature of their non-executive role; and whether there need to be as many Commissioners.
- Taking every step necessary to ensure that all staff in both the Ministry and LSC recognise that policy responsibility rests clearly within MoJ.
- The MoJ, in concert with the LSC, examine the scope for streamlining policy arrangements, eradicating duplication, and making the necessary efficiencies.
- Ensuring that the MoJ consults LSC, to understand the operational implications of proposed policy change.
- The LSC focuses on developing its expertise and capacity as a commissioning body.
- The LSC consider whether there is scope to redress the balance between maintaining adequate control and giving providers space to deliver services effectively, efficiently and to encourage innovation.
- That the CEO of the LSC, under the guidance of its Audit Committee Chair and Finance Director, and working with the MoJ Finance Director, takes urgent steps to provide assurance to the Department's Accounting Officer that the LSC has the necessary controls in place to address the potential deficiencies outlined in this report.
- That the Director-General, Finance, in the MoJ works with the CEO of the LSC to develop a different forecasting model based on best practice elsewhere within and outside Government.
- That the Ministry, together with the LSC and HMCS, considers whether the division of responsibilities between HMCS and LSC is as it should be and whether processes and administration could be made more efficient.
- That the Ministry and LSC look at the case for further efficiencies, perhaps through sharing legal, financial, human resource, information technology, and estates services.
- That the Ministry invites a brief independent review of progress towards implementing these recommendations in six months' time.
- That an independent review takes place as to how any new delivery arrangements are working in 3-5 years time.

## Review of Legal Aid Delivery and Governance

### *For further investigation:*

- That the MoJ and LSC consider the suggestions made to this review on providing a greater focus on issues and interests pertinent to legal aid delivery in Wales.
- Further evaluation of the scope for pooling and devolving social welfare budgets.
- Consideration of the case for an Executive Agency to replace the LSC.
- Examining the possibilities for outsourcing non-core functions, and for making further efficiencies through shared services.

## **Part 7 - Conclusion**

### **Acknowledgements**

245. I am indebted to the many organisations and individuals, too numerous to mention here, who have given their time to provide evidence to this review. The staff of the Ministry, and the Chairman, Chief Executive and others within the LSC, have been particularly helpful. Most of all, however, thanks go to my small team of Laura Beaumont, Simeon Welby, and Justine Stratton. They have been unstinting in their support, working long hours including over a holiday period, and responding with unfailing good grace and humour to what must have seemed an unending list of questions and comments from me.

### **Conclusion and Wider Reflections**

246. Much has changed in the more than ten years since provision was made for the establishment of the Legal Services Commission. Resources in the public sector now are much tighter, and are likely to get scarcer still. The original vision for legal services policy, and for the development of the LSC's role, has changed, with several reviews of policy along the way. The operational roots of the Legal Aid Board have long since faded, with the inevitable changes in personnel. The Lord Chancellor's Department, where legal aid provision and the administrative and policy support for it represented significantly more than 60% of the total budget, has gone; and the responsibilities of the Ministry of Justice are much wider. The new Legal Services Board operates from this year to regulate the legal market.

247. There are clearer and stronger guidelines in business and in government than ever before for corporate governance and, stimulated in part by events in recent years, a requirement for clear separation between executive and non-executive authority. Within Government, there has been a growing recognition of the importance of looking laterally at policy development and operational delivery. Again within Government, there is clear recognition of the importance of the operational arms and the policy makers working in unison; and that has resulted over the last ten years in closer working and administrative arrangements between, for example, the centre of the Department for Work and Pensions and its Executive Agencies.

248. It remains extremely important that the implications of successful, and unsuccessful, policy implementation are capable of being relayed to and understood by those who have responsibility for policy development. A close relationship to those whom Government serves, whether they be

## Review of Legal Aid Delivery and Governance

people benefitting from legal aid; benefit claimants; or taxpayers, remains vitally important.

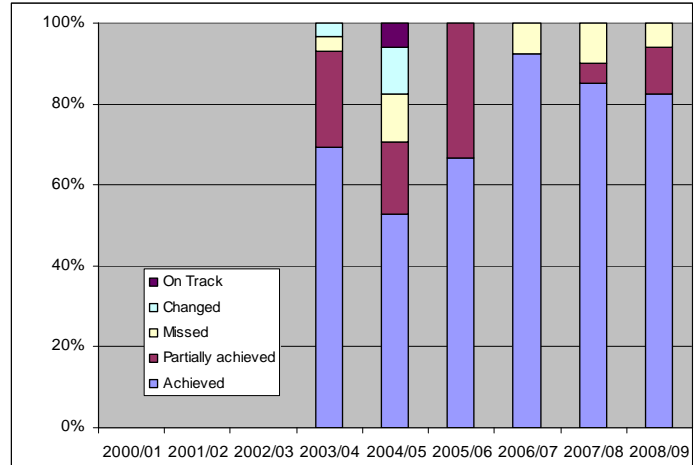
249. In the context of significant change over the last ten years, the only real surprise when I began to gather evidence for this review is that there had not in all that time been any independent review of the LSC. Inevitably, what I have to say has some implications for the sponsor Ministry as well as for the LSC.
250. In research to be published shortly by the Institute for Government (with which I am associated), we observe that there is inconsistency between the management by Departments of their “arms-length” bodies; that there is duplication of policy function; that there are differences in levels of Departmental and political control – and the desire for it; and that different interpretations of roles and freedoms can lead to breakdown of trust. All this may be said to apply to this particular review.
251. There are many committed people within the LSC and the Ministry, all no doubt trying to do their best to deliver essential services to a disadvantaged section of the population. The LSC has delivered significant change, often in a challenging environment to a demanding marketplace. It would not have been easy to foresee in 1999 that the 2010 requirement for the LSC was essentially to deliver commissioning, procurement, and payment services. Nor did the Lord Chancellor’s Department then define the role that way.
252. Added to the wholesale changes mentioned above, given the evolution of the requirement on the LSC, and the different positioning of the Ministry, it would be surprising if the delivery vehicle appropriate for ten years ago was still fit for purpose today. However, the level and breadth of concern is now substantial and there is an urgent need for action, particularly in respect of financial controls on expenditure of significant sums of public money. I believe acceptance of my recommendations for immediate action and the further work I have suggested will provide a firm platform for the future.

## Review of Legal Aid Delivery and Governance



## Annex A - LSC 1999-2009

The strategies employed and the objectives set by the LSC have varied enormously from year to year. Targets relating to the CLS have changed significantly year on year. Targets for the CDS have been much more consistent. In 2008/09 targets included: 'Maximising Access to quality services to meet the diverse needs of clients', 'Delivering a sustainable legal aid scheme', and 'Ensuring the efficient delivery of Justice and wider Government priorities.'



- In 2003/04 the LSC had 88 KPI targets, against just 17 in 2008/09.
- Since 2005/06, the LSC has met over 80% of its KPIs<sup>64</sup>

### Contribution to Ministry of Justice targets and objectives:

- From 2006/07, annual reports have recorded 'MoJ targets to which the LSC contributes' and 'MoJ targets relevant to the LSC.'<sup>65</sup>
- The 2008/09 report opens by considering 'Our Relationship with Government.' Strategic objectives are framed against departmental targets.
- Risk management reporting processes have become increasingly 'aligned with those of the DCA.'<sup>66</sup> From 05/06 the LSC identified as a risk the 'effective management of high-level relationships with the MoJ and Ministers.'<sup>67</sup> This was not identified as a risk in 2008/09.

### Community Legal Service

Much of the LSC's focus in the early years was establishing the CLS:

- Working towards comprehensive coverage of civil advice services across England Wales, developing the infrastructure to support a range of

<sup>64</sup> Legal Services Commission Annual Reports

<sup>65</sup> Legal Services Commission Annual Reports

<sup>66</sup> Legal Services Commission, Annual Report 2003/04, p.90

<sup>67</sup> Legal Services Commission, Annual Report 2005/06, p.48; Legal Services Commission, Annual Report 2006/07, p.47; Legal Services Commission, Annual Report 2007/08, p.50; Legal Services Commission, Annual Report 2008/09, p.33

## Review of Legal Aid Delivery and Governance

services in local areas and building the capacity of local advice services. 100% of the population were covered by Community Legal Service Partnerships (CLSPs) and 81% of these had 'Strategic Plans' within 2 years.<sup>68</sup>

- By 2004, a survey of CABs indicated that only 21% felt the purpose of their CLSP was clear and understood by all, against just 14% who felt that the CLSP had achieved the successful co-ordination of advice.<sup>69</sup>
- 'Making Legal Rights a Reality' presented a 5 year CLS strategy in 2006 which announced the planned replacement of CLSPs with 75<sup>70</sup> Community Legal Advice Centres (CLACs) and 36 Community Legal Advice Networks (CLANs).<sup>71</sup> CLACs and CLANs were to be completely rolled out by 2011, with some rapid progress following 2009. There are currently 5 CLACs in place.<sup>72</sup>

### **Criminal Defence Service**

The creation of the Criminal Defence Service happened in 2001 and began by:

- Introducing a General Criminal Contract to control quality
- Developing a 'duty solicitor scheme' to provide advice to potential clients in police stations and magistrates courts from solicitors available on a rota.
- CDS targets consistently focus on maintaining the 100% coverage of the duty solicitor scheme and on improving the time taken for solicitors to contact clients. Most of these targets have been consistently met.<sup>73</sup>

### **Implementing Carter**

- The implementation of Carter's recommendations has been a key focus of the LSC since 2006. Since then, the LSC has introduced fixed fees and graduated fee schemes across both schemes in a move to prepare the legal services market for price based tendering.

---

<sup>68</sup> Legal Services Commission Annual Report 2002/03

<sup>69</sup> On the Right Track: Debating the Future of the CLS, ASA and LAG, December 2003, URL: <http://www.asauk.org.uk/fileLibrary/pdf/confntes.pdf>

<sup>70</sup> Making Legal Rights a Reality: The Legal Services Commission's Strategy for the Community Legal Service, 2006-2011, p.8

URL: [http://www.legalservices.gov.uk/docs/civil\\_contracting/CLS-Strategy-final-15032006cover.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/CLS-Strategy-final-15032006cover.pdf)

<sup>71</sup> Making Legal Rights a Reality: The Legal Services Commission's Strategy for the Community Legal Service, 2006-2011, p.9

URL: [http://www.legalservices.gov.uk/docs/civil\\_contracting/CLS-Strategy-final-15032006cover.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/CLS-Strategy-final-15032006cover.pdf)

<sup>72</sup> See: [http://www.legalservices.gov.uk/civil/community\\_legal\\_advice\\_centres\\_and\\_networks.asp](http://www.legalservices.gov.uk/civil/community_legal_advice_centres_and_networks.asp)

<sup>73</sup> Legal Services Commission Annual Reports

## Review of Legal Aid Delivery and Governance

- In 2007, the LSC moved to establish a unified civil contract. This has resulted in bringing all providers delivering services as part of the CLS within the same contractual arrangements.

### **Partnership working**

#### *HMCS*

- SLA covers the arrangements, including: performance targets; governance; service charges; and escalation process between the three parties with regard to work done by HMCS on behalf of LSC
- SLA to improve access to legal services for both the customers of HMCS and the wider CLA client group.

#### *DWP*

- Information gateway in place to check clients' means

#### *Referral arrangements with:*

- Consumer Credit Counselling Service
- Child Maintenance and Enforcement Commission
- Advisory, Conciliation and Arbitration Service

#### *Local Authorities*

- CLACs involve joint commissioning with local authorities

#### *Local and national forums*

- LSC staff sit on local Criminal Justice Boards and local Family Justice Councils.
- The LSC Chief Executive sits on the National Criminal Justice Board and National Family Justice Council.

### **Innovation**

- The LSC has completed over 15 pilots to innovate solutions to long standing problems since 2004/05 and undertaken over 30 consultations since 2006.<sup>74</sup>

#### *A Public Defender Service*

- The Public Defender Service was set up in 2001 as a 4 year pilot project to test the viability of a salaried service in England and Wales.

---

<sup>74</sup> Justice Committee: Family Legal Aid Reform, Eighth report July 2009. p28. Para. 67.  
URL: <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmjust/714/71408.htm>

## Review of Legal Aid Delivery and Governance

- In 2004/05 the PDS dealt with over 4,500 criminal cases and 5,886 cases the following year. More than 97% of clients expressed satisfaction with the service and 98% would have recommended the service to a friend.
- An evaluation report published by the LSC in January 2007 recorded that the PDS was able to 'provide a generalist criminal defence service which is of good quality, equal and in many respects better than the general standard of service provided by private practitioners in comparable areas.'<sup>75</sup>
- The report concluded that the PDS was between 40% and 90% more expensive than private practice.<sup>76</sup>

### *New technology*

- In 2004 the LSC launched 'Community Legal Service Direct' to provide a comprehensive advice service over the telephone. The service now known as 'Community Legal Advice' provides specialist advice in debt, education, benefits and tax credits, employment, housing and family problems.
- The number of Acts of Assistance over the telephone has increased year on year and the service has maintained very positive approval ratings.
- In 2007/08 the telephone service dealt with 70% more calls than in 2006/07, while 96% of clients said that the service met their expectations, and 92% would have recommended the service to a friend.
- In 2008/09 the website received 3.3m visits, which reflected a 22% increase in visitors from the year before and a 32% rise on the year before that.<sup>77</sup>
- 'CDS direct' was established in 2005 as a telephone advice helpline providing non-means tested legal advice directly to members of the public suspected of criminal offences and detained by the police.
- In 2006 95% of calls were returned to Police Stations within 15 minutes against a target of 70%, while in 2008/09 this had risen to 98%, at an overall average of just under 3 minutes.<sup>78</sup>

---

<sup>75</sup> Evaluation of the Public Defender Service in England and Wales (Legal Services Commission, TSO, January 2007), p297

URL: [http://www.legalservices.gov.uk/docs/pds/Public\\_Defenders\\_Report\\_PDFVersion6.pdf](http://www.legalservices.gov.uk/docs/pds/Public_Defenders_Report_PDFVersion6.pdf)

<sup>76</sup> Evaluation of the Public Defender Service in England and Wales (Legal Services Commission, TSO, January 2007), p299

URL: [http://www.legalservices.gov.uk/docs/pds/Public\\_Defenders\\_Report\\_PDFVersion6.pdf](http://www.legalservices.gov.uk/docs/pds/Public_Defenders_Report_PDFVersion6.pdf)

<sup>77</sup> Legal Services Commission Annual Report 2008/09

<sup>78</sup> Legal Services Commission Annual Reports

## **Quality and audit**

- The LSC has established the Specialist Quality Mark (SQM) as the 'gateway standard' for providers who wish to undertake contracted legal aid work. By 2003, 1250 firms were granted the SQM.
- The LSC has different approaches to auditing the quality of a provider's work. These include peer review, yearly contract auditing of providers (with the exception of these with the highest scores in the previous year), and specific audit programmes for certain categories of law. Of the 655 audits undertaken between April 2008 and October 2009, 250 contract notices were issued. The LSC has not yet obtained peer review scores for all firms and currently, less than 1% of providers fail to reach peer review rating 3.
- The LSC is increasing the number of and resources available to its audit function. A new set of indicators (known as a provider dashboard) is being developed which show where problems might arise, for example through identifying high risk areas of work, claims patterns, and firms behaviour will activate warning indicators.

## **Controlling costs: efficiency savings and productivity gains**

- Both the CLS and CDS have been vulnerable to demand-led pressures, such as higher than expected demand for criminal, asylum and public law family legal help and representation.
- Costs continued to rise in CLS/CDS schemes until 2005. Reforms in 2004 helped control the civil spend, by reducing immigration and asylum costs and implementing a fixed fee scheme in civil and family law.
- LSC has introduced individual case contracts to manage Very High Cost Cases (VHCCs) and a system of fixed and graduated fees now covers the majority of both civil and criminal work.
- Criminal spend has been further contained by a tighter merits test and the reintroduction of means testing into the Magistrates court in 2004.
- Between 2004/05 and 2008/09 the combined CLS and CDS acts of assistance rose by over 21% while overall costs increased by just 3% in real terms. This reflects a relatively constant number of Criminal Acts of Assistance and a vastly increased number of Civil Acts, with minimal variation in expenditure.

## *Administrative costs*

- Increases to the Administrative budget have generally coincided with new business processes or policy implementation, rising estate costs and salaries.

## Review of Legal Aid Delivery and Governance

- In 2001, while the CLS and CDS were being established, the cost rose to £72.4m before stabilising. In 2003/04 accountability for criminal legal aid work in the Crown Court and higher courts was transferred to the LSC from HMCS. Spend rose to reach £83.9m in 2004/05 and £96.4m in 2005/06. In 2008/09 this figure was £124.4m.<sup>79</sup>
- Permanent and temporary staff numbers have been reducing since September 2008 as part of efforts to save 30% of the admin budget by 2012.<sup>80</sup>
- The LSC initially operated from 12 regional offices and a London HQ. By 2005 they had added to these 8 PDS offices and 2 more regional offices.
- Since 2007, the regional structure has been reformed: new processing centres opened, regional offices combined and business organised under three central themes: commissioning, business support and corporate services.
- LSC electronic bill processing went live in 2008 which now provides access for over 5,800 providers' offices, "the systems is performing well and feedback has been positive".<sup>81</sup>

### *Staff Costs*

Between 2000/01 and 2008/09:<sup>82</sup>

- Expenditure on the Executive Team has risen from £342,000 to £1.1m. Rises to senior salaries are based on the Senior Salaries Review Body (SSRB).
- The total spent on commissioners has risen from £257,000 to £348,000.
- The Chief Executive's salary increased from £137,000 to £213,600, representing an increase of 56%, or a 5.7% year on year increase.
- The amount spent on salaries (inclusive of senior staff) has risen by 56% to reach £67.8m, while numbers of permanent full time equivalent staff at the LSC have not increased.

---

<sup>79</sup> Legal Services Commission Annual Reports

<sup>80</sup> Legal Services Commission Annual Report 2008/09, p.31

<sup>81</sup> Legal Services Commission Annual report 2008/09, p.44

<sup>82</sup> Legal Services Commission Annual Reports

## **Annex B – The Commission: Subsidiary boards, committees and groups**

In addition to the Commission, there are other various decision making Committees and Boards within the organisation. Non-executive Commissioners may be invited to sit on various subsidiary boards and committees.

### **Corporate governance sub-committees of the Commission**

#### *Finance Committee*

The Finance Committee meets four times a year and its membership includes up to five Commissioners with attendees from the executive. The LSC Chair is also Chair of the Finance Committee.

#### *Audit Committee*

The Audit Committee meets on a quarterly basis – in January, April, July and October. Members are Chair Barry Elliott and three other Commissioners and attendees include a MoJ representative, NAO representatives, and heads of key functions within the LSC. The Audit Committee discusses and makes decisions on matters related to internal and external audit, special investigations around fraud by suppliers, internal control and risk management, and complaints about the LSC. It also has a unique meeting in June to oversee the annual accounts.

#### *Human Resources Committee*

The Committee meets three times per year (including once as a Pay Committee) to oversee the development of a human resources strategy for the Legal Services Commission and consider confidential issues relating to human resources and other associated matters. Members include Chair Beryl Seaman, two other Commissioners and two independent external members (with a third who attends when the Committee sits as the Pay Committee).

#### *Change Programme Board*

As the LSC is experiencing an ongoing programme of change, there is a Change Programme Board to help manage the work on priority changes. The Change Programme Board is chaired by the Chief Executive and membership includes Commissioner Barry Elliott, LSC staff and representatives from MoJ. The Board meets monthly to consider the progress of the overall change programme.

#### *Operational committees*

There are also several operational committees which decide on funding and contracting matters including the Multi-Party Actions Committee, Public Interest

## Review of Legal Aid Delivery and Governance

Advisory Panel, Contract Review Body, Customer Redress Committee and Costs Appeals Committee. All are chaired by Commissioners.

### *Provider Reference Groups*

Provider Reference Groups were set up early in 2008. They are chaired by the Commissioners with an interest in each region. Their membership includes local providers and they discuss issues related to the local implementation of policy.



## Annex C – Process Maps

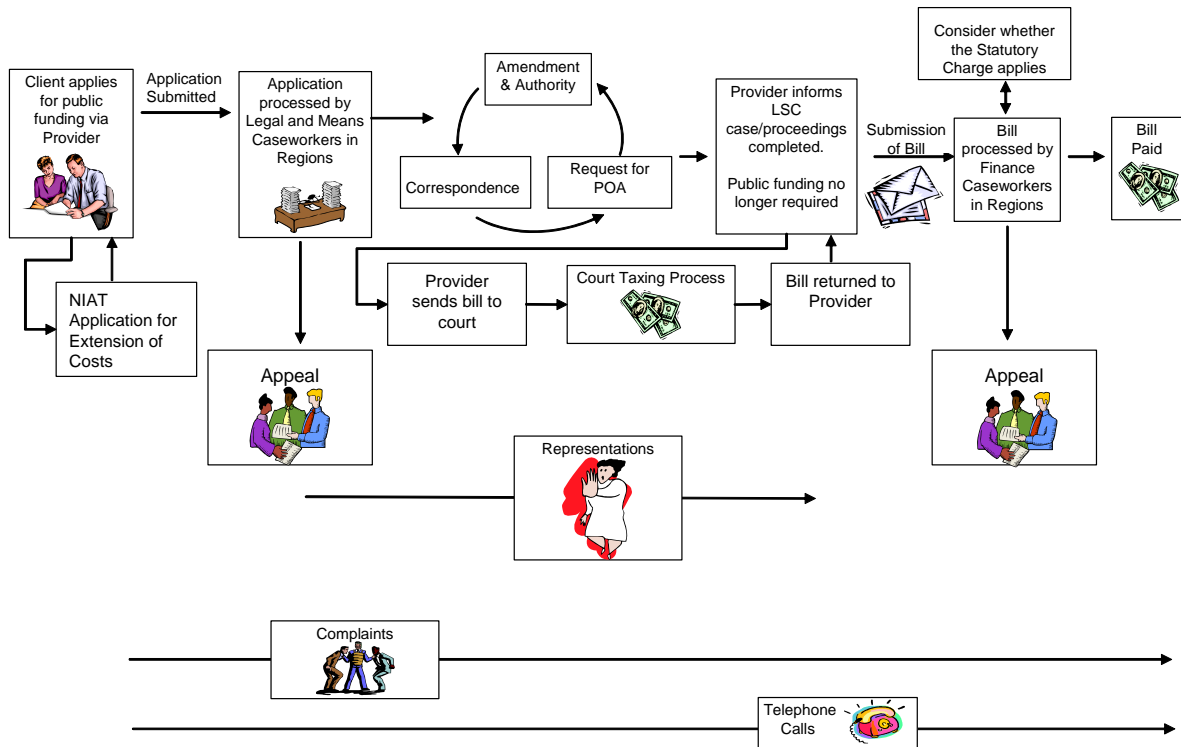
### Delivery of Legal Aid

The delivery of legal aid is described in Part 2.2 of this report and key issues relating to it are highlighted in Part 5.1 Analysis.

The high level process flow for the management of civil and criminal legal aid cases is illustrated and described in the sections below.

### The Civil Case Management Process

The granting of civil legal aid is subject to a means test. The diagram below gives a high level view of the process flow for Civil Case Management casework.



The key process steps are as follows:

- The client contacts a supplier relating to their legal problem.
- The supplier considers whether legal aid may be available and submits an application to the LSC.
- The regional office will conduct a means and merits test (if applicable) and determine whether a certificate for legal aid should be issued.

## Review of Legal Aid Delivery and Governance

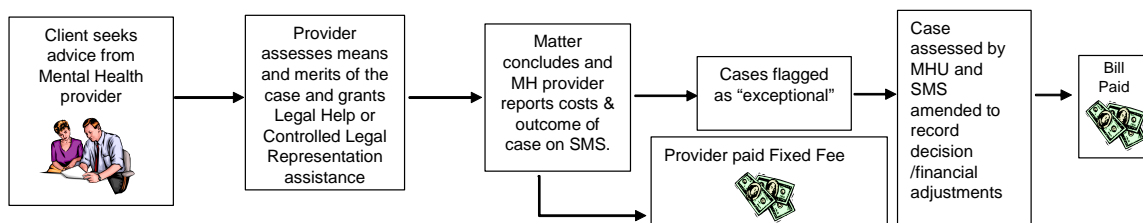
- Once the certificate has been issued there may be amendments to the certificate relating to the cost limitations or the scope of the certificate.
- During the lifetime of the certificate the supplier may also request payment for profit costs or disbursement on account.
- Once the case has concluded the supplier will arrange for the submission of a bill to the LSC for their costs which will be considered by a caseworker.
- On receipt of the bill the caseworker may also consider whether the Statutory Charge will apply.
- If an application is refused or if a bill is reduced the supplier has a right of appeal. The appeal will be considered by a caseworker and either upheld, upheld in part or refused.

Where a certificate for legal aid is granted for a client the opponent has the right to raise representations at any point during the lifetime of the certificate if they feel that there are no longer merits in the case that would support the continuance of the certificate, or if they believe the clients means are such that they would not be granted legal aid.

In addition, throughout the course of the certificate caseworkers may need to consider complaints made to the commission or manage telephone queries from either the supplier or client.

The courts have no involvement in the granting of legal aid in civil/family proceedings. This is wholly a matter for LSC. However, HMCS carry out assessments in civil cases which qualify for legal aid and assistance beyond advice. The vast majority of these are in family proceedings and HMCS currently carry out approximately 40,000 detailed assessments in family cases each year. These are carried out by District Judges in the County Courts and Masters in the Supreme Courts Costs Office. The number is planned to reduce as cases move into the fixed fees regime.

The diagram below shows the high level process flow for Civil Case Management for mental health cases.



The Community Legal Advice, helpline and website was introduced in 2004, offering specialist advice in debt, education, benefits and tax credits, employment, housing and family problems to people who are eligible for legal aid.

## Review of Legal Aid Delivery and Governance

There has been a steady increase in the numbers of acts of assistance delivered via the helpline and now 10% of controlled work acts of assistance are delivered via CLA.

The overall civil legal aid client diversity profile differs from the national profile in the following ways:

- Greater proportion of clients in the 25-49 age group;
- Greater proportion of clients from BME origin;
- Greater proportion of clients with a disability;
- Little difference between legal aid clients and national profile by gender.

The English & Welsh Civil & Social Justice survey (LSRC) looks at the incidence of civil legal problems. People vulnerable to social exclusion (e.g., lone parents, those on benefits, those who have a long-term illness or disability and victims of crime) report problems more often than others. Over 25% of problems lead to stress related illness.

Certain civil justice problems have a tendency to 'cluster' together: the three main groups are Family, Economic and Homelessness.

### **The Criminal Case Management Process**

The granting of criminal legal aid is subject to an Interests of Justice (IoJ) test and a means test in the Magistrates' Court (and in the Crown Court with the roll out of Crown Court Means Testing beginning this year). An IoJ test determines whether an applicant is entitled to a Representation Order based on the merits of the case. The applicant must indicate which of the following criteria they believe apply to their case:

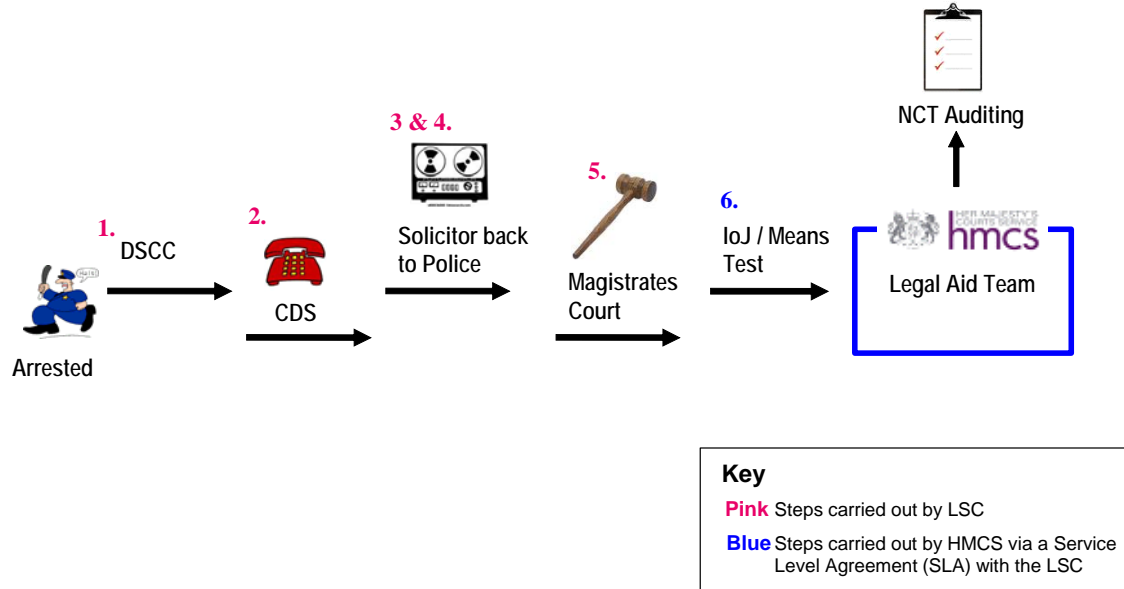
- It is likely that they will lose their liberty
- They have been given a sentence that is suspended or non-custodial. If they break this, the court may be able to deal with them for the original offence
- It is likely that they will lose their livelihood
- It is likely that they will suffer serious damage to their reputation
- A substantial question of law may be involved
- They may not be able to understand the court proceedings or present their own case
- They may need witnesses to be traced or interviewed on their behalf
- The proceedings may involve expert cross-examination of a prosecution witness
- It is in the interests of another person that they are represented

## Review of Legal Aid Delivery and Governance

- Any other reasons.

If the applicant passes the IoJ test, they must also pass the means test to qualify for legal aid. There are different means tests for different levels of service.

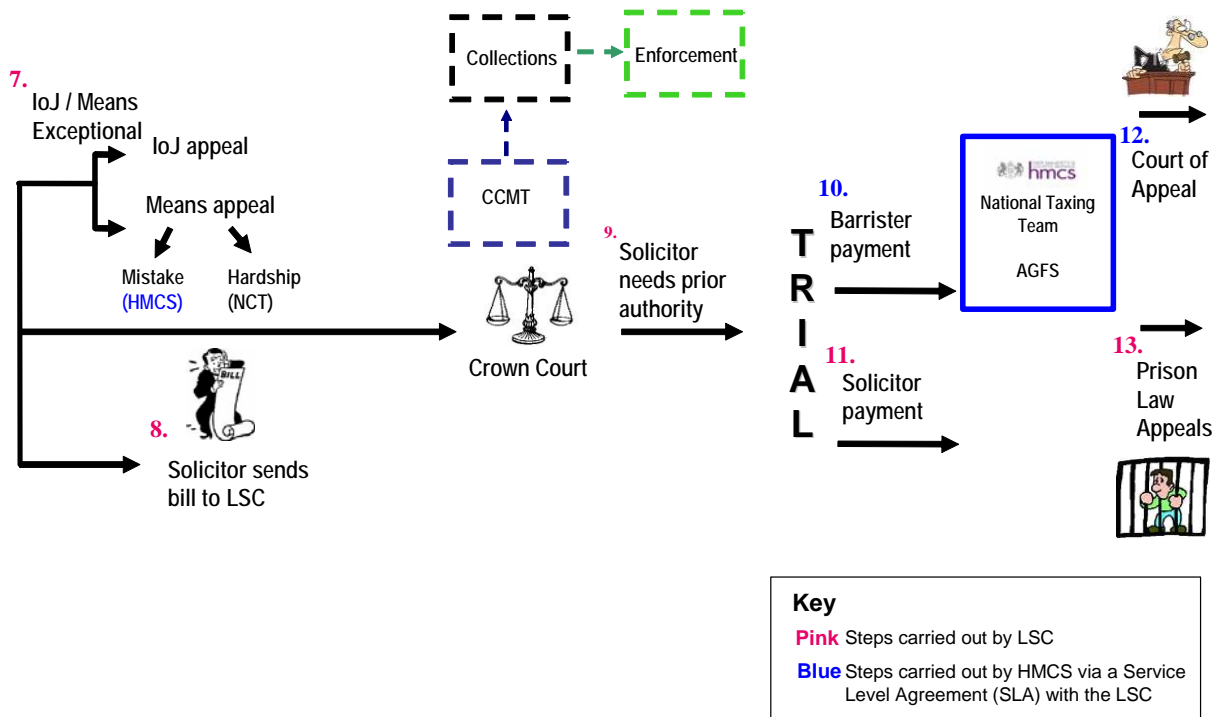
The diagrams below show the basic flow of a defendant through the criminal justice process, including the high level process for criminal legal aid for the case.



The key process steps are as follows:

- The client is arrested. A call is made to the Defence Solicitor Call Centre who determines if phone advice may be appropriate (step 1 in the diagram above). If so, the call is referred to Criminal Defence Service Direct (CDS Direct), who provide advice over the phone where possible (step 2). If representation is needed, own or duty solicitor is contacted (steps 3 and 4). The supplier will either receive a fixed fee or, if the case is exceptional, will send the file in for assessment.
- Once charged, the defendant will appear in front of the Magistrates court to plead and for administrative issues to be considered (step 5). If appropriate, a legal aid application is made to HMCS for both IoJ and Means (step 6). Complex means assessments/hardship applications are passed to the LSC for determination (step 7 in the diagram below).

## Review of Legal Aid Delivery and Governance



- Summary only cases stay in the Magistrates court, indictable only cases are passed up to the Crown Court and a determination is made for either way offences.
- If a disbursement is necessary, the supplier can submit an application for prior authority (step 9 in the diagram above).
- At the end of Magistrate court proceedings, the supplier submits a claim – either a fixed fee or an exceptional case (step 8). All exceptional cases are subject to assessment.
- If the case goes to the Crown Court, suppliers can also submit an application for Prior Authority (step 9).
- At the end of a Crown Court case, solicitor claims under the Litigator Graduated Fee Scheme to LSC (step 11), and the barrister under the Advocates Graduated Fee Scheme to HMCS (this will transfer from HMCS to the LSC in 3 phases ending in January 2011) (step 10)
- Once in Prison, the prisoner can complain about treatment, or can ask for a further appeal (either against sentence or conviction). All of a Prison Law case and the initial stages of an Appeal case will be funded subject to means/merits criteria being met (step 13). In appeal cases, the Court of Appeal assume responsibility for granting funding and assessing bills from the moment that provisional grounds have been identified (step 12). The bill is submitted to the LSC at the conclusion of the case.

## Review of Legal Aid Delivery and Governance

The overall criminal legal aid client diversity profile differs from the national profile in the following ways:

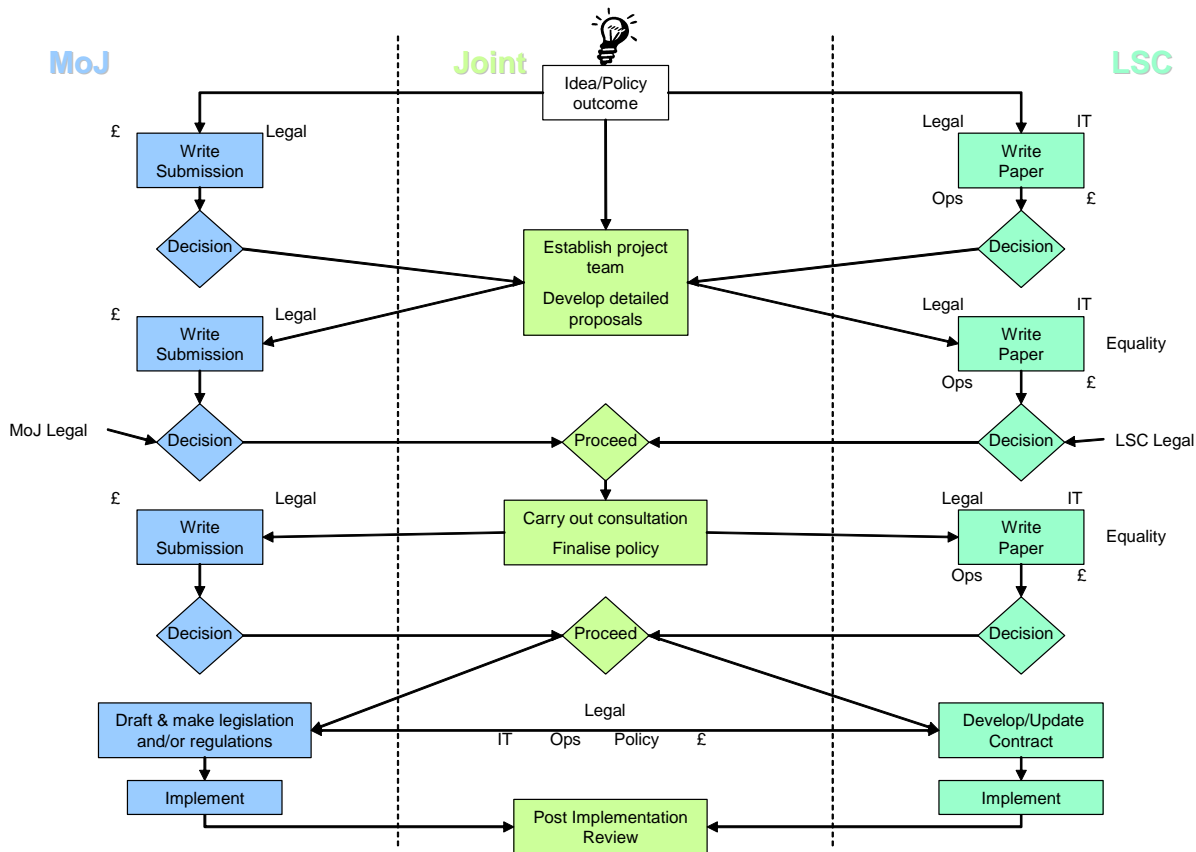
- Lower proportion of disabled clients, though this may be affected by the high proportion where disability status was unknown.
- Lower proportion of white clients, though this may be affected by the high proportion where ethnicity was unknown.
- Far greater proportion of male clients.

### Legal aid Policy Making Process

Legal aid policy making is described in Part 2.2 of this report and key issues relating to it are highlighted in Part 5.1 Analysis.

The diagram below provides a simplified, high level process map which illustrates the policy delivery process once a particular policy idea or policy outcome has been identified.

It does not capture the earlier policy formulation process giving rise to the particular policy idea or outcome.



## Review of Legal Aid Delivery and Governance

The table below describes the different roles in general of MoJ and LSC in legal aid policy making. However, as stated in Part 2.2, it should be noted that there is inconsistency in roles and responsibilities between MoJ and LSC for policy making for different jurisdictions and parts of jurisdictions, largely for historical reasons.

<b>MOJ</b>	<b>LSC</b>
Interact with other government departments at a primary policy level	Limited or no interaction with other government departments at a primary policy level.
Focus on the Minister and needs of the Government and of the general public, including broader policy and strategy	Focus on Clients and the strategy set by the Commissioners in discharging their statutory functions under the Access to Justice Act (AJA). Implementing Government policy on legal aid.  Awareness of broader Government policy.
Focus on gaining value for money for the taxpayer from legal aid and broader policy. Recognise and take account of financial position of MoJ.	Focus on value for money for the taxpayer in delivery of AJA.
Oversight and ownership of the AJA and secondary legislation	Interpret and implement the AJA and draft, implement and interpret the Funding Code.  Interpret the funding code within accepted interpretation conventions.  Inform and provide data, interpret rules and practice and implement amendments to Funding Code.  Run pilots that 'test' extending the Funding code with permission of Ministers, e.g. ELAP ministerial agreement to bring solicitor attendance at UKBA Asylum Interviews into scope.
Advice on new legislation as impacting upon AJA and secondary legislation	Inform and provide data, interpret rules, practice and implement. Advice

## Review of Legal Aid Delivery and Governance

	on new legislation as impacting on the Funding Code.
Set parameters of primary policy within legislation (and EU law) including government policy/strategy – e.g. Carter	Assistance with interpretation of legislation, informing primary policy through historical Management Information.
Buffer for legal aid impact assessments, oversee protection of the fund from other government departments. For example by:  Analysing proposals and advising on impact of other government departments' policies on legal aid  Arranging transfer of cash from other government departments whose policy changes impact adversely on the legal aid fund	Inform and provide data, interpret rules, practice and implement. Help to identify areas where impact assessments are appropriate e.g. Gurkhas, terrorist cases.
Limited or no interaction with other government departments at a day-to-day operational level	Significant interaction with other government departments at an operational level e.g. Home Office and UK Border Authority in relation to Immigration and Asylum – setting up services in new detention centres.  React to changes in operational policy of other Government Departments insofar as this does not require changes to Funding Code.
Limited input into operationalisation of policy.	Design, execute and interpret primary policy through the development and implementation of operational policy e.g. procurement based on Carter.
No interaction with legal services suppliers on individual cases.  Frequent liaison with stakeholder groups regarding particular policy changes and/or as part of regular liaison. For example, the Law Society, Bar, LAPG, Law Centres Federation.	Significant interaction with legal services suppliers on operational issues and in developing and implementing operational policy.  Extensive stakeholder liaison on operational issues and with regard to operational policy.



## Review of Legal Aid Delivery and Governance

<p>Limited interaction with local authorities and WAG</p>	<p>Significant interaction with local authorities (eg joint commissioning) and WAG</p>
<p>Employees with primary policy making skills including (but broader than) legal aid</p> <p>Political awareness</p> <p>Knowledge and skills in parliamentary processes including developing legislation and regulations</p> <p>Access to professional skills to support policy formulation and delivery including economists, statisticians, lawyers, accountants etc</p>	<p>Employees with specific practice skills and focus on the areas of funding.</p>

## Annex D - Glossary

### Acronyms

<i>AJA</i>	Access to Justice Act 1999
<i>ALB</i>	Arms Length Body
<i>AtoJ</i>	Access to Justice
<i>BIS</i>	Department for Business, Innovation and Skills
<i>BVT</i>	Best Value Tendering
<i>CAB</i>	Citizens Advice Bureau
<i>CAFCASS</i>	Children and Family Court Advisory and Support Service
<i>CCMT</i>	Crowns Court Means Testing
<i>CEO</i>	Chief Executive Officer
<i>CEPEJ</i>	European Commission for the Efficiency of Justice
<i>CDS</i>	Criminal Defence Service
<i>CDS Direct</i>	Criminal Defence Service Direct
<i>CJS</i>	Criminal Justice System
<i>CLA</i>	Community Legal Advice (telephone service)
<i>CLAC</i>	Community Legal Advice Centre
<i>CLAN</i>	Community Legal Advice Network
<i>CLS</i>	Community Legal Service
<i>CLSD</i>	Community Legal Service Direct
<i>CLSP</i>	Community Legal Service Partnerships
<i>CPS</i>	Crown Prosecution Service
<i>CSR</i>	Comprehensive Spending Review
<i>DCA</i>	Department for Constitutional Affairs
<i>DWP</i>	Department for Work and Pensions
<i>ELAP</i>	Early Legal Advice Process. This means the UKBA's special arrangements in relation to Asylum Clients.
<i>F&amp;GP</i>	Finance and General Purposes Committee
<i>FTE</i>	Full Time Equivalent
<i>HMCS</i>	Her Majesty's Court Service
<i>HMT</i>	Her Majesty's Treasury
<i>ITT</i>	Invitation to Tender
<i>IoJ</i>	Interests of Justice Test
<i>KPI</i>	Key Performance Indicator
<i>LAB</i>	Legal Aid Board
<i>LALL</i>	Legal Advice at Local Level
<i>LCJB</i>	Local Criminal Justice Board
<i>LSC</i>	Legal Services Commission
<i>MI</i>	Management Information
<i>MOJ</i>	Ministry of Justice

## Review of Legal Aid Delivery and Governance

<i>NAO</i>	National Audit Office
<i>NHS</i>	National Health Service
<i>NMS</i>	New Matter Starts
<i>NOMS</i>	National Offender Management Service
<i>OCJR</i>	Office for Criminal Justice Reform
<i>PDO</i>	Public Defender Office
<i>PDS</i>	Public Defender Service
<i>PSA</i>	Public Service Agreement
<i>QM</i>	Quality Mark
<i>SMP</i>	Standard Monthly Payments
<i>SQM</i>	Specialist Quality Mark
<i>SWL</i>	Social Welfare Law
<i>ToR</i>	Terms of Reference
<i>TUPE</i>	Transfer of Undertakings (Protection of Employment)
<i>VHCC</i>	Very High Cost Case: A criminal case that is likely to last for more than 40 days; or between 25 and 40 days and is a terrorism prosecution or Serious Fraud Office prosecution or meets any two of: At least 10,000 pages of prosecution evidence At least 10,000 pages of unused or third party material More than five defendants Fraud or serious drug cases where the value of the fraud or drugs exceeds £1m
<i>WAG</i>	Welsh Assembly Government
<i>WIP</i>	Work in Progress
<b>Acts of Parliament</b>	The Legal Aid and Advice Act 1949 Ministers of the Crown Act 1975 The Access to Justice Act 1999 Mental Health Act 2007 Legal Services Act 2007
<b>Financial Terms</b>	
<i>AME</i>	Annually Managed Expenditure
<i>Cash</i>	Cash out the door – Actual amount spent
<i>DEL</i>	Departmental Expenditure Limit
<i>Near cash</i>	Resource expenditure that has a related cash implication, even though the timing of the cash payment may be slightly different. Near cash = cash + movement in debtors and creditors
<i>Resource account</i>	An accruals account

## Review of Legal Aid Delivery and Governance

*Resource accounting* The system under which budgets, estimates and accounts are constructed in a similar way to commercial audited accounts, so that both plans and records of expenditure allow in full for the goods and services which are to be, or have been consumed I.E. Not just the cash expended.

*RAB* Resource Accounting and Budgeting  
*Resource budget* The means by which the government plans and controls the expenditure of resources to meet its objectives

## **Annex E – List of Contributors**

### **LSC**

LSC Commissioners  
LSC Executive Team  
LSC staff in London and South  
Tyneside

### **MoJ**

Justice Secretary  
Lord Bach  
MoJ Corporate Management Board  
Officials within Access to Justice  
Group  
Officials within Criminal Justice Group

### **Judiciary**

Lord Chief Justice  
The Master of the Rolls  
Lord Justice Goldring  
Lord Justice Leveson  
Lord Justice Thomas  
Lord Justice Jackson  
President of the Family Division, Sir  
Mark Potter  
Senior District Judge of the Family  
Division, Philip Waller

### **OGD**

Director of Public Prosecutions  
Chief Executive of the Crown  
Prosecution Service  
Chief Executive of HMCS  
Chief Executive of the Tribunals  
Service  
Deputy Chief Executive of the United  
Kingdom Border Agency  
Director General and Chief Executive  
of the Office for Criminal Justice  
Reform  
Chief Executive CAFCASS  
Her Majesty's Treasury

Chief Executive Pensions, Disability  
and Carers Service

### **Legal Aid Provider Groups and Representative Bodies**

The Law Society  
The Bar Council  
Legal Action Group  
Law Centres Federation  
The Howard League for Penal Reform  
Legal Aid Practitioners Group  
Criminal Law Solicitors' Association  
Advice Services Alliance UK  
Advice UK  
UK Strategy Director A4E

### **Regions**

Chief Executive and Chairman of the  
Scottish Legal Aid Board  
Scottish Executive  
LSC Director for Wales  
Chair and Members of the Wales  
Committee for the CLS  
Chairman of the Northern Ireland LSC  
Wales Office

### **Other**

Lord Carter of Coles  
Dame Sue Street  
Ursula Brennan  
David Edmonds, Chair of the Legal  
Services Board

### **Trade Union representatives:**

GMB Chair;  
GMB representative [LSC];  
FDA Chair [LSC];  
FDA Vice Chair [LSC]

## Review of Legal Aid Delivery and Governance

### **Written Submissions:**

Carl Sargeant AC, Minister for Social Justice and Local Government, Welsh Assembly Government  
The Law Society  
Young Legal Aid Lawyers  
Citizens' Advice Bureau  
Institute of Legal Executives (ILEX)  
Law Centres Federation  
The Howard League for Penal Reform  
Refugee and Migrant Justice  
Wales Council for Voluntary Action  
Unlock  
Shelter  
Brent Private Tenants rights group  
Riverside Advice, Cardiff  
Six submissions from private practice solicitors  
Two submissions from private individuals