

**Lord Carter's Report upon the Procurement of Legal Aid –
Response to the Select Committee's Constitutional Affairs on behalf of the
National Youth Advocacy Service (NYAS),
Registered Children's Charity and Not for Profit Organisation**

General response to questions for all respondents – 1.1 – 1.5:

NYAS is a unique socio legal children's charity employing a team of 5 solicitors (1 Child Panel member and 1 Family Law Panel member), 1 in-house Barrister, 2 paralegals supported by sessional caseworkers and advocates throughout England and Wales. NYAS was the first Not for Profit agency to have a Contract with the Legal Services Commission to provide legal advice and assistance to children and young people. NYAS provides Separate Representation under Rule 9.5.

NYAS solicitors have more than 40 years experience between them and NYAS as an organisation has been undertaking legally aided work since 1998. We undertake 100% of publicly funded work in the family law category.

These reforms are likely to have a significant impact on our organisation and the young people who turn to us for help.

NYAS believes that all young people have the right to access high quality legal information, advice and advocacy services wherever they live in the UK. We promote children's rights through the provision of socio legal advocacy services and a Freephone helpline. We also provide a regional supervised Contact Centre.

NYAS is a pilot provider of Family Advice and Information Network services through the provision of telephone advice and mediation for children and young people whose families are experiencing breakdown. Focus groups in relation to this work have told us of the significant need young people feel for access to reliable legal advice and support to have their wishes and feelings acknowledged.

Summary of NYAS' Response

5.1 Quality Supporting Measures - We entirely endorse the view that publicly funded work should be of a high standard. We feel that this is particularly important for the vulnerable group of young people who make up our clients. We feel it is essential that services for children and young people should not be allowed to become a second class service. We welcome the move towards the Standard of Quality Assessment being based on peer review assessment. It is a concern however that the proposed criteria required to attain Preferred Supplier Status at a fixed price may prevent those standards from being achievable, given the additional internal administrative and self-audit requirements.

5.2 Transitional arrangements – It is felt that the proposals under recommendation 5.4 will simply constitute additional monitoring requirements and will do little to increase diversity of provision. The additional monitoring will have further cost implications and, as a result of these measures are likely to reduce the number of providers rather than to sustain a diverse supply base.

As a Not for Profit children's charity we are acutely aware of the costs entailed in competitive tendering. In the light of the Gershon Report relating to contractual work for local authorities we know there are significant difficulties in achieving full cost recovery. We feel that this is likely to be an on-going issue in the provision of Legal Services, notwithstanding the making of grants available for restructuring.

We have serious concerns about the emphasis placed on a tendering and procurement process based on a best-value approach when best value is inherently subjective. Particularly important in the provision of specialist services to vulnerable groups is the identification and acknowledgement of factors relating to that vulnerability.

5.6 We feel that the idea of 'access to justice' will be seriously compromised by a system which is driven by a subjective interpretation of complexity and volume in the proposed fixed price procurement system. The question of significant benefit for a young person may well differ to the LSC view of significant benefit.

We do not consider that recommendation 6.2 will provide any incentive to Not for Profit organisations to develop services because within the proposals any significant upward movements in unit cost must lead to an agreement to adjustment down in price or other measures. We consider that we already operate to maximum efficiency with an extremely tight margin for viability.

6.1 *Replacement for TFF* – Although we understand the concern at the overall level of spending on Legal Services and the desire for cost control we do not feel that fixed fees are an appropriate solution in the field of family work and care

proceedings. These are set out as a lead in to price competitive tendering which would, in the words of the Report, “reward efficiency and suppliers who can deliver increased volumes of work”. We do not feel that this is appropriate in family proceedings and in particular for direct work with children. We feel that there is an urgent need for the Legal Services to address its understanding of the needs of different client groups, in particular vulnerable children and young people as their need for advice differs substantially from those of other client groups, as a result of their age and understanding, giving a rise to a need for increased levels of support to safeguard their welfare, achieve effective communication, ensuring participation and engagement.

NYAS would prefer a National Fee for this work because as a National Organisation we aim to meet the needs of children and young people across the country. It is our experience that there is a high cost associated with meeting the needs of our clients from the more remote and rural areas where they do not have access to specialist services. In addition, disadvantaged areas may become further depressed by continuing lack of investment, with a resulting reduction in available Legal Service provision.

6.2 We do not agree with the proposals for payment of tolerance work. A reduced fee for tolerance cases will result in fewer firms being able to offer holistic services. The limited number of contracts that will be available for work which is currently undertaken under tolerance, together with the associated administrative costs will further reduce access to legal advice. This is likely to have a detrimental effect on the range and quality of services provided.

As a Not for Profit provider NYAS feels that the particular needs of the NfP sector should be acknowledged. Whilst we accept the principle that there should not be any distinction between fee structures and payment systems for private practice and Not for Profit organisations, we are concerned that the proposed structures will seriously disadvantage Not for Profit providers. The removal of tolerance will not support wider advice work, campaigning and lobbying and will not enhance our wider role.

Whilst we have achieved an impressive level of efficiency, we feel that difficulties caused from moving to payment only after the event would place serious strains on the financial stability of many Not for Profit provider organisations. We feel that these measures are likely to reduce the number of Not for Profit providers and therefore make it more difficult for vulnerable groups to access the specialist advice and support that they need. As a Children's Charity, although we welcome the notion that extra payments can be made when targets provided are exceeded, we are extremely concerned that this will only be subject to there being sufficient new case starts available. This could result in us having to turn away young people seeking support. Given the likely reduction in available providers it is also likely that those young people will find it difficult to obtain suitable advice elsewhere.

Care Proceedings – Graduated Fee Scheme (Sect.7). The intervention of the State in the life of any family is necessarily significant and traumatic for them. Each set of proceedings will deal with multiple issues for each member of the family involved. The seriousness of the outcomes in every case requires careful consideration and expert advice. No two cases are the same and it is extremely difficult to apportion a

fixed or graduated fee to reflect this. The Carter Report itself recognises the multi-party nature of care proceedings and the need for separate representation and states “there are around 1,700 members of the Children Panel in England and Wales and – a number of these are small suppliers. There will be a need to ensure such suppliers can be maintained within the system” (page 66). We are concerned that the current proposals will actually result in a reduction in available members of the Children Panel.

We can see some benefit in Level 2 Pre-Proceedings work for children and young people so that they have advice and a better understanding of what is involved in care proceedings and the child protection process.

7.5 Family help private (Sect.7). – In principle the proposal of a graduated fee scheme is not opposed, however the current fee structure level is not realistic. NYAS would prefer the provision of a national level of fees. We are concerned that the removal of recognition of specialist panel members will result in a serious reduction in the quality of services and advice provided, given the reduction in fee levels this will become a driver to use less experienced and less qualified people to cover the work. There would be requirement to ensure that experienced and qualified staff were providing a satisfactory level of supervision and the cost of this is not reflected in the fee structures. We do not feel that it is possible to address whether proposed scope of the scheme is entirely appropriate when the suggested associated fee levels are so clearly inadequate and will not cover the cost of the activities and level of service detailed.

7.8 – We do not agree with the proposal to remove the 15% uplift for Panel members. We feel that there needs to be a positive reward for experienced practitioners to undertake early work.

7.9 – Again it is difficult to comment on the proposals for payment when the fee structures do not adequately reflect the proposed scope of work at each level. In addition we are concerned to note that, should there be payment for exceptional cases, this would be only subject to assessment after the work has been carried out. This could seriously impact on an organisation’s preparedness to run the risk of providing additional input to complex cases if there was no certainty that there would be ultimate appropriate payment.

7.10 Proposals for payment of advocacy - As a national Not for Profit organisation NYAS provides representation for children and young people throughout England and Wales. As such it is essential that we are able to instruct Counsel where necessary.

10.1 In view of our previous comments on the inadequacy of the proposed fixed fees we do not consider it to be likely that actual costs will be lower than the published standard or graduated fee!

10.2 Without scrutiny of the proposed detailed guidance on costs assessment for exceptional cases it is difficult to comment on the proposed arrangements.

Questions on the unified contract 11.3 – Given our concern at the additional administrative burden which is likely to follow from the proposals set out in the new

market based approach to reform, we feel that any proposals to simplify and improve ‘usability’ can only be welcome.

11.5 In principle it is not foreseen that there would be a problem with the proposals for self-monitoring, however it will be important for this to be kept within reasonable boundaries. We welcome the move to encourage communication electronically.

11.8 We feel that an independent peer review is an appropriate alternative to current LSC audit arrangements. We have some reservation about mystery shopping in that the lack of openness is unlikely to foster positive relationships between the supplier and the LSC.

11.9 and 11.10 - Whilst we agree that a good argument can be made for all providers to be paid on the same basis, there is some concern that the removal of Level 1 work for NfP organisations may reduce the accessibility to legal advice for the most vulnerable groups.

Conclusion

- We do not feel that the proposals will promote the provision of best quality advice for vulnerable children, young people and their families and it is difficult to see how they will significantly improve efficiency. They are likely to jeopardise the provision of legal services in the future by forcing a number of providers to opt out. As a consequence, clients are likely to experience a serious reduction in their ability to access justice and suppliers that do remain

within the scheme will be obliged to rely on less experienced, less qualified staff operating under a pressurised new matter start performance criteria rather than being able to provide tailored and bespoke services which address client needs in a holistic manner.

- We do not agree that there is currently a need to change the existing system for family work, except to review the existing levels of remuneration provided to solicitors who have shown a long standing commitment to this very difficult area of work.
- Whilst we recognise that it is important to review and control the level of spend for Legal Services this should not be at the expense of access to justice for the most vulnerable members of our society and we do not believe that the current proposals will result in effective savings but are likely to increase administrative costs passed on to suppliers and that, in turn, will impact upon the number of suppliers available to do the work.
- We believe that there needs to be further research into the most effective provision of legal services for those with specialist needs, effective outcomes, diversity of provision, best value and cost-effectiveness.

NYAS

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