

**Community Legal Service Policy
Mental Health Policy**

LSC Response to Article by Sheila Carrick in *Adjust*

I welcome this opportunity to respond to Sheila Carrick's article regarding the state of access to mental health legal services in the South West of England (*Adjust* – December 2008). I would like to assure readers that we take such concerns very seriously.

Our recent consultation, "Civil Bid Rounds for 2010 Contracts", outlines how we plan to procure legal services for contracts from 2010 onwards. In mental health, maintaining and developing access forms the backbone of our policies. For example, we propose to ask legal representatives to list the hospitals where they plan to work when bidding for a contract. This will allow us to survey areas of undersupply and take action where appropriate. We also propose to allocate work geographically by demand for work. Currently we have little control over where providers choose to do their work, which makes it hard to balance supply with demand when concerns about access are raised with us.

However, we also need to identify and deal with any access problems that appear before the new contracts are in place. Last year, specific concerns were raised by a group of providers operating in the South West about the provision of services in their region. At the same time, reports produced for our Phase 1 Fee Scheme Review indicated that the number of cases started in the area had dropped by more than 20% in comparison to the previous year.

Since November our Policy and Regional Contracting Teams have been working to investigate potential access problems in the South West. It must be borne in mind that the LSC has a duty to safeguard public funds and strong evidence is required to justify additional expenditure. Gaining this evidence has proved problematic. Whilst we collect information on how many cases have been started by each provider, this does not tell us where that work is being carried out, particularly since there is significant travel across regional boundaries. Whilst we can monitor the location of the actual work carried out at the conclusion of a case, this provides only a retrospective picture of access.

In addition, our public sector partner the Tribunals Service does not currently record instances of unrepresented clients, except where hearings are adjourned, and does not record adjourned hearings on a geographical basis. Our ability to monitor access in the future will be helped by the introduction of the Tribunals Service's new mental health database, which will capture additional data on adjourned hearings by specific hospitals. Until then, we have had to find other ways of quantifying access.

In the South West we have increased our engagement with the people in the region who are best placed to advise us about the situation. Contact was maintained with local providers, and, for the first time, we have sought information from NHS Mental Health Act Administrators. Using questionnaires, meetings and telephone conferences we asked them for their views on access. In particular we looked for specific evidence of unrepresented clients in the region, which the region's providers had repeatedly suggested was already an issue.

This project has rightly taken a considerable amount of effort and resource at a busy time for the LSC. We now have a deeper understanding of the difficulties felt by many solicitors in the region. On the other hand, the evidence provided to us by the administrators seems to indicate that local clients do not, in general, have a problem in obtaining legal advice. We have also been unable to obtain specific – rather than anecdotal – evidence of unrepresented clients in the region.

This is supported by our recent discovery that the number of cases in the South West has not, as originally assumed, substantially fallen. In fact, when late claims are taken into account, and certain data issues resolved, case volumes in the region appear to have remained fairly constant over the last two years. Furthermore, if you take into account the revised definition of a ‘matter’ introduced in January 2008 along with the Standard Fee Scheme, the overall work completed in the area appears to have risen by 17%.

Despite this, we have decided that we cannot afford to ignore the anecdotal evidence that has been presented to us by solicitors. In particular, we are concerned that providers in the region are at maximum capacity and may not be able to continue to provide access throughout the region if, for example, the volume of work were to increase, or further providers were to withdraw. We propose to offer an increase in work to providers working in the area. If local providers cannot take further work on, we will offer the work more widely. To ensure quality, both these exercises will be underpinned by the principles encapsulated in the consultation.

Sheila proposes that withdrawal of solicitors in the South West has been as a direct result of the introduction of the Fixed Fee scheme. While 6 providers have withdrawn this only amounts to 11% of the region’s providers’ total capacity. Furthermore, this does not take into account providers from outside the area continuing to work in the South West. However, we take the region’s providers’ concerns seriously.

Fixed Fees are strongly justified in all categories of law, including mental health, since they secure a sustainable future for legal aid within the confines of our fixed budget. Without Fixed Fees, the only option to control rising costs would be to help fewer people by cutting scope or eligibility. These alternatives would diminish proper legal representation and are not palatable for clients, providers or the LSC. Having said that we are committed to reviewing all our fee schemes, and concerns such as those that were raised by Sheila will be examined during the Phase I Fee Scheme Review.

It is important to clarify at this stage that there have been exceptional cases in the Bristol area. To date, at least nine providers from the region have reported cases that, subject to assessment, may qualify as exceptional cases. Our management information shows that a number of these providers have reported cases that would qualify for exceptional case status but have not claimed them as such. We would urge providers to claim where they are entitled.

Our investigations throughout this matter have shown that the tribunal process in the South West is in good health, which is a testament to everyone working in the area. The actions we will be taking shortly will ensure that this continues to be the case, and we are confident that no client will go unrepresented at a tribunal because they are unable to find a provider to take on their case. However, we will continue to listen to the view of others, and welcome any information on areas where there may be access issues. Working together we can ensure a fairer legal aid system for all, and continue to protect the fundamental rights of some of the most vulnerable people in society.

Paul Newell, Head of Civil Policy (non-Family)