

# Community Legal Service: the introduction of contracting



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
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# executive summary

- 1 In April 2000, the Legal Services Commission (the Commission) replaced the Legal Aid Board as the body responsible for administering civil legal aid in England and Wales. The Commission was also given responsibility for establishing and maintaining the Community Legal Service which incorporates the old civil legal aid scheme, renamed Community Legal Service Funding. The Government's aim for the Community Legal Service is to encourage easy access to quality assured services that provide information, advice and representation mainly, but not exclusively, to the most disadvantaged.
- 2 In 1996, the Committee of Public Accounts expressed concern about the growth of expenditure in civil legal aid and, in particular, the growing number of applicants with complex legal affairs typically associated with expensive litigation (Civil Legal Aid Means Testing, 25th Report, Session 1995-96, HC314). This report looks at the current administration of the Community Legal Service Fund by the Commission in the light of the Committee's earlier recommendations.
- 3 In 2001-02, net expenditure borne by the Community Legal Service Fund totalled £734 million. Most applicants for civil legal aid are required to undergo a means test and any assistance provided must fall within the scope of the scheme. Civil legal services are funded in accordance with the merits tests set out in the Funding Code approved by Parliament. Funded services fall under the headings of controlled work and licensed work:



- *controlled work* consists of all legal help, and legal representation before, for example certain tribunals. The decision about whether to provide services in a particular case is made by the supplier, under a contract that limits the number of cases. Under the old scheme, cases were funded provided the client met the means test criteria and the assistance sought fell within the scope of the scheme. Expenditure on controlled work totalled £258 million in 2001-02.
- *licensed work* covers all legal representation before the Courts, including all very expensive cases which, additionally, are managed under individual contracts with the Commission. Expenditure on licensed work is controlled through a certification process requiring the Commission's initial approval of the cost, timing and scope of each case. The administration of licensed work was unchanged by the introduction of the Community Legal Service. Expenditure on licensed work totalled £476 million in 2001-02.

- 4 Our examination suggests that the introduction of contracts for legal help has led to better scrutiny by the Commission of the work of its suppliers and, in a number of respects, a greater degree of control over this element of the civil legal aid budget. The Commission has strengthened its scrutiny of the cost of expensive cases and has successfully challenged the eligibility of some applicants. However, the number of solicitor's firms providing services has dropped, partly offset by a rise in the number of participating not-for-profit organisations. There are some gaps in the provision of services in specific areas of law, for example social welfare. As the new arrangements bed down, the Commission needs to do more to tackle poor performing suppliers, target resources at areas where unmet need is greatest and working with its suppliers, communicate a clearer vision for developing the supplier base.
- 5 Our main findings are:
  - Overall expenditure on civil legal aid has decreased. Expenditure on civil legal help is increasing largely due to the demands of work on immigration and asylum. But this is more than offset by reduced expenditure on licensed work. The average cost of individual cases across categories (excluding immigration) increased by around 20 per cent in 2001-02. The reasons for this increase are not completely clear but the Commission had expected contracting to lead to a shift away from high volume, low value cases and therefore some increase in average costs. The Commission is conducting further research to examine the correlation between the work done and the quality of advice and outcome for the client.
  - The Commission has, in some cases, disallowed a significant proportion of the costs claimed on help and advice work, although in some cases these amounts have been reinstated after mediation with the supplier. Audits conducted by the Commission of case files kept by suppliers suggest that 35 per cent of suppliers were in the lowest category, that is overclaiming at a rate in excess of 20 per cent. The 2001-02 audit results suggest that there has been some improvement in suppliers' performance over the previous year, and possibly the reliability of the audit process. However, a significant minority of suppliers have not improved. The Commission told us it intends to remove suppliers who persistently overclaim on controlled work but the removal process is long and drawn out, taking a minimum of around 18 months. The Commission told us that a small number of suppliers had withdrawn in anticipation of being removed.
  - The Commission's Special Investigation Unit reviews whether the means of claimants referred to it do indeed qualify for publicly funded support. Of the 150 civil cases it investigated in 2001-02, 85 per cent led either to the refusal or withdrawal of funding or to an increase in the contributions payable. The Unit estimates that it achieved savings of £750,000 in 2001-02. The Special Cases Unit manages the funding of the highest value cases with gross costs in excess of £25,000. In individual cases the Unit's intervention can save significant costs. The Unit comprises 20 people overseeing cases costing, in net terms, over £75 million (2002-03). This compares with around 460 staff engaged in the administration of civil and criminal contracts involving expenditure of around £880 million. There may therefore be scope for the Commission to review its targeting of resources across controlled and licensed work, and expensive cases.
  - The Commission has outstanding debts of around £320 million, of which £255 million is charges on the property of clients from which legal aid costs will be recovered when the property is sold. Although the debt can be repaid voluntarily at any time earlier than this, debtors may be unaware of this option.
  - Since the introduction of new contracting arrangements, there has been a decline in the number of solicitor firms providing legal aid services. There is increasing use of the not-for-profit sector, currently accounting for about eight per cent of the total supplier base. However, these bodies work mostly in providing legal help. The reduction in the supplier base is partly a deliberate move away from reliance on a large number of generalist support firms towards a smaller number of specialist quality-assured providers. However, the reduction also reflects concern amongst some firms about the level of remuneration offered on civil legal aid work. The Commission has identified gaps in provision in some parts of the country and in some areas of law, for example family law but has had some success in attracting suppliers to immigration work.

- As part of the establishment of the Community Legal Service, the Commission has helped create a network of local Community Legal Service Partnerships bringing together suppliers and other funders of advice and information services, including local authorities. These partnerships have the potential to play a significant role in identifying local needs and in helping to match services to meet those needs. Most of the organisations we spoke to welcomed the creation of these partnerships, but some suppliers expressed concern about a perceived lack of progress in helping to shape local services in some areas.





# Recommendations

## We recommend:

- (i) The Commission should introduce arrangements to ensure greater consistency in the approaches adopted by the Commission's auditors in different regions.
- (ii) The Commission should reduce the minimum time needed, from serving the initial notification, to removal of suppliers who persistently and significantly overclaim.
- (iii) The Commission should review whether resources employed on examining controlled and licensed work, including the Special Investigation and Cases Units, reflect the relative risks associated with these activities, and allocate resources accordingly.
- (iv) The Commission should introduce measures to help it assess the impact of the work of the Special Cases Unit.
- (v) The Commission should raise awareness amongst debtors of its voluntary system for the early repayment of debt currently held as a statutory charge on property.
- (vi) The Commission should periodically seek direct feedback from the users of services on the quality of services funded through legal aid.
- (vii) We support the Commission's initiative to bring together all information about contract holders for the purpose of its audits and recommend it evaluates the new approach after one year.
- (viii) The Commission should review the size and composition of its supplier base and communicate its priorities for developing the supplier base in the medium term - taking account of changing patterns of need, the impact on the likely outcome for the client, the efficiency and effectiveness of different types of supplier, and the need to ensure adequate access to services across the country.
- (ix) The Lord Chancellor's Department and the Commission should review whether there is scope to reduce future demands on the Fund by encouraging improved feedback, particularly to public bodies, on the lessons to be learned from cases.
- (x) The Lord Chancellor's Department and the Commission should examine the work undertaken by the Community Legal Service Partnerships to date and consider whether effective use is being made of their ability to shape local services.