



Civil Bid Rounds for 2010: A Consultation

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Child Poverty Action Group
94 White Lion Street
London N1 9PF
www.cpag.org.uk

Introduction – about CPAG

CPAG is the leading charity campaigning for the abolition of poverty among children and young people in the UK and for the improvement of the lives of low income families. CPAG aims to: raise awareness of the causes, extent, nature and impact of poverty and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. We are a national organisation and we are based in Islington. We also have an office in Glasgow which serves Scotland.

In line with our charitable aims, we produce publications, undertake training and second tier advice work, and carry out test case work in social security law. We also undertake policy work and we campaign in this field. CPAG produces the leading publication on welfare rights; the *Welfare Benefits and Tax Credits Handbook*, which is updated annually, and is used as the standard text on social security by Citizens' Advice Bureaux, Law Centres and solicitors. The book is also used by local authorities and by the Department for Work and Pensions and HMRC. We also edit the *Social Security Legislation Volumes I-IV* and we produce the *Housing Benefit and Council Tax Benefit Legislation*, which again are standard texts on social security. All these publications are listed by the LSC as essential texts required to meet the supervisor standard in Welfare Benefits. We produce other associated rights-based publications. We are also one of the foremost providers of training in social security. Lord Bingham described CPAG as:

".. a key player in making complex and impenetrable social security law work for children and families.."

One of CPAG's objectives is to:

Raise advisers' knowledge and awareness of income maintenance so as to equip them to advise their clients and to maximise take-up

We view the provision of advice to claimants on their rights to welfare benefits as vital anti-poverty work. We are concerned rights advice should be well managed and funded so that claimants can get the help they need in accessing their full entitlement to benefits.

Test case work

CPAG pioneered the strategic use of test cases in the UK, and has been undertaking work in this field since the 1970s. We set out below CPAG's history of test case work. We take on a small number of cases selected on the basis of our test case strategy, which is briefly summarised as follows:

- To seek a ruling on an untested point of law or to overturn or confirm a prevailing judicial interpretation from the perspective of promoting the rights of claimants.

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- To take cases which will have significance not only for the person bringing it, but for others too.
- To use test cases as a focal point for campaigning and lobbying work.

We have found this to be an effective means of promoting social justice through the courts. Low income has been shown to be one of the major indicators for a child's life chances. By helping to get better interpretations of the law relating to social security for claimants, and drawing attention to policy issues facing those in poverty, our test cases promote CPAG's aims of bringing about positive income changes for children in poverty and enabling those eligible for income maintenance to have access to their full entitlement. We would argue that this is also in line with the government's policy;

"Our historic aim, that ours is the first generation to end child poverty forever...It's a 20-year mission but I believe it can be done."

Tony Blair, Toynbee Hall 18 March 1999

CPAG is a national organisation. We believe our national perspective is valuable. Most social security benefits, with the exception of housing benefit, are administered and the rules for them are set nationally. The Department for Work and Pensions and HMRC are both organised nationally.

Test case work

CPAG brought the leading case on the standing of organisations to bring cases on behalf of groups of claimants; *R v Secretary of State for Social Services ex p Child Poverty Action Group [1989] 1 AER 1047*, and we also brought the first case on the court's ability to grant protective costs orders in public interest cases *R v Lord Chancellor ex parte CPAG [1999] 1 W.L.R. 347*, which remains an important authority. CPAG has brought some of the leading cases on social security law, recent examples include:

R (RJM) v Secretary of State for Work and Pensions (2008). This case was about whether the failure to pay the disability premium in income support to claimants without accommodation discriminates against them in the enjoyment of their possessions contrary to Articles 1P and 14 of the European Convention on Human Rights. The House of Lords decided that, following the decision of the ECJ in *Stec*, income support was a possession for the purposes of Article 1P, and that homelessness was a status for the purposes of Article 14. This is an important case for social security law, because Article 14 can only apply where another Convention right is engaged. RJM makes clear that in most social security cases Article 1P will be engaged, so where discrimination arises in the social security system claimants can challenge this under the Human Rights Act.

Zalewska v Department for Social Development (NI) (2008). This case concerned a national of an Accession State who had undertaken 12 months' work in the UK, not all of which was registered under the Workers' Registration scheme, and who had been denied a right to reside in the UK.

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CPAG intervened jointly with the Public Law Project. The House of Lords rejected the claimant's argument that as an EU worker she was entitled not to be discriminated against under Article 7(2) Regulation 1612/68. It rejected the argument for the Department for Social Development that EU law did not apply at all to the national measures in respect of the workers' registration scheme. It held by a majority of 3-2 that the effects of the scheme in denying entitlement to benefit to A8 nationals who had worked for 12 months, not all of which was registered, were not disproportionate.

Introduction

CPAG has commented on "Legal Aid: A Sustainable Future" in 2006 and on "Making Legal Rights a Reality" in 2005. Copies of those responses are attached for reference. We comment on this consultation both from the perspective of a second tier organisation which itself provides specialist support services and has a solicitors' contract to carry out our test case work, and from the perspective of an organisation which is concerned that welfare benefits claimants should be able to access good quality advice services. We comment only on those parts of the consultation which are within our area of expertise.

Executive summary

We have a couple of general comments on the background to these reforms.

We are concerned at the use of statistics on legal aid spending which we think can be misleading; for instance we understand the figure of £38 per head on legal aid given at para 2.2 relates both to criminal and civil expenditure. However this consultation relates only to civil legal aid which we understand takes up about 43% of the legal aid budget. Lord Falconer accepted expenditure on civil legal aid had in effect been cut by 22% since 1997.

We note at paragraph 2.8 of the summary that the reason given for these proposals is to respond to clients' needs for holistic advice services, and to align with the CLS and family strategies. However, the proposals do not acknowledge the question of the increase in the LSC's administration costs which was highlighted in the Carter report, and which the proposal for fewer, larger contracts which this consultation introduces was in part designed to address. If the proposals do not openly address the issues they are intended to resolve, this makes it difficult to formulate a response.

We believe that some acknowledgment should be made that the way in which the LSC has funded services in the past has contributed to the pattern of services that exist at present. For instance the fact that representation at tribunals is not funded discourages solicitors from carrying out welfare rights work, which has largely been carried out by voluntary sector organisations who have access to other funding streams. Further, the LSC encouraged its suppliers to specialise in the interests of quality, and now expects them all to generalise. It is not easy for organisations to

adapt to these changes in policy, and it is not surprising that the “supplier base” is contracting in most areas of law¹.

We are also concerned about the timescale of these changes, and whether they are really necessary. Fixed fees have only recently been introduced, and suppliers are now faced with further major changes. Once the final proposals are published, there will be very little time for providers to organise themselves for the tenders. It seems to us that no real case for reform of civil legal aid has been made out by the Carter report or elsewhere, yet reforms continue at a pace which many suppliers may find difficult to keep up with. The Civil Justice Council’s Access to Justice Committee, with which the Constitutional Affairs Committee agreed, said that:

“...the proposals if implemented, carry greater risks in terms of damage to civil legal aid provision, and access to justice, than the minimal financial improvements to the overall legal aid budget.”²

Questions

1. Are there any areas of family work other than child abduction that should be procured separately?

We have no comments to make on this.

2. Are there any other areas within low volume categories that are so significantly distinct that it would be more appropriate to tender separately from the rest of the category?

We have no comments to make on this.

3. Do you agree with the types of services we intend to procure in each category of law? If not, how should services be structured to ensure more integrated advice?

Social security, or welfare benefits, has been categorised as a high volume area of law, and has been linked with housing and debt. We appreciate the concern to ensure that the full range of claimants’ problems are dealt with together. However, although often regarded as a “Cinderella” area of law by solicitors, the law related to social security is extremely complex. It also arguably changes faster than any other field of law, and much more than either debt or housing, with which it is linked. It would be a loss to claimants if specialisms which have been built up in particular subject areas were diluted. We therefore think that to help ensure quality, there should be room for specialists in this area. We expect to see an increase in the number of appeals as a result of the introduction of Employment and Support Allowance and we anticipate this will generate greater demand for advice. Further Welfare Reforms are expected, which are likely to have a similar impact.

¹ See Constitutional Affairs Committee, Third Report of Session 2006/7 “Implementation of the Carter Review of Legal Aid” Vol 1 p 15

² Civil Justice Council, Access to Justice Committee Response to DCA/LSC’s Consultation Paper ‘Legal Aid; A Sustainable Future’ Constitutional Affairs Committee, Third Report of Session 2006/7 “Implementation of the Carter Review of Legal Aid” Vol 1 p 12

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Social security problems are often linked with changes in claimants' lives. They are therefore also often linked with problems associated with other areas of law such as family, and employment which are categorised as social welfare law, and with immigration which is categorised on its own. It is not clear how access to services in these other areas of law will link with access to welfare rights advice.

These proposals are likely to result in fewer, bigger suppliers. We are concerned about the potential consequences of this. It appears to be well accepted that BME suppliers, which tend to be smaller, are likely to be disproportionately affected³. As BME clients seek help from BME solicitors, then their clients are also likely to be affected.

We are also concerned that large commercial organisations are likely to be at an advantage in bidding for large contracts as they are better prepared for this type of contracting than smaller suppliers, who may have to form consortia which will be legally and practically difficult to achieve.

Fewer, larger suppliers may mean fewer offices that claimants can attend, and less likelihood of an accessible local supplier. This may impact on disabled claimants who have mobility problems or other difficulties in accessing advice.

We recommend that you consider giving weight to, and/or funding social policy work in the tenders. Campaigning and lobbying work, and collecting and acting on local information are valuable parts of the work of advice centres, which should be recognised and funded. Where there is a systemic problem with a local benefits office for instance, which an advice service works with an MP to resolve, this can save legal aid time and money.

4. Do you agree with the types of civil legal aid service we will no longer procure? If not, why?

Please see our comments in response to question 3 above. We believe there should still be room for specialist providers in the subject areas listed in paragraph 4.4.

We are not as yet sure what impact these proposals will have on CPAG's test case work. In paragraph 4.16 of the consultation paper there is provision for exceptional funding to be made available to high-profile campaigning organisations that undertake a small amount of public law legal aid work. It has been recognised these organisations may have difficulty meeting the criteria for contracts. It is not clear to us whether CPAG is included in this category, or whether it includes all the work we do. Some of our cases could be classified as "public law", but some would fall within the category of "welfare benefits", which is a "high volume" area of law, and does not seem to be covered by paragraph 4.16.

We have written to Carolyn Regan expressing our concerns and we understand from her reply that the LSC proposes to continue contracts for specialist support providers in their specialist areas of law, and we are grateful for this reassurance. This proposal is not, however, set out in the consultation document and we would

³ Ibid Chapter 7

welcome more information about how it will work in practice and in particular whether we would be required to carry out a minimum number of matter starts. As a specialist second tier organisation, which generally takes cases on referral where initial advice has already been given under legal help, we would have difficulty in carrying out a minimum number of matter starts.

We are pleased that the LSC has given consideration to the difficulties CPAG and other campaigning organisations may face in meeting the general requirements. However we would have some concerns about funding provided through the Special Cases Unit. Our experience of applying for exceptional funding under s 6(8) Access to Justice Act 1999 through the Special Cases Unit is that the levels of remuneration are so low, and the thresholds set for allowing funding so high, that the work we have to put into making the legal aid application, and dealing with subsequent queries and appeals cannot be economically justified. The work on the legal aid application is usually not funded at all. We also have concerns about the fairness of decision making in some cases.

We would submit that work funded via certificates issued by the Special Cases Unit should be paid at the usual legal aid rates – so for instance a funded case before the Upper Tribunal should be funded at rates payable for High Court cases, which is the equivalent level jurisdiction. We would also like to see a better working relationship developed between the Special Cases Unit and the organisations involved.

5. Is it reasonable that, in order to maintain integrated services, where contracts have been awarded on the basis of multiple categories (eg debt, housing and welfare benefits), work in all categories usually lapses where the minimum new matter start size per contract year has not been met?

It is not clear to us how lapsing the contract in these circumstances would maintain integrated services for clients. Surely it would have the opposite result; it would disrupt services. It may also discourage social policy work in a particular field; for example if a local campaign results in the local authority carrying out major repairs to its housing stock there may be fewer disrepair cases for suppliers, and fewer matter starts in housing.

6. Are the minimum new matter start sizes required set at the right level in each category? If not, why – for example, is there are a case for setting lower matter start sizes in rural areas?

It seems to us that numbers of matter starts should follow demand in procurement areas which are small enough to allow easy access for clients. Whether that should be more or less than the contract size will depend on demand for services in that area.

7. Is the minimum supervisor to caseworker ratio set at the correct level or are there, for example, some categories where processes are simpler, and as such require less supervision?

We have no comments on this question.

8. Are there any practical impacts on debt providers that will make the requirement to have an Approved Intermediary for Debt Relief Orders unachievable?

We have no comments on this question.

9. Is Panel membership for advocates before the MHRT a reasonable requirement for Integrated Services A in high security hospitals? If not, what additional measures should we use to ensure appropriate expertise of MHRT work?

We have no comments on this question.

10. Do you agree that requiring two immigration providers to have at least one Level 2 to every level 1 caseworkers employed will help ensure that providers are structured to represent clients through to the appeal stages of their case?

We have no comments on this question.

11. Is the Integrated Services A requirement to undertake legal representation in community care, housing and mental health and immigration and asylum the most suitable way to ensure that clients can access all levels of advice? If not, what would be a better approach?

We have no comments on this question.

12. Do you agree that specifying referral to family support services for family contacts is the best way of addressing the support needs of family clients?

We have no comments on this question.

13. Other than independent advocacy services are there any other types of support services that the LSC can more closely specify that mental health providers should have links with? If so, what are these?

We have no comments on this question.

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Sarah Clarke
Solicitor
Child Poverty Action Group
94 White Lion Street
London N1 9PF
tel: 020 7837 7979
fax: 020 7837 6414
email: sclarke@cpag.org.uk

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