



Ole Hansen of Ole Hansen and Partners believes that if *Making legal rights a reality: the Legal Services Commission's strategy for the Community Legal Service 2006–2011* says what it means and means what it says, the future is bleak for publicly funded suppliers of social welfare legal services, whether in private practice or the not for profit sector.¹ They must fit one of two prescribed models, ie, either a Community Legal Advice Centre (CLAC) or a Community Legal Advice Network (CLAN), or die. Ole Hansen predicts the death of some suppliers within the next financial year.

CLACs and CLANs – a new reality?

Introduction

According to the Legal Services Commission's (LSC) new strategy the future belongs to CLACs and CLANs. Jointly funded by the LSC and a local authority, a CLAC 'will be a ... single legal entity that provides the whole bundle of core social welfare law services' (*Making legal rights a reality*, p8). A CLAN 'will be a group of readily identifiable [Community Legal Service] CLS organisations that work together to deliver the same legal services as a Centre' (*Making legal rights a reality*, p9).

The LSC says that where there is a CLAC or a CLAN, 'we may reduce or not renew some of our other social welfare contracts from April 2007' (*Making legal rights a reality*, p9). In the longer run, the LSC adds: 'our direction of travel is clearly one where all legally aided social welfare advice and representation is provided by a combination of Centres, Networks and CLS Direct subject to continuing evaluation to ensure quality, access and value' (*Making legal rights a reality*, p10). Hence, the fears of current providers, and others, that the LSC plans a general cull.

Just in case existing suppliers think they might survive by joining one of the relatively innocuous sounding CLANs, the LSC makes clear that these networks are only for the 'less densely populated ... and larger geographical areas' (*Making legal rights a reality*, p9), that is, not for the urban areas where, of course, most

dedicated legal aid suppliers are to be found. Just to show that this was not empty talk, the LSC promptly followed the publication of its new strategy with invitations to tender to set up CLACs in Leicester and Gateshead – both sites of existing Law Centres®. (See July 2006 *Legal Action* 5.)

It is not surprising, therefore, that in May 2006 the legal aid minister, Vera Baird QC, MP, at a public meeting organised by the Access to Justice Alliance, felt impelled to say that: 'This is not some mad Stalinist plan to close everyone down ...' (*Independent Lawyer*, June 2006, p8). Clearly, the new strategy's similarity with the forced collectivisation of Soviet agriculture in the 1930s had struck the minister.

Policy U-turn

Stalinist or not, the LSC has clearly abandoned the policy of gradually and carefully improving both the accountability of suppliers and their standards of service that was followed by the commission and its predecessor, the Legal Aid Board (LAB), since taking over legal aid from the Law Society more than 15 years ago. *Making legal rights a reality* makes redundant many of the changes which the LAB and the LSC have introduced successfully: from franchising and contracting to the preferred supplier scheme. If suppliers take the LSC at its current word, few of them will stick

around long enough to become 'preferred'.

The reason for this change of tack by the LSC, according to the director of the CLS, Crispin Passmore, is that: 'Quite simply the research findings available to the LSC on civil justice are unparalleled. The conclusions are so stark that to leave the civil legal aid system unchanged would be almost criminal. This knowledge and understanding allows us to set out, with confidence, a way forward for the CLS.' (See May 2006 *Legal Action* 9.) He was referring to the findings of *Causes of action: civil law and social justice*.² This research into civil justice problems was launched by the Legal Services Research Centre (LSRC), the independent research arm of the LSC.³

No basis in research

However, *Causes of action* provides no support for what the LSC is planning. The key findings of that report, for the LSC's present purposes, are no more 'unparalleled' – since they also appeared in an earlier edition of the same report (see March 2004 *Legal Action* 9) – than they are surprising:

■ Many clients have problems which fall across LSC categories and most existing suppliers are unable to deal in-house with all of them, for example, family, welfare benefits and housing problems.

■ The likelihood of people obtaining advice declines with the number of advisers to whom they are referred. The

LSRC calls this 'referral fatigue'.

Furthermore, the researchers of *Causes of action* fail to see the stark conclusions to which the LSC says it is driven. Far from suggesting that their findings require existing forms of provision to be replaced by something like the LSC's exclusive new models, the researchers suggest improving public education and the training of advisers so as to make referrals more effective.

Again, instead of providing 'knowledge and understanding' on which the LSC can base its plans, *Causes of action* does nothing of the kind. The research has nothing to say about the likely impact of CLACs and CLANs, whether negative or positive. It does not consider the risks of implementing CLACs on a national scale without prior testing, and contains no information on the possibly adverse effects of the LSC's plans on the availability, cost and quality of existing public legal services. The main target sites for CLACs are the 75 Neighbourhood Renewal Areas. These contain some of the best legal aid practices in the country, and 30 Law Centres and numerous advice centres.

The researchers cannot be faulted for not reporting on something that they were not asked to consider but, equally, the LSC cannot rely on support which does not exist to cover the shortcomings in its strategic policy.

The report merely notes that the LSC 'intends to promote co-ordination of advice services through contracting arrangements, which will see the development of Community Legal Advice Centres and Community Legal Advice Networks. The former are not dissimilar to the legal advice centres proposed by the Rushcliffe Committee in 1945, and the proposals are evocative of ... Law Centres in the United Kingdom ... etc' (*Causes of action* pp173–174).

Making CLACs and CLANs a reality?

Just as the LSC has no research on which to base its new strategy, so it has failed to carry out any consultation. True, the consultation paper, *Making legal rights a reality: the Legal Services Commission's strategy for the Community Legal Service*, which, in July 2005, preceded the policy statement, mentions both CLACs and CLANs, but with one all important difference: they would only be a small number of pilot projects. The notion that they should be the only form of publicly funded provision surfaced for the first time when it was

announced as a fixed policy in *Making legal rights a reality*, which was published in March 2006.

A similar lack of thought and preparation is apparent in the invitation to tender for the CLAC in Leicester. The sums involved – £1m a year over three years – might appear attractive to providers. However, that is only at first sight. For example, the chosen provider will have to start the equivalent of 3,030 new Legal Help cases in the first year of full operation. If this was all that was required, it would mean a fixed fee of £330 per case. This might just be worth bidding for even taking into account the start-up costs of a new operation which are not otherwise covered, but much more is asked for. In addition to the 3,030 Legal Help cases, the contractor is required, for no further payment, to undertake 300 cases for which legal aid certificates would usually be issued and to give general legal advice to 9,400 clients. This is not to mention running a duty solicitor scheme in the county court, mandatory outreach work, and a contractual obligation to present an action plan to prevent legal problems from arising in the first place. Finally, to cap it all, the contract can be terminated at any time by giving six months' notice.⁴

Similarly, it seems that little thought has been given to issues of professional ethics such as client confidentiality and conflict of interest. Leicester CLAC will be expected to start 530 housing cases in its first year of operation. A large proportion of those cases, and of those dealt with by the duty solicitor scheme, will involve council tenants. Yet 'Leicester City Council ... will retain a right to inspect all the Centre's files, financial records and computer records of client advice' (see para 86.7).

Perhaps it was to be expected, therefore, that a number of voices from inside the LSC would be saying that, in fact, *Making legal rights a reality* does not mean what it says. At a meeting about the preferred supplier scheme in April 2006, both Mike Jeacock, the LSC's executive director for service delivery, and Martin Seel, the LSC's regional director for London, denied that it was the LSC's policy eventually to contract only with CLACs in urban areas.

In June 2006, at a doom-laden meeting in London, 'What future for housing solicitors in the LSC's strategy 2006–2011?', Ruth Wayte, the LSC's legal director, tried to reassure practitioners. The statements in the policy were

'aspirational'; it would take so long for the two announced CLACs to be set up that there would be no impact in 2007, and although the word 'pilot' had disappeared from the strategy the CLACs would have to be subject to evaluation which really amounted to the same thing.

Conclusion

These acknowledgments of the need for more thought are welcome but they are not enough. In the real world, providers of publicly funded legal services have to make decisions about funding, about investing in IT and other capital projects, and whether to take on leases, or apply for jobs. The terms in which the LSC has stated its strategy, and the manner in which it has done so, have created an uncertainty which will make many of those suppliers reluctant to commit themselves to publicly funded legal services in the future.

- 1 Available at: www.legalservices.gov.uk/docs/civil_contracting/CLS-Strategy-final-15032006cover.pdf.
- 2 'Research details impact of civil justice problems', May 2006 *Legal Action* 8 was published opposite Crispin Passmore's article giving the, no doubt, unintentional impression that one followed from the other.
- 3 A summary of the main findings of the research is available at: www.legalservices.gov.uk/docs/news/Summary-Main-Findings-revised-Mar05.pdf, from TSO, £24.95 or tel: 020 7759 1193.
- 4 *Information for applicants – Leicester Community Legal Advice Centre*, available at: www.leicester.gov.uk.