

Legal Services Commission

Consultation Paper

Civil Bid Rounds for 2010 contracts



A response by the Association of Personal Injury Lawyers

January 2009

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation whose members help injured people to gain the access to justice they deserve. Our members are mostly solicitors, who are all committed to serving the needs of people injured through the negligence of others. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Executive Summary

APIL agrees with the Legal Services Commission's proposals regarding an appropriate ratio of supervisors to caseworkers being one to four but is concerned that some quality assurance levels should be implemented for supervisors and that there should be some stipulation about supervisory cover if the nominated category supervisor is unavailable for any reason.

APIL welcomes the Legal Services Commission's intention, in low volume categories, to allow providers to serve clients from anywhere within England and Wales but objects to any future plans to limit an injured victim's access to justice on a geographical basis as this may seriously limit their choice of solicitor.

APIL agrees that there needs to be some minimum standards imposed upon providers in low volume categories who have no offices in particular locations but cost and availability have to be borne in mind, particularly as regards the provision of video conferencing facilities.

APIL does not agree with the proposal to remove experts' cancellation and administrative fees from the scope of public funding or that rates should be capped for experts' travelling and waiting time. We believe this would discourage experts in accepting instructions in legally aided cases.

Introduction

APIL welcomes the opportunity to respond to this Legal Services Commission (LSC) consultation paper in relation to the award of new civil legal aid contracts for 2010.

The consultation paper groups the law into several categories¹ and APIL members will generally only be involved with the 'low volume categories' involving clinical negligence, personal injury claims, police claims and abuse in care claims. Given APIL members' limited involvement in legal aid work we do not feel that it is appropriate for us to submit a response to every question posed and we are therefore submitting a response of a more general nature.

Section 4 – Types of services we want to buy

Criteria relating to quality

Minimum ratio of supervisors to caseworkers

APIL agrees that effective individual supervision is one of the most important guarantees of quality services for clients and that the appropriate ratio of supervisors to caseworkers should be one to four, as proposed.²

APIL is concerned, however, that there is no quality assurance level indicated for supervisors, such as Law Society panel membership, AvMA panel membership or APIL accreditation status and we believe that the LSC should give some consideration to this. (APIL would be happy to assist further in this regard).

APIL is also concerned that there should be some element of 'back-up' supervision available to ensure adequate and appropriate supervision if the nominated category supervisor is unavailable for any reason.

¹ Civil Bid Rounds for 2010 contracts: A Consultation, page 12, paragraph 3.15

² Ibid, page 27, paragraph 4.38

Section 5 – Where services will be delivered

Procurement areas

APIL welcomes the LSC's intention, in low volume categories, to allow providers to serve clients from anywhere within England and Wales.¹ We generally agree with the LSC's conclusion that providers in clinical negligence and personal injury are already quite well distributed across England and Wales.² However, providers in more specialist categories of law (for example, child abuse claims) might not be so well distributed although there are a number of specialist firms offering a national service. We believe that such specialist providers should not be precluded from being offered new matter starts from regions other than where they physically have a presence.

APIL objects to any future plans to limit an injured victims' access to justice purely on a geographical basis. We submit that personal injury and clinical negligence are highly specialised areas, with highly specialised practitioners, many of whom obtain recognition through panel membership and/or APIL accreditation. We believe it is essential that this highly specialist advice, from specialist practitioners, remains accessible across the whole geographical spectrum.

APIL is concerned, therefore, that the LSC is requiring providers in the low volume categories to specify the regions in which they want to market and deliver their services despite allowing them to operate throughout England and Wales.³ We believe that if, in the long run, this were to lead to procurement of clinical negligence and personal injury services at a more local level, particularly if this also involved more onerous bid criteria, this may have a serious effect upon the injured victim's access to justice as it may seriously limit their choice of solicitor.

¹ Ibid, page 36, paragraph 5.3

² Ibid, page 41, paragraph 5.28

³ Ibid, page 41, paragraph 5.27

Presence

Q 22 Where a low volume category provider, other than in clinical negligence and personal injury, has no office in an area, what requirements should be placed on the provider in terms of facilities offered to clients and the marketing of their service? Is it appropriate to use video conferencing to provide face-to-face advice to clients where there is no local “access point”?

APIL agrees that there needs to be some minimum standards imposed upon providers in these circumstances but cost and availability may be an issue, particularly in the provision of video conferencing facilities.

We believe that some minimum standards that could be considered are maintenance of an informative website and e-mail/web based assessments of claims following completion of a questionnaire and/or telephone advice.

Section 7 – Changes to the scope of funding

Tolerance

APIL agrees with the proposal that ‘actions against the police etc’, be removed from the scope of tolerance work.¹ We believe that only those practitioners who are specialists in this discrete area should be allowed public funding to pursue such cases.

Cancellation, administration and travel and waiting costs of experts

Q.40 Do you agree with the proposal to remove experts’ cancellation and administration fees from the scope of public funding in all civil cases and to cap rates for experts’ travel and waiting time?

¹ Ibid, page 68, paragraph 7.2

APIL does not agree with this proposal, outlined at paragraphs 7.5 to 7.8 inclusive in the consultation paper, as we believe this may severely limit the injured victim's access to justice.

In any clinical negligence or personal injury claim, the claimant's solicitor's ability to choose the right expert is absolutely crucial and we believe this proposal may seriously limit this ability if it leads to experts being discouraged in providing reports in legally aided matters. This would be even more profound in some categories of law (for example, child abuse claims) where there is a very small pool of experts to choose from in any event. Claimant's solicitors may be faced with the stark choice of either not being able to instruct the appropriate expert of their choice or instructing the expert anyway with the attendant risk of having to pay irrecoverable charges.

We submit that the current costs assessment process is sufficient to provide protection to the LSC as the expert's costs and charges are critically assessed by the court in any event.

The LSC's proposal would, in our opinion, tilt the 'playing field' firmly in favour of defendants who would have much greater freedom of choice of experts by, effectively, being able to pay them more than claimants.

- Ends -

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