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## Legal aid advice services

4.27 pm

**Ms Karen Buck (Regent's Park and Kensington, North) (Lab):** Thank you, Sir Nicholas. I am grateful for the opportunity to raise this important issue. I pay a sincere tribute to the Minister on two counts. The first is that she kindly met me and representatives of a number of my local advice agencies a few months ago to hear some of their concerns. The second is that I am aware of her personal commitment to this issue and her concern to get it right. I have no doubt that she would be most anxious if we were able to convince her, as I believe we will, that the proposals for the future of legal aid funding and the funding of advice services will impact on some of our most deprived communities.

I am conscious that amendments have been made to the Carter review's original proposals in the recent way forward document, and I appreciate that they have emerged as a recognition of the strength of some of the arguments put forward by the sector. However, I must tell the Minister that, despite the changes, concerns among many organisations delivering advice services remain. In my constituency in particular, and across London and nationally, there are real concerns about what the Government are proposing. When thoughtful and experienced advice providers use words like "meltdown" in the context of fixed-fee arrangements as they apply to London, they have to be taken seriously.

The community housing advice service—or CHAS—in central London, which services Church street, one of the most deprived wards in the country, told me that

“should the Legal Services Commission and DCA push forward their proposals as currently stated, there is a considerable risk that providers of legal aid in Westminster will simply not be able to afford to deliver free legal advice, and/or may refuse to deliver advice under LSC contract because it will require them to compromise the quality of that advice to such an extent that clients will be put at risk...Areas like Westminster will be the hardest hit because of the high levels of deprivation”.

It did not mention, although it might have done, the high cost of providing any form of service in central London. It continued:

“this in turn will inevitably have an impact on you as a local MP”—

that is, me—

“your workload will increase as people have fewer places to turn to for advice, and the number of organisations to which you can refer your constituents diminished”.

**Mr. Sadiq Khan (Tooting) (Lab):** I congratulate my hon. Friend on securing this debate. She sees around her a number of colleagues from London and elsewhere who

are interested in the issue. I am only sorry that she could not secure a longer debate, but perhaps we can do so in the new year.

Does my hon. Friend agree that her comments are particularly acute because they come from the not-for-profit sector, which has a long and rich history in helping some of the most deprived communities in our city and the country? The fact that the concerns come from that sector and not private practice should give them added resonance and weight.

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**Ms Buck:** I completely agree with my hon. Friend and I am delighted to see a number of other hon. Members here this afternoon, despite this being such a short debate. That tells us something important about the service. I shall expand on the point that my hon. Friend raised.

**Mr. Andrew Dismore (Hendon) (Lab):** Barnet law service wrote to me in similar terms to those that my hon. Friend reported to the House. I went to see the people there a few weeks ago and they were extremely concerned that they would not be able to deliver high-quality—

**Sir Nicholas Winterton (in the Chair):** Order. Perhaps the hon. Gentleman will address the Chair, and not turn his back on it. Would he care to repeat the last part of his comments, which I did not hear?

**Mr. Dismore:** Of course, Sir Nicholas. The point that I was making was that Barnet law service wrote to me in terms similar to the comments that my hon. Friend made. I visited the people there several weeks ago when they made their points forcefully. I, for one, do not want my work load to go up because of cuts implemented by the Department for Constitutional Affairs. We have plenty to do as it is and I am concerned that my constituents, particularly those in the most deprived areas, will not receive the service that they need and should expect.

**Ms Buck:** I agree completely with my hon. Friend and share his concern that MPs' offices, which are already heavily overstretched, should not be expected, for the sake of our constituents, to have to take on these complex and difficult cases.

**Mr. Andrew Slaughter (Ealing, Acton and Shepherd's Bush) (Lab):** I intervene so that my hon. Friend can lose her place completely! I agree entirely that the impact on our work is significant, but there are even more significant problems. First, the effect on the advice sector will be a barrier to good local government because it is often the advice sector that takes action against statutory bodies. It will also jeopardise the survival of many advice centres and legal aid solicitors, many of whom have gone already, particularly in my constituency where they are also affected by cuts implemented by the local Tory council. Fundamentally, this will have an impact on the most vulnerable people in our constituencies and runs completely contrary to the Government's agenda on social inclusion.

**Sir Nicholas Winterton (in the Chair):** Order. Are there any more interventions? Perhaps we should get them all over with.

**Kate Hoey (Vauxhall) (Lab):** I also congratulate my hon. Friend the Member for Regent's Park and Kensington, North (Ms Buck). Does she agree that for the people who are involved in some of the work that we value so highly in law centres and solicitors' firms in our very deprived inner city constituencies, and who work with the poorest and most vulnerable people, including many asylum seekers and people with language difficulties, it will not be possible, nor sensible, to say that it could be possible for people to be able to do the work and provide the quality of delivery that is necessary to give our constituents a proper hearing?

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**Sir Nicholas Winterton (in the Chair):** Order. Before we take any more interventions, I suggest that the hon. Member for Regent's Park and Kensington, North (Ms Buck) responds.

**Ms Buck:** I welcome the interventions that my hon. Friends have made. I shall develop some of the arguments during my comments, but everything that has been said so far echoes exactly my experience and what will be the thrust of my speech.

**Joan Ruddock (Lewisham, Deptford) (Lab):** My hon. Friend seemed to indicate that she would be willing to take another intervention. It is important to demonstrate the breadth of the concern throughout London. The greatest single issue in my constituency casework is immigration. The people concerned have absolutely genuine and solid reasons for needing legal advice on immigration matters, which sometimes involve their relatives, and so on. I do a huge amount of work for them, but from time to time I know that my ability is limited. They must have proper advice, and they will just not get it if the proposals go through.

**Ms Buck:** In support of what my hon. Friend said, the model of good practice is for Members of Parliament to deal with constituency cases, whether immigration, welfare benefits, housing and so on, but to seek to work in partnership with our solicitors, law centres and citizens advice bureaux, so that they can offer expert advice and we can drive forward that advice and, we hope, obtain responses from agencies that might otherwise not provide them. That relationship, in which we both do the work that we are there to provide, is exactly how we achieve the best results for our constituents.

**Fiona Mactaggart (Slough) (Lab):** I have the privilege of making the first intervention from a Member of Parliament who does not represent a London constituency. I have many of the same issues that other hon. Members have mentioned, but there is no such thing as a law centre in Slough. The citizens advice bureau was smashed by its previous leadership, and is underfunded and limping along. I am afraid that I do not share the confidence that other hon. Members have expressed about the competence of many of the local solicitors' firms to deal with immigration advice. May I ask my hon. Friend to comment on how important it is to have good-quality sources of advice, as well as to have them well funded?

**Ms Buck:** That is absolutely right, and part of the thrust of my comments is the importance of having the general, although high-quality, advice that is offered by citizens advice bureaux and law centres, and also some of the specialist practices that

I am fortunate to have in my constituency, such as the Catholic Housing Aid Society, which helps my constituents with what are sometimes complicated housing cases. Having that range of specialist advice services is exceptionally important.

I take the point made by my hon. Friend, but I am fortunate in having some very good local solicitors' practices. In their representations to me, Gillian Radford and Co. said:

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“Our firm currently advises”

just over 1,000

“legally aided clients a year, mainly relating to family and housing law matters. If Carter is implemented it will no longer be viable for us to continue to offer this service”.

That threatens a blow to the delivery of services in my constituency that is absolutely not sustainable.

**Mr. David Burrowes (Enfield, Southgate) (Con):** I congratulate the hon. Lady on securing this debate, which we all wish was longer so that we could all contribute in more depth.

Is it not a concern that the possibility of Carter being implemented is worse because of the way in which the means-testing process is being implemented for criminal legal aid? Does she share my concern that those who are mentally ill, in particular, are often denied the representation to which the Minister referred during a contribution in this Chamber when she said:

“No one can have a fair trial, and all of our much-prized legal principles are as nothing, if people are not adequately represented.”

—[*Official Report, Westminster Hall*, 26 October 2005; Vol. 438, c. 71WH.]

Many mentally ill people are not adequately represented, despite the recent amendments on means-testing.

**Ms Buck:** I agree. It is certainly the case that some individuals do not receive the representation that they should because of means-testing and the nature of their cases. That is with the service as currently constituted. It fills me with horror to think that we may deliver an even lower level of service than that provided at the moment.

The key issues expressed to me by organisations cover access, funding, the possibility of private practice withdrawing from social welfare law, and a reduction in suppliers because some will not receive preferred supplier status, sometimes because they are small and specialist services and not because of the quality of their work.

On the issue of private practice withdrawing from legal aid in social welfare law, we are concerned about what is happening already in immigration—in some cases rightly because, as my hon. Friend the Member for Slough (Fiona Mactaggart) said, there were some poor practitioners in the area of immigration advice, but others were good. That withdrawal could accelerate into other areas of social welfare law. If that happens, how is it proposed that not-for-profit provision will be increased to fill the gaps? That will be a particular problem in London because without any London weighting to cover the inevitably higher cost of provision in London—wages, overheads and so on—we are starting from a lower base.

Until now, the legal aid system has recognised the higher costs in London by paying additional fees to organisations based in the capital. Organisations are concerned that the caps on time per case could hit vulnerable clients, who mainly opt for the not-for-profit sector rather than the private sector. It is probably the single most important issue. Those vulnerable clients include many people from black and ethnic minority

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groups, clients with multiple problems, language issues, mental health problems and chaotic lives. Inevitably, cases that involve such challenging clients take longer.

Many agencies have told me that the new time restrictions will result in an unsustainable loss of income. One of my local law centres told me that under the new regime, the loss of income could be as much as 40 per cent., meaning that it could not take on complex cases because they would simply not be economic.

Although I understand the proposals for exceptional cases, in practice many cases will take far longer than the average, but they will not make it into the three-times-costs category. That represents a major disincentive to accepting cases that take longer than a fixed fee allows for, but which do not make it into the exceptional case category.

The DCA asserts that there will be swings and roundabouts; however, if an agency serves mostly clients from groups with complex cases, it is difficult to see how the system will operate. In principle, I see little wrong with the fixed fee system per se, but unless it takes account of the needs of those groups, it will fail, and many of the more vulnerable groups will simply fall through the net. The director of one agency wrote to me to say:

“The proposed change to the Legal Services Commission ‘Not for profit’ contract from payment by the hour worked to block payment per case will disadvantage the disadvantaged. The payment by case system already operates for private practice and we have seen that it deters solicitors from taking cases where the client is disabled, disorganised or otherwise likely to require more time spent than average. Under the proposed system the fees will be based on national figures that are considerably lower than case costs in London. This will devastate London’s services.”

On the Government’s assertion that many firms are already doing work for the proposed cost, the director said that it was probably because they were cherry picking

simple cases and easy clients while rejecting the complex cases and vulnerable multi-problem clients. The director conceded that

“it is entirely possible for a firm of solicitors to make substantial profits under the proposed new contract. However, to do that they will have to provide a poor service, exclude the socially excluded and their outcomes will be atrocious. That is very bad value for money.”

In the balance between cost and outcomes, the new service errs wildly on the side of cost constraint. It will provide cheap services but poor value for money. Having spent so long trying to drive the sharks out of legal aid, the Government will be left relying on sharks to provide it, as they will be the only providers left.

Other comments from lawyers bear out that conclusion. The partner of a specialist mental health practice in London gave me a number of case studies, illustrating the impossibility under the proposed system of taking on the type of complex cases that she routinely deals with. Similarly, a debt specialist unit in my constituency told me that its cases routinely take longer than the fixed fee times because of their complexity. Workers from the unit told me:

“We attended a lengthy meeting with the LSC in August 2006 and provided detailed information about all our closed cases where more than 7 hours had been claimed. Many of these clients either did not speak English as a first language, or had serious mental health issues which meant they needed a higher level of support to address their debts effectively. Many clients

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were threatened with committal to prison for non-payment of council tax, or their homes were at risk as a result of rent arrears.

“There were no cases from this presentation where the LSC felt we could have addressed the case in a shorter period of time, or conducted our work in a more efficient manner. The conclusion was that we had claimed appropriately for work legitimately done. However, in spite of this, a system has been introduced where we must complete additional paperwork, and at our own expense.

“Time spent completing this form is time spent not doing direct casework and therefore not meeting our contractual LSC hours. This creates additional work not only for us, but greater monitoring from the LSC—how can this be cost effective for either party, particularly if the conclusion reached at our meeting was that the team were providing a good and efficient service?”

Another local housing specialist told me that legal aid caps will hit many housing cases, particularly those against big landlords. Some are ultimately unsuccessful, not because of the merits of the case, but because legal aid runs out. Some landlords deliberately spin out their cases because they are aware of that. I am told that some registered social landlords are—shamefully—particularly guilty of such practice.

Organisations in my constituency also expressed concern about the proposed abolition of level 1 advice work, which provides brief, non-means-tested advice or initial diagnostic work for clients. It is a valuable service, as it often helps resolve matters at an early stage, or it highlights an issue that needs in-depth work. Another advantage is that one can advertise oneself as providing “free initial advice”.

Fear of cost is a major turn off to potential clients—even eligible ones. Now that such work will be means tested, a significant number of people who need help will not be eligible. That is a common problem in London. Relatively poor people, even though they are low paid, are not eligible, because they are slightly over the limits but unable to afford to pay privately.

Another group increasingly caught out by the capital limits are those who have exercised the right to buy and who may after a year or so be over the capital limits. I have in that category a number of council leaseholders who are challenging major works bills. They would not be entitled to advice.

Most organisations have expressed their anxiety about the black and minority ethnic community, as potential user and supplier, being hardest hit. In a nutshell, all the proposals seem to push for larger suppliers, which are justified by the economies of scale argument. Few, if any, large suppliers are from the BME community, so a disproportionate fall-out may result, as BME agencies and firms fail to get contracts under the new regime. In view of those two issues, has a race impact assessment of the situation in London been undertaken?

My final concern relates to the assumption that local authorities will play a central role. It is assumed that local authorities will contribute to local plans and put resources into making local plans work. That is often not the case. For example, of my two local boroughs, Westminster city council contributes nothing to its law centres, and the royal borough of Kensington and Chelsea, only a small amount. They appear to take the view that they will fund generalist but not specialist advice—sometimes because they wish to avoid legal action against themselves, and sometimes for historical reasons.

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Without a statutory duty—or something similar—to provide funding, plans may fail, and there is evidence from other fields that local authorities may take it as an opportunity to cut funding and break the additionality principle by seeking to shift previously locally funded organisations on to Government funding.

In conclusion, I shall flag up a number of questions. In view of the almost universal opinion that fixed fees will not work as structured, particularly in London, because of the higher proportion of complex cases and the significantly higher proportion of multi-problem clients, how do the DCA and the LSC propose to address the issue? Will consideration be given to a more sophisticated fee structure, together with London weighting, which more accurately reflects the realities and costs of legal aid work in London? Will the DCA and the LSC address the issues raised by the abolition of level 1 assistance, particularly in London? Will the Minister assure me that a race

impact awareness study, covering both clients and suppliers, has been undertaken in London? If so, what are its conclusions? What will the DCA do when local authorities refuse to co-operate or to resource local services as intended, so that people in such areas are not disadvantaged?

I have been blessed with a number of excellent advice services in the private and not-for-profit sectors, and I put on record my appreciation of the work that they do. However, even at present strength, my office is deluged with work: there were 3,000 cases last year. My office has dealt with more than 1,000 housing complaints, with homelessness, disrepair, debt and immigration, but still, a vast amount of need goes unmet.

If there is a reduction in the provision of advice services in my area, my office will not be able to cope, and those who lose out will be the poorest—the most disadvantaged of my constituents. This is an issue of national concern, but not for the first time, I make a particular plea for the interests of London.

4.49 pm

**The Parliamentary Under-Secretary of State for Constitutional Affairs (Vera Baird):** I congratulate my hon. Friend on securing this debate and those Back-Benchers who have contributed. Not surprisingly, Labour Back-Benchers are conscientiously looking after the interests of the underprivileged, while the only intervention from the Tories concerned the means test, which does not have anything to do with this debate.

I shall respond rapidly to a few questions. There will be a race impact assessment soon. I probably will not have time to deal with the question of community legal advice centres and community legal advice networks, but I will discuss them and their interaction with local authorities with my hon. Friend any time she wishes. There is no reason why smaller providers should not continue to offer niche services within the ambit of CLACs and CLANs. The model is intended to be flexible.

I agree entirely about the need for good-quality immigration and mental health advice. Neither of those issues is included in the current proposals, and no new proposals concerning them have been introduced. They will be introduced after consultation with the professions in October 2007.

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**Joan Ruddock:** I raised the issue of immigration because we are considering holistic local advice services, and it is an integral part of those services. If one part of a service were to be affected to its detriment, other parts of the service not touched by the proposal would also be affected.

**Vera Baird:** I do not think that that will happen. I am grateful to my hon. Friend the Member for Regent's Park and Kensington, North (Ms Buck) for her acknowledgment to me, a person dedicated to the Government's commitment to public funding. I shall be ready to discuss the immigration and mental health

proposals when they are published, but I imagine that as we will have consulted with practitioners, the proposals will not be exceptionable.

Frankly, much of what has been said is a little bit out of date. Conversations about supply months ago and repeated references to the Carter review ignore the changes made by “Legal Aid Reform: The Way Ahead”. The document was very recently published, so it is not all that surprising. I have made it clear throughout the process that the fundamental aim of legal aid reform is to safeguard the work of our advice agencies, which do so much to assist the socially excluded. My hon. Friends and I agree on that.

Contrary to the claims of advice deserts that emerge from time to time, the community legal service helped record numbers of people last year—708,000, far more than in any year since the LSC’s creation. That help included record amounts of face-to-face assistance—a 13 per cent. increase from the previous year, with another increase expected this year—as well as the advent of Community Legal Service Direct, a telephone service whose take-up has increased by a staggering 73 per cent. in its second year. We are improving and increasing the advice given.

**Rob Marris (Wolverhampton, South-West) (Lab):** I am grateful to my hon. Friend the Minister for giving way. Legal aid is a pillar of the welfare state and an enduring legacy from the post-war Labour Government. I agree that the system needs overhauling and that we must be careful when we do so not to destabilise it. I suggest that the legal aid budget has enough money, but that too high a proportion of that budget still goes to a few very highly paid barristers, principally those doing serious criminal work. I urge her to rethink some of her plans and redistribute more money away from such barristers to front-line advice and assistance services and firms.

**Sir Nicholas Winterton (in the Chair):** Order. The Minister has very little time in which to reply to a full debate. I hope that there will be no further interventions.

**Vera Baird:** The aim is to move money across from high-cost cases, and that aim runs throughout the proposals, as I am sure my hon. Friend knows.

The move to fixed fees is an essential part of legal aid reform. As is pretty well known, I deliberately toured the country during the summer and held 25 meetings, 11 of them with the not-for-profit sector. I am grateful for that input, which has improved our schemes for

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social welfare law. It will be my watchword to continue consulting, but I must make it clear that the direction of travel is now set.

Both solicitors and not-for-profits do advice work across the range of social welfare law. Solicitors are already paid a fixed fee per case. Such fees are called TFFs, or tailored fixed fees, because they are based on the individual firm’s average claims in 2003-04 for each category of case. TFFs were a stepping stone to a single fixed-fee system—that is, one that pays the same fee to all firms for the same kind of work. Clearly, we cannot continue to pay different fixed fees to different suppliers for the same work.

**Several hon. Members** *rose*—

**Vera Baird:** I have a good deal to say. Not-for-profit advice agencies such as citizens advice bureaux are paid on a contract to provide hours of work in the category of social welfare law for which they are contracted. I repeat that we cannot pay different rates for the same work, and so the right way forward is fixed fees for such advice.

The fees in the consultation document that caused so much concern were based on solicitors' pay rates. I listened carefully to those in the not-for-profit sector during the summer. They said that they see different clients than solicitors and that their clients are more vulnerable. Solicitors doing social welfare law disagree completely, saying that they see just such vulnerable people as well. Each side of the provider base also says that it does the most complex work. It seemed to be the right way forward to base a common set of fees on data from both not-for-profits and solicitors, and that is exactly what the Government have done. Average not-for-profit supplier costs are significantly higher than solicitors' in some areas, but not all, so the new proposed fees have changed. They are now based on data from both sides. The fee for a debt case, for instance, is £70 more than in the July consultation document, and the welfare benefits case fee is £20 more.

We considered the option of London and non-London fees. In most categories the average London fee is higher, but the average costs of a number of suppliers in London are less than the proposed fixed fees, just as the costs of a number of firms outside London are more. The real issue is costs, not regions. I emphasise that some not-for-profit advisers work for lower fees than solicitors and vice versa and that there are variations, often large, between not-for-profit advisers doing the same work in the same geographical

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area. Those variations are not explained by any difference perceptible to the LSC or me or claimed in the meetings that I have had. I should also make it clear that many suppliers of both kinds work for less than the proposed new case fees. Concerns were also raised about an escape clause, which we have altered; I shall not go into detail.

Having explained all that, I hope that my hon. Friends can see that there is absolutely no reason why quality should be adversely impacted. Indeed, it will be enhanced, because no one will be permitted to contract until they have been peer reviewed. They will all be continually peer-reviewed. Quality will improve as well as quantity.

I turn to transitional arrangements. We have decided to delay implementation of the changes until October. In the meantime, the existing payment scheme will continue. The not-for-profit sector expressed complaints and concern about the proposal to move to payment in arrears, because not-for-profit advisers are now paid three months in advance. We accept that it is compatible with the contract to carry on doing so, and we will continue to pay the not-for-profit sector in advance, although payment will eventually be monthly, not quarterly. That transition can be introduced gently.

In terms of numbers of cases, not-for-profit productivity has gone up strikingly in recent years, particularly during the past year. I praise the sector for it. Productivity is already high. A significant portion of the increase in acts of advice that I mentioned comes from that sector. Many not-for-profits' performance is already at least

commensurate with solicitors'. That means that not-for-profits can be moved to fixed fees—based, remember, on the average costs that they and solicitors claim now—in 2008.

Arrangements will have to be made for transitional provision. Payment for work in progress will be calculated on an hourly basis and so on. The whole point will be to cushion the not-for-profit sector's move to the new system and to encourage the sector, not to damage it. We will hold discussions with representative bodies throughout the process, exactly as I have throughout the summer, to ensure that the transition occurs sustainably. The position is rather like that of my hon. Friend the Member for Regent's Park and Kensington. The complaint is not about fixed fees as such; it is about the transition, and we have examined that process.

*It being Five o'clock, the motion for the Adjournment of the sitting lapsed, without Question put.*