

## North Kensington Law Centre

### Response to Carter Report and the LSC/DCA paper "Legal Aid: a sustainable future"

October 2006

**1.1 Do you have a particular interest in legal aid? If so, what (e.g practising lawyer)?**

We are a Law Centre operating under a NfP contract. Over 70% of our funding derives from the LSC.

**1.2 If you are a lawyer, do you undertake legally aided work? If so, what type(s) and for how many years?**

The Law Centre was established in 1970 as the first law centre nationally. We currently provide specialist legal advice education, employment, housing, immigration and welfare benefits.

**1.3 If you are a legal practitioner, how do you think these reforms will impact on your business?**

The proposed fixed fee system unless changed will have a serious adverse impact on our funding and will result in a loss of services to the communities we serve. For example, the proposed fee for homelessness reviews is based on 3.8 hours work. Only straightforward reviews could be done within this time frame.

**1.4 How many fee earners are there at your firm?**

6 solicitors and 4 caseworkers

**1.5 Approximately, what proportion of your firm's work comes from legal aid?**

70%

### Supporting Measures

**5.1 Do you have any comments on Lord Carter's proposals in Chapter 3 paragraph 43 and Chapter 5 paragraphs 11 to 29 for implementing a quality threshold for those who would like to undertake publicly funded work? Are there any impacts in particular that should be taken into account? If so, please give reasons.**

Yes and No. We support the system of peer review as the mechanism for determining and measuring quality. We fundamentally disagree with the proposal to transfer responsibility for this area to the Law Society.

First, our view is that the LSC have invested considerable time and money in recent years developing this system which appears to have the support of both NfP and for profit organisations. The Law Society is currently undergoing radical changes following the Clementi Review and we believe responsibility for quality assurance should stay with the LSC for the foreseeable future in order to maintain the quality of the scheme.

Second, given that all preferred suppliers must attain a minimum rating of 1 or 2 assessed at peer review it is important we are assessed against the same standard which is overseen by a single body. Any proposal to split this function between NfP and for profit organisations would undermine the preferred supplier scheme.

Third, any quality assurance system must have sufficient investment and resources to sustain it. The NfP sector does not have access to such funds and, given the considerable investment made by the LSC into it we believe it makes sense for it to continue to support it.

Fourth, the proposal to separate quality assurance would create anomalies in the regulation of caseworkers and solicitors in the sector. Under current arrangements, the LSC peer review process

focuses on each unit regardless of the status of fee earner, i.e solicitor or caseworker. If the Law Society were to handle this function it is not clear how they would exercise their responsibilities in respect of individual solicitors and caseworkers. Would they peer review only solicitors in NfP organisations and those working in private practice? Who would supervise non-solicitor caseworkers working in NfP organisations?

Under the Law Society's current regulatory arrangements, it would only be responsible for supervising individual solicitor caseworkers working in NfP organisations but not the non-solicitor colleagues who may probably be working on the same files.

Our view is that this proposal is inherently flawed and makes it difficult to produce a comparable assessment standard for the preferred supplier scheme and adversely affects the NfP sector.

**5.2 Transitional Arrangements (Recommendations 5.4, 5.5, 5.6, 5.7, 5.8 and 5.9)**  
**Do you have any comments on the transitional arrangements proposed by Lord Carter in Chapter 5 paragraphs 90 to 141 of the final report? Are there any impacts in particular that should be taken into account? If so, please give reasons.**

We believe it is important that the LSC maintain a diverse provider base across the NfP and for profit sector. However, the proposals to reduce the supply base through preferred supplier and concentrate on working with large scale providers will undermine any efforts at creating diversity.

The proposals outlined in these areas concentrate mainly on the impact upon for profit organisations as they seek to restructure their businesses in order to continue public funded work. We believe that the recommendations do not take sufficient account of the governance and financial arrangements of NfP organisations.

NfP organisations traditionally rely on a mixture of funding streams spread over different business cycles in order to sustain and deliver services. The table below provides a breakdown of our income for the period 2006-2007:

**Table 1**  
**Grant Income: 2006-2007**

<b>Funder</b>	<b>Amount £</b>	<b>%</b>	<b>2005</b>	<b>%</b>
LSC Contract	414,759	70%	417,020	76%
ALG	90,000	15%	90,000	17%
RBK&C	30,000	5%	16,320	3%
CRE	54,000	10%	16,000	3%
Change Up	-	-	3,834	1%
<b>Total</b>	<b>588,759</b>	<b>100%</b>	<b>545,179</b>	<b>100%</b>

As you can see we are dependent upon public funding in order to sustain our services. Our constitution precludes us from undertaking any private client work on a commercial basis. Unlike for profit firms we have little scope to attract funds outside the public sector. ALG and CRE funding support work which is outside the scope of the legal help scheme. ALG funding supports tribunal representation for employment and welfare benefit clients while CRE funding enables us to provide education advocacy and support for parents at school appeal hearing and attendance at special educational needs (SEN) tribunals.

Regarding proposals for loan and equity finance, our view is that this is fraught with difficulties for the NfP sector. Most lenders require some security and personal guarantees from business partners. In NfP organisations MC members liability is usually limited when they join. Is it reasonable to expect volunteer members to give personal guarantees for commercial loans entered into by the organisation?

Our view is that most NfP organisations do not have sufficient assets to provide any security for commercial loans and any lenders would insist on taking security from the directors/members which they are unlikely to agree to given the uncertainties of contract and grant funding.

Regarding recommendation 5.9 on technology modernisation it is our view that a substantial proportion of investment should be made available the NfP sector.

**5.3 Wider Justice System Efficiency (Recommendations 5.10, 5.11 and 5.12)**  
**Do you have any comments on the arrangements to encourage optimal use of all resources within the justice system proposed by Lord Carter in Chapter 5 paragraphs 160 to 166 of the final report? Are there any impacts in particular that should be taken into account? If so, please give reasons.**

Our experience of civil work is that the behaviour of “public bodies” such as the DWP, Home Office and local authorities can determine whether justice system works more efficiently. We believe that developing a Code of Practice for public bodies involved in litigation would help improve efficiency and reduce case lengths.

**5.4 DCA/LSC – External Engagement (Recommendations 6.1, 6.2, 6.3, 6.4 and 6.5)**  
**What are your views on Lord Carter’s proposals in Chapter 6 on information management and sharing? Do you have any comments on the proposals regarding stakeholder relations and cross-justice system working arrangements?**

We support the general thrust of these proposals including greater cooperation across government departments to include legal aid impact testing to understand volume pressures.

**Civil, Family and Immigration Legal Aid**

**Replacement for TFF (section 6)**

**6.1 Do you consider that any other types or categories of work should be excluded from the scheme? If so please explain why.**

Discrimination. The law is ever more complex. For instance in the vital field of indirect sex discrimination there have been three separate and very different legal definitions of the law in four years and still there are different definitions for employment and non-employment circumstances. Currently in, there are separate definitions of indirect race discrimination depending on whether someone is claiming discrimination on the grounds of race, ethnic or national origins or on grounds of nationality and colour. There are different definitions of harassment for race, sex and disability depending where the harassment took place and, again for race, whether it was on grounds of race, ethnic or national origins or nationality or colour.

It is very rarely practical to bring a well-prepared discrimination or unfair dismissal case to an employment tribunal in 9 hours. Documents must be considered, questionnaires drafted, disclosure made and considered (sometimes several lever arch files), written witness statements prepared, the Respondent's statements considered, supplementary statements drafted, medical reports requested and considered. Most of these steps are ordered by the employment tribunal and the Claimant has no choice but to comply.

The introduction by the government of the Statutory Dispute Resolution Procedures in October 2004 has had unintended consequences. The extreme complexity of the regulations (as commented upon by the judiciary, all sides of the legal profession and many commentators) has led noticeably to an increase in length, particularly in discrimination cases. For instance, in many discrimination cases it is now necessary to issue two separate claims (for one case), have two separate responses from the employer and it takes a very long time to marry the two claims back up. In effect, the early stages of a case may now take twice as long to do.

Emphasis in the past has been placed on representation at the hearing only. However, in unfair dismissal and discrimination cases, this is now out of date; skill and expertise are as important in preparation as in

advocacy. Discrimination and unfair dismissal cases are often won by detailed and careful preparation - gathering of evidence from the employer, persuading the tribunal to order the employer to provide vital evidence, obtaining expert evidence on the damage to the worker's health and well-being, pleading the case precisely. Extensive knowledge and experience of tribunal procedure and caselaw are necessary; errors in preparation too often disable an otherwise strong case. The Statutory Dispute Resolution Procedures mean that a Claimant needs expert and specialist advice at the very beginning of their case; if they have not complied with the complex grievance procedures, they lose the right of access to the Employment Tribunal.

The benefit to the common good of a single case should not be under-estimated. A single case can have nation-wide benefits. For instance, the refusal of one blind woman with a guide dog in one supermarket led to a court case and to the supermarket chain bringing in nationwide disability awareness training from the Royal National Institute for the Blind.

A successful case may attract widespread publicity; people remember it. Such a case only directly affects a few people but it is like a stone thrown into the centre of a pond : the stone only hits a small drop of water but the resulting ripples go much wider.

Full allowance needs to be made for the difficulties of taking instructions and giving advice to individual clients for reasons such as disability or language.

**6.2 Which of the 2 options set out for the replacement of the TFF scheme do you prefer and why?**

We reject both options as currently proposed for a number of reasons though we would suggest that any workable system must take into count the differences and higher average case costs between London and any national fee system.

According to the ASA figures, out of the 4 292 completed employment cases reported by NfP agencies in 2004-5, 13% (555) were discrimination. Discrimination had easily the longest average caselength with a +309 variation from the mean.

Further, the ASA figures reveal that London agencies do disproportionately more discrimination work. It appears that at least one important “driver” of long caselengths in London is the disproportionately high number of discrimination cases. As discrimination cases take longer than all other types of work, it appears that the more discrimination work a provider does, the longer their average caselength.

Imposing average caselengths on London agencies would disadvantage those doing more discrimination work.

The proposed regional fees are problematic because they do not take into account the higher case costs reported by NfP agencies in London. The “sustainable future” paper states that the proposed fees are based on TFF payments made to solicitors in 2005-06 but exclude claims from NfP organisations. By excluding NfP data from their calculations the LSC has produced a model which does not reflect the true costs of running cases by the sector nor does it take into account the reasons why NfP costs are higher (see below). The table below provides a breakdown of average case costs in 2005-06 for this organisation compared with the proposed regional fee for London:

	<b>Education</b>	<b>Employment</b>	<b>Housing</b>	<b>Homeless</b>	<b>Immigration</b>	<b>Welfare Benefits</b>
Proposed national fee	£293	£229	£163	£188		£143
Equivalent in hours	5.9	4.6	3.3	3.8	9	2.9

NfP average 2005-06						
Proposed London fee	£440	£453	£206	£237		£223
Equivalent in hours	8.8	9.06	4.1	4.8		4.5
North Kensington average	4.9	14.6	6.8			8.9

As you can see our average times are approximately 50% higher than the proposed fees for London in employment, housing and benefits. Over 90% of our clients come from BME backgrounds. Invariably casework lengths are longer where an interpreter is needed to facilitate taking instructions and to translate documents. For example, many employment clients are migrant workers and usually require assistance with translation both at the initial stages and where cases progress to tribunal appeal. Such cases can take longer where the client is vulnerable or has a history of mental health.

The LSC propose an escape route for “exceptional cases” which are defined as four times the standard fee. What happens to those cases where the average case times are greater than the fixed fee but below the requirements for exceptional cases? We believe exceptional cases should be defined as twice (not 4 times) the standard fee.

We suggest that further work is done to reflect the complexity of certain types of cases. Consideration should be given to introducing a graduated fee structure for certain types of work. Certain types of cases lend themselves more easily to this system such as employment and discrimination work and homeless review cases and benefit appeals where the nature and extent of work needed is determined by the needs of the client (BME clients, language needs and mental health issues) and the behaviour of the “other side”.

Second, there appear to be differences between the national fees proposed and average case costs referred to by Lord Carter. For example, the “sustainable future” paper proposes a national fee of £143 for welfare benefits whereas Carter cites average case costs of £352 for NfPs and £243 for solicitors for such work.

The proposed caselengths are far too short for complex employment matters. In employment law, employment tribunals have moved far away from the original idea of informal forums where employers and workers can resolve their differences quickly and cheaply. As the former Lord Chancellor Lord Irvine told the Parliamentary Constitutional Affairs Committee, the idea that workers can represent themselves in all employment tribunal cases is no longer tenable. Unrepresented applicants face ever-higher barriers in the tribunals, both in preparation and hearing. As the court Civil Procedure Rules are used, expert evidence is required more often, interlocutory hearings become the norm and the legislation and caselaw pile up, the scales of justice are weighed yet more heavily against the unrepresented party, more usually the worker. Statistics clearly show that represented workers (particularly those with skilled representatives) achieve better outcomes in their cases.

Further, the eligibility test is complex and requires extensive documentary back up. Carrying out the eligibility test and obtaining the necessary evidence can easily take one hour and in some cases more than one and a half hours. Again, it is particular types of clients, disproportionately found in the NFP sector, who are at the biggest disadvantage. Migrant workers sometimes have property or savings abroad (usually considerably under the eligibility limit) but obtaining the evidence and doing the calculations when all evidence and assets are abroad is very time-consuming.

Also, more marginalized groups have more complex finances eg having more than one job. In one recent case, there were four payslips to consider, one for the wife, and three for the husband, one of which was paid on the week, the second a week in arrears and the third two weeks in arrears.

When there are problems with communications (because of language or perhaps lack of a telephone or a fixed address) , it can take several appointments and many calls to establish eligibility.

Again, fixed fees mean that such clients get less “advisor time” out of their 4.6 hours as more time is spent establishing eligibility.

The result will be that such clients are less likely to obtain advice and will fail to obtain access to justice, whereas clients without these issues will find it easier to obtain advice. Lord Carter himself stated in his report that there was a risk that these proposals would result in cherry picking of cases.

**6.3 Do you agree with the proposals for payment of tolerance work? If not please explain why?**

We do not support this proposal. Tolerance allows the development of innovative work which has not yet become a 'specialism'. Examples include:

- Actions under the Protection against Harassment Act 1997 in the domestic setting for immigration or family clients.
- Race discrimination cases with an immigration aspect – the CRE has said it does not do immigration cases under the Race Relations Act because of their complex nature – only immigration specialists will be able to tackle them under tolerance.
- Community care/housing cases involving a challenge to NASS. Recent high profile cases have involved successful challenges by NfP organisations (Shelter etc) to Section 55 in the higher courts.
- Actions against the Home Office for false imprisonment
- Assault on removal

All of these categories of law have been fostered under tolerance. Creative and innovative ways of using the law should be encouraged and not undermined by financial penalties.

Much non-employment discrimination does not have a code (because it is rare it is usually “other/ other”); therefore it is usually done under tolerance.

Discrimination in the provision of goods, facilities and services is a very serious problem. Our clients complain of Muslim women thrown off buses for wearing a hijab, a wheelchair user refused entry to a nightclub; a Black person racially insulted in a restaurant; a guide dog owner unable to use their local supermarket. These deeply humiliating experiences go to the heart of a person’s integration into our society. Parliament has recognised this when making discrimination unlawful.

Yet such cases remain remarkably rare; this is very much a developing area of law, especially with discrimination on the grounds of sexual orientation in the provision of goods, facilities and services being outlawed next year.

The reasons for the relatively small number of cases are complex. However, we fear that these proposals will choke this important and growing area of law.

Such cases need the skills of experienced discrimination practitioners who are found predominantly in employment units.

This organisation reports less than 5% of our work as tolerance. We believe it is irrational and unfair to maintain two different payment systems for equivalent work done by providers.

**6.4 Do you agree that the scheme should apply to work done by not for profit providers? Do you agree that there should be a transitional scheme and what are your views on the initial proposal?**

As an NfP organisation we believe the sector is an essential part of the scheme. We support a transitional arrangement to enable the sector manage the changeover for two main reasons. First, we have difficulties with the initial proposal in paragraph 6.20 primarily because the fee suggested is uneconomic and fails to take into account cases which take longer than the proposed fee but are short of the exceptional cases requirement of 4 times the average. See earlier comments at 6.2.

Second, the change from a funded post model of 1100 hours to one based on new matter starts will require an fundamental change in working practices for the NfP sector. Traditionally, NfP organisations have applied a holistic approach to casework where multiple matters were dealt with in one single case. Under the new matter start system caseworkers will have to open a higher volume of new cases for each matter thereby creating additional demands on already stretched administrative resources.

### **Immigration & Asylum (section 8)**

#### **8.1 Do you agree with the proposed scope of the graduated fee scheme? If not, please explain why?**

Disagree with the proposed scheme. Graduated fees are in effect a cap not only on the financial amounts to be incurred on cases but fundamentally also a cap on the time spent working / preparing a case. It implies a uniformity of cases and does not take into account many important factors such as the ability for applicant's to communicate, the complexity of the cases and undermines the principle that each cases are to be considered on their own merits. Additionally it is felt that the financial cap / time limit has been set to low and will discourage practitioners to take on more difficult / complex cases or those were the merits are borderline. This could lead to considerable sections of the immigration / asylum / human rights fields being deserted with deserving clients unable to find representatives to take on their cases. It could also arguably lead to lack of development in the field since challenging cases might go unrepresented or be badly presented by applicants self representing. Whereby financial scrutiny is important it should not be the sole factor to be taken into account. Practitioners already go through extensive accreditation processes and auditing / peer review procedures are in place to monitor quality across the field. Unrealistic financial burdens are unlikely to benefit the sector or to attract competent practitioner into an area (legal aid work) where most are already disillusioned.

Realistic time / finance limits coupled with honesty, less bureaucracy and a relationship of equals would go a long way towards bringing value for money, which is what the Commission is looking for.

The graduated scheme is supposed to cover all immigration and asylum matters, but does not seem to include the possibility of a further fresh asylum claim - because of changing circumstances, the emergence of fresh evidence, or the past failures of previous representatives. Fresh asylum claims are notoriously complex, involving as they do the analysis of the whole previous claim/appeal and where things went wrong, the obtaining of fresh evidence, the weighing of this evidence in the balance of the previous determination, and the preparation of representations that address all these issues. The clients are likely to be the most vulnerable – homeless and destitute and often also suffering severe mental health problems. The absence of medical evidence in the past, spelling out the effect of trauma on the ability to recall events, has often contributed to the failure of the previous appeal.

Under the proposed scheme, with its fixed hours, noone would be encouraged to take on this complex and time consuming work – which has generally fallen to the nfp sector. Therefore we propose that it should be considered to fall outside the scheme, with payments made on an hourly basis.

The scheme as proposed does not take account of the *difference between London and regional rates*, due to the far higher cost of living in London. Within the public sector a London weighting has been a recognition that, within a low paid sector, some incentive has to be given to attract and retain staff. The Law Centres, and the legal aid sector generally, is already finding difficulty attracting candidates for recruitment. This will compound the problem.

**8.2 Do you agree with our approach to produce different forms of remuneration for those services outside of the graduated fee scheme? If not, what suggestions do you have for contracting these services?**

No. This should be done on a case by case basis. The proposed system seems to add more bureaucracy to the scheme and providers will be likely to bear the brunt of this added layer of bureaucracy. Payments should be made on individual cases, according to their merits rather than under a 'uniform' block contract. This is likely to lead to cherry picking of cases.

**8.3 Are there any other services or client groups that should be outside the graduated fee scheme?**

Services to the very old / mentally ill / particularly vulnerable applicants, victims of domestic violence and fresh asylum claims.

**8.4 Do you agree with the stages of the graduated fees and the services that we would expect to be provided in the majority of cases? If not, please explain why.**

Subject to previous comments, the rigid nature of the stages does not seem to accommodate for complexity of cases (where more time may be needed) or the particular circumstances of applicants that may arise. Also with the advent of NAM, it is likely that the Home Office will front load more resources into the initial decision making process. Whilst this is welcomed, it is of no use at all if representatives are unable to respond to these changes if they are hampered by time / financial constraints within each stage that are too prescriptive.

The amount of work seriously under calculated – especially for complex immigration cases. Example : applications for leave under the domestic violence rule. Recently granted 20 hours by LSC for preparation of application and representations, because of - delay in seeking legal advice/ submitting the application so client an overstayer; lack of contemporaneous medical and police evidence due to complete control of inlaws over applicant; distress of applicant and her initial reluctance to disclose sexual abuse; necessity of very long statement because of complex nature of violence – emotional sexual as well as physical. *This is not an exceptional case, but typical of those referred to us by refugees and women's organisations.*

CF *Common Issues Identified through Peer Review* 'failure to take full and detailed instructions may mean that an important aspect of the client's case is overlooked' .

**8.5 Do you agree with the proposals for additional payments? If not, please explain why.**

Yes. Any additional payment should be excluded from the proposed graduated fee. The fee for representation at substantive hearing is too low – esp for asylum hearings but also for immigration cases with more than one witness. It is an absurdly low fee for counsel who may have to attend for a full day, in addition to many hours travel to satellite courts, especially in London. Most importantly it does not include a fee for pre hearing conferences – advisable in all cases and essential in complex cases or where the appellant will have difficulty giving evidence.

Cf *Guide to the common issues identified through peer review*, : -'counsel will be more effective if they have been briefed thoroughly and *if they have had a conference with the client prior to a hearing* (where appropriate)' p 10.

**8.6 Do you agree with the proposals to include interpretation and translation costs within the fees in asylum cases? If not, please explain why.**

No, profoundly disagree. The fee of £550.00 covers 8 hours of work but if interpreting and translation costs are to be included then the effective time allowed on a case where interpretation / translation will be involved will be less than 8 hours in money terms. The majority of asylum applications involve asylum seekers who cannot speak English or have limited knowledge of the language. Serious difficulties and detriment can be made to applicants through inadequate interpreting. This measure

could trigger the widespread use of friends and families being relied on for such tasks as practitioners try to protect their costs. The point made in the report that including interpreter's fees in the graduated fee should encourage practitioners to be more efficient with their use of interpreter and reward providers who employ multi-lingual caseworker is noted but no reward can be derived if none is offered: where a provider has multi-lingual caseworkers or in house language services the reality is that the extra skill by the caseworker will be provided free of costs to the commission and any in house language services will have to be subsidised by the provider. Where the reward is (apart from the practitioner protecting his costs) is difficult to see.

This proposal is likely to encourage bad practices in terms of employing interpreters. Likely to lead to situation where vulnerable people, for example, women victims of sexual violence may have to explain their experience through a family member.

Repeated studies and consultation have clearly shown that the principle of impartiality, neutrality and independence should seep throughout the whole application process. Unlikely to happen if interpreting / translation fees are to be subsidised by the representatives.

This would be in breach of the guidelines established under professional conduct (and could lead to negligence / competence questions from the representatives) as well as recommended good practice from ILPA as well as the LSC guidelines under peer review.

This exclusion is likely to have a discriminatory effect. In all other areas, interpreting / translating fees are separated from the fee paid to the practitioner. What rationale was used to decide that it should not be the case with asylum applicant? Those are the cases where more than any other interpreters are an integral and important part of the process. Their efficient, competent performances is of the utmost importance for the outcome of the case, whether positive or not. Surely, relying on non professional interpreters is unlikely to assist the process and could create a deluge of complaints from applicant and would also compromise the integrity of the claim.

The current collapse in the number of asylum / immigration and human rights practitioner is due to the impossible financial and bureaucratic burdens that have been created in the past in what have been clearly cost cutting exercises with little serious regard being paid to the value and quality as well as the difficult conditions in terms of resources that NFP's operate under. This new proposal will simply amplify the problem. As a general point no benefit seems to arise for NFP's from the Carter Review.

The different and less favourable treatment of asylum seekers, in this crucial area of facilitating communication, would constitute direct discrimination contrary to the Race Relations Act.

cf *Peer Review* p 16 'have family members.. been used as interpreters where independent interpreter more appropriate due to sensitive nature of information, a potential conflict of interest, or risk of breaching confidentiality?'

The use of family/friends as interpreter would particularly disadvantage women who have suffered sexual abuse or other shameful treatment.

#### **8.7 Do you agree with the proposals for exceptional cases? If not, what other structures should we put in place to pay for these cases?**

No. What would constitute an exceptional case and at what stage do you decide that a case is exceptional? Is the criteria simply a financial one (i.e. once cost of case is 4 x £1300 [stage a + stage b]). What will happen if the costs of case once graduated payments have been done is say 3 X £1300.00? Is it being proposed that in such instance the layer of work that does not fall within the fee (3 x £1300) will simply not be paid? In which case, where is the incentive to take on more difficult, complex cases?

What would the position be if the graduated fee had already be paid (whether exceptional rate or not) and it transpires that the unsuccessful applicant has grounds for a fresh application or the previous application was badly conducted by the previous representatives? Does the applicant no longer has access to representation because his / her allocation has already been paid, therefore leaving the applicant to either rely on pro bono representations or nothing?

We recommend – subject to the qualifications we have made elsewhere – that once the estimated hours have doubled the case should be seen a exceptional.

**8.8 Do you agree with the proposals for an early resolution payment? If not, how else might we encourage positive outcomes for clients early in the process?**

Do not agree with the proposal for additional payment for early resolution as it could lead to practitioners shying away from more difficult cases. It also suggests that practitioners have had a vested interest in extending the life of cases in the past. This proposal also disregards the fact that often cases are long running simply because the Home Office refuses to concede in some cases or to positively engage with representatives when possible. Early resolution when cases are properly conducted and decided is in the interest of all: practitioners, client and Home Office. Delays are not the making of practitioners. Unlike other areas of the law, where your opponent is also regulated by the same code of conduct, this is not the case with the Home Office. The general experience is that it is an uncommunicative, non – cooperating and sometimes arrogant organisation. To eradicate some of these traits and create an atmosphere of genuine communication and cooperation would assist towards this goal of obtaining positive outcomes early in the process. Perhaps the Commission in conjunction with the Law Society, ILPA and other interested parties should consider the drafting of a code of conduct to which all parties involved will have to adhere to.

The early resolution of cases is not in the power of the representatives but of the Home Office.

**8.9 Do you agree with the proposed arrangements for stage claims? If not, please explain why?**

Yes, but discretion should be given to practitioners as to whether they want to stage claim or simply claim for the bulk of the work at the end. Stage claiming is useful where delays in decision arise hence creating cash flow problems but, if the decision making process is quicker then some organisations may prefer to submit one final claim at the end of the work, hence limiting the administrative burden and duplication of admin work.

**8.10 Do you agree with our suggested approach to provide advice, information, and referral at ASU? If not, how else could these services be provided?**

No. This seems to undermine the principle of a client's freedom of choice to instruct a representative of his choosing. It also assumes (incorrectly) that there will be a provider in the applicant's local area. This referral system to work will involve providers restructuring their current administrative arrangements which may be difficult at a time when limited resources are in effect being limited ever still.

Also providing advice at the ASU may in the eyes of the applicants undermine the independence and impartiality of the advice and any subsequent referrals.

**8.11 Do you agree with the proposal to restrict client choice and allocate clients to particular providers on a rota basis? If not, what alternative mechanisms do you think could be introduced to ensure that clients are guaranteed access to legal advice in the short period available between making their asylum application and the substantive interview?**

No. Difficult to reconcile with the principle that a client is free to instruct a representative of his choosing. At present applicants do not seem to have a problem in finding immigration practitioners. The problem

lies in finding a practitioner that will take the work on. Current referral systems in place seem to be working. The problem is the scarcity of advice providers.

**8.12 Do you agree with our suggested approach to provide legal services to clients in Detention Centres? If not, what alternative arrangements do you think could be introduced to ensure that clients are guaranteed access to legal advice and representation whilst reducing the administrative burden on the Commission?**

No as it is likely to lead to less providers being involved in detention work resulting with more detainees left without adequate advice. We still receive requests to represent detainees at Hardmondsworth, Yarl's Wood and others on the fast track system but have declined instructions because of the exclusivity of fast track work. This suggests that the current approach is not meeting the current need and this is likely to worsen if fewer providers are involved.

**8.13 Do you have any suggestions about how legal services could be provided to immigration clients held in prison?**

Access to a list of registered practitioners / organisations with such. Freedom of choice.

**8.14 Do you agree with our suggested approach to provide legal services to this client group? If not, do you have any other suggestions about how we can ensure that providers delivering services to this client group have the necessary experience and expertise?**

Possibly, but what criteria will be used for membership of special panel? Does it involve further accreditation? What extra resources will this entail?

**8.15 Do you agree with our proposed approach with remunerating these services? If not, what suggestions do you have?**

No. case by case basis / hourly rates per case across.

**8.16 Do you agree with our rationale for selecting reduced numbers of providers to provide these services? If not, do you have any suggestions about how to minimise the administrative cost to the Commission?**

No. Limits freedom of choice and likely to exclude and discriminate against certain providers. Possibility of desert advices.

**8.17 Do you agree with our approach of extending the exclusive contracting arrangement for fast track clients to other services and client groups? If not, what other proposals do you have to help reduce duplication of advice?**

No, see above. Honesty, trust and self – scrutiny should be sufficient to avoid duplication of work. The current system seems to have cured this problem to a great extent. Also the idea of avoiding duplication of work undermines the client's right to a second opinion and would prevent organisations from unpicking applications which had been badly prepared. This law centre has such experience. Often new cases arise where the applicant has already exhausted all his / her remedies and on consideration of the papers it become obvious that a fresh application should be made. Our success rate in such application is quite high as we carefully analyse the merits of each case. Sometimes nothing more can be done but to give a negative opinion, but even in those cases, applicants are happier once they know exactly where they stand.

It is of crucial importance to a client in life and death (ie most asylum) cases that he /she should be able to obtain a second opinion on the merits of the case. These proposals will make such work impossible.

**8.18 Apart from the generic criteria that we set for bid rounds, do you have any suggestions for specific criteria that we should use in bid rounds for the exclusive services to ensure that providers have the right level of expertise?**

Ethnic make up of local area should be taken into account. For example NKLC is local to a strong North African community and therefore likely to have a better understanding and expertise of problems arising within that community.

**8.19 Do you agree with our approach to develop national and regional providers? If so, are you a provider or part of a network that would be interested in becoming this type of provider?**

Yes, provided that the intention is to create a network of joined up thinking, sharing knowledge, expertise and avoiding repeat clients from switching to one provider to another but not if it is simply a costs driven exercise. Also note that there is a real danger that in the wake of the Carter review, providers will simply pick those cases that suits there structural arrangements, leaving other cases unrepresented.

**Common Issues (section 10)**

**10.1 Do you agree with the proposals for varying the fees? If not, please explain why.**

The proposal as drafted seems to imply that fees will be reduced where there is a negative policy change, i.e. taking work outside scope. It does not have sufficient regard to the behaviour of other public bodies which mean that fee levels have to be reviewed “upwards” not “downwards”. Overall, we believe the comments in paragraphs 10.1-10.6 suggest a “race to the bottom” in any review of fee levels which is bound to engender a cynicism amongst providers.

**10.2 Do you agree with the proposed arrangements for payment of exceptional cases? If not how else might we manage these cases?**

We believe the arrangements for exceptional cases needs to be refined further to take into account cases which exceed the standard fee but do not exceed the “four times “ threshold. We refer you to our earlier comments 6.2. Principally we suggest that cases above the standard fee but are less than “four times” should be paid on a graduated fee system. Where cases exceed the “four times” they should be subject to cost assessment.

**10.3 Do you agree with the arrangements for payment of disbursements? If not, please explain why.**

We believe that disbursements should continue to be paid in advance as is currently the case for NfP contracts. We disagree with the proposal to treat disbursements costs in asylum cases separately and would suggest that the principle of equivalence to disbursements across all civil categories.

**10.4 Do you agree with the proposed arrangements for the application of the statutory charge? If not, please explain why.**

Yes we support the proposal to remove the statutory charge from Legal Help except where property is recovered or preserved under a certificate.

**10.5 Do you agree with the proposals for payment of VAT? If not, please explain why.**

We support the view that fixed fees should be exclusive of VAT. Any views!

**10.6 Do you agree with the proposal to remove payments for file review in order to fund more civil matter starts? If not, please explain why.**

As a NfP organisation we do not claim payment for file reviews except under NfP contract hours.

**10.7 Do you agree with the proposed amendments to the Funding Code set out at Annex C?**

No comment.

**Proposed Unified Contract (section 11)**

**11.1 Do you agree with our proposal that eventually all our providers, including NfP organisations, will be covered by the same contract terms? If not why not?**

We do not agree with this proposal in spite of its advantages for the LSC for the following reasons:

- The NfP and for profit organisations operate under very different governance structures. As an NfP organisation our constitution precludes us from undertaking work on a commercial basis for clients.
- The client base and profile of some NfP organisations is very different from for profit organisations. For example, the majority of our users come from BME backgrounds and have traditionally relied for the NfP sector for advice and assistance.
- Our approach to advice and assistance is based on providing a holistic service. Under the new matter start system this system of working will change as organisations adjust to new business imperatives.

**11.2 Do you agree with our proposals for the future of the SQM? If not why not?**

We support the proposals for SQM provided that responsibility for Peer Review remain with the LSC and not, as proposed by Lord Carter, be transferred to the Law Society. We welcome the suggestion that key elements of the SQM relating to client care and supervision arrangements should become contract terms.

We fundamentally disagree with any proposal to transfer responsibility for quality assurance to the Law Society and for the NfP sector to develop its own systems of quality control. Principally, our view is that the quality of the peer review system can only be maintained if it stays with the LSC. In recent years the LSC have invested considerable time and money developing its peer review quality standards. Given the preferred supplier scheme's requirements in respect of peer review it makes sense that all providers are assessed and measured against the same standards by one single body.

**11.3 Do you agree with our proposals to introduce new provision on the length of the Unified Contract and powers to terminate the contract in order to introduce Lord Carter's reforms or CLACs and CLANs? What contract length would you like to see and do you agree with the proposals on termination?**

**Length of Unified Contract**

We agree that any new contract should be for a minimum period of three years to enable sufficient financial planning by organisations. Should this be extended we agree it makes sense for any notice of extension to be during the first two years.

We agree that any notice of termination should be a minimum of three months, however this may need to be extended in the case of some providers with large contracts covering a range of social welfare categories in order to ensure a stable continuity of services in particular areas.

As regards CLACs and CLANs we believe that these need to be phased in gradually on a pilot basis to enable an objective evaluation of their role. It is our belief that the success of CLACs and CLANs will be shaped by the role and support of local authorities towards the legal advice sector and their approach to commissioning. Under this proposal there is a serious risk that some local authorities may use any

commissioning and tendering process to exclude good quality organisations from participating in such arrangements. As a London-based Law Centre operating in Kensington and Chelsea our experience of commissioning is that it is used to procure services from organisations historically regarded as their “preferred suppliers”.

In order to ensure that currently LSC funded organisations are part of any CLAC/CLAN, it might be sensible for the LSC to impose some prescriptive requirements as to the composition of these bodies, particularly in areas where there may be concerted attempts to exclude particular organisations.

**11.4 Do you agree with our proposals on self-monitoring, approved personnel, an open book relationship and technology? Do you think that they will improve the working relationship between the LSC and its providers? If not why not?**

We agree with the general thrust of the proposals on a more “light touch” relationship with providers. As an NfP we already have a performance management system and have devised our systems and monitoring procedures to comply with and meet the LSC performance standards.

We already transact with the LSC using e-business and welcome the proposal to extend this relationship. However, additional investment by the LSC is required to enable organisations to meet the full technical specification required to service any new contract requirements.

**11.5 Do you agree with our proposal that all contracts will include a number of new matter starts thereby bringing to an end licensed only contracts? If not why not and are there circumstances where licensed only contracts should continue?**

We do not support the move to new matter starts, subject to our earlier comments on average case lengths and the introduction of transitional arrangements for NfP providers.

We are concerned that the pressure to open up a higher volume of matter starts and reduce average case lengths will affect quality and client outcomes. A possible option is to retain the existing 1100 hour model with a stipulation that a minimum number of cases are opened up.

Our initial calculations have shown that based on cases opened to the year end 31 March 2006 we would have to increase our new matter starts by nearly 150% across all categories in order to maintain our current service across all categories.

Regarding licensed work, we believe that it might be sensible to permit licensed work in certain categories where provision is scarce in order to main adequate service coverage in some geographical areas.

**11.6 Do you agree with our proposals to publish information about contracts? If not why not?**

Yes

**11.7 Do you agree with our proposals on quality assurance and client service particularly the use of peer review and mystery shopping? If not why not?**

Yes.

**11.8 Do you agree with our proposals that under the contract all providers will be paid on the same basis? If not why not?**

As a NfP organisation we believe that the LSC should maintain the advanced payment system for the sector. As a registered charity our constitution precludes us from undertaking any work on a commercial basis. This puts us at a distinct disadvantage with for profit firms who are able to generate additional revenue from other private client work (e.g conveyancing, personal injury etc) in order to sustain their service. By comparison NfP organisations are increasingly subject to further restrictions in the use of funding from statutory and charitable funders under their additionality rules.

**11.9 Do you agree with the removal of level 1 work for NfP organisations? If not why not?**

No. Level 1 work is a vital part of our service and enables us to help vulnerable clients who are unable to access other advice services but need advice and assistance to enable them to understand their options and how to deal with the issues.

One of the traditional roles of law centres was to complement the legal aid private sector by offering assistance to those who are just above the legal aid threshold but who cannot afford private fees. In immigration cases, we can use the level one system to advise such clients – particularly at the application stage. We can also assist clients to submit brief appeal notices when there are strict deadlines, in order to preserve the client's rights while they seek a private solicitor which has become more difficult due to the shortage of immigration practitioners. We tailor level one advice to the needs of the local community – eg naturalisation applications for the more settled Moroccan community. We provide a crucial role in offering a second opinion on level one to clients who have been told by their representatives that there is no merit in going further. There are high stakes for clients in much of our work – especially in housing and immigration/asylum cases. A second opinion (whether or not it challenges the first) is a vital protection of their interests. One off advice (whether by telephone or in person) is an ideal way to provide this.

Our experience is that 30 minutes of legal advice is an excellent cost effective way of preventing certain types of problems escalating (i.e rent arrears, employment disputes) which then necessitate additional public funds through the Legal Help scheme to prevent clients descending further into social exclusion. It is also enables us to triage enquiries to ascertain whether the legal issues have sufficient merit and whether the individual is eligible for Legal Help.

By removing this provision there is a serious risk of people being denied access to basic advice and assistance because the business imperatives of the new contracting regime will force organisations to cherry-pick enquiries which can be converted into cases that fall within the fixed regime while complex enquiries will be signposted elsewhere. Traditionally, NfP organisations have taken on cases which have been refused by some for profit organisations where the client is particularly vulnerable (mental health, language needs etc) and because the case is not viable under a fixed fee system.

This advice is akin to a general practitioner service in medicine. This service allows everyone easy access to specialist advisers by phone or in person. Thus it is as accessible as possible to all in the community.

This advice identifies problems early and effectively. Often early and specialist intervention prevents the problem from escalating. It is highly cost efficient. If the system is cut in employment law for example, agencies will only be able to help clients once they have been sacked and take a case to Tribunal.

In employment law, a significant part of Not For Profit agencies work is early advice and successfully saving clients' job by explaining to both employer and employee the legal consequences of their actions.

Employment (and discrimination) law is complex and often employer and employee do not realize the legal implications of simple decisions.

For instance, a single mother (who does not qualify for legal aid) phones a law centre explaining that her employer wants her to start work half an hour earlier in the morning. The employer thinks this is minor change. However, the single mother has two children, one in a nursery and one at primary school. She has a tight morning timetable to get her children to childcare and school etc and get herself to work on time. Having to be in work half an hour earlier makes this timetable unworkable. Unable to comply with her employer's request, she loses her job.

In this situation (based on real life example) both parties were utterly unaware that the employer's plan is potentially indirect sex discrimination and hence unlawful. Half an hour's free advice allows the mother to explain the legal situation to her employer and allows her employer to reconsider.

Without the Level 1 service, the employee will lose her job, qualify for legal aid, come to the law centre and probably end up in an Employment Tribunal where she might obtain substantial damages.

But this is not what she wanted. She wanted to keep her job. A lack of early preventative advice results in a tribunal case no-one wanted. Everyone loses. The mother has lost her job. The employer has had to pay for the legal fees and then perhaps substantial compensation (on top of the wages of her replacement). The tax payer has had to pay for the time of the Employment Tribunal and LSC-funded caseworker.

All this could have been saved by the government's keeping the Level 1 service - half an hour's advice.

It should not be objected that people who are not eligible can afford to and will approach private solicitors. As stated in question 6.1, the eligibility test is highly complex and can be very slow. We have level 1 clients who fail to qualify because they own (in London) a flat worth over £200 000. They have thousands of pounds of debts and cannot take out a loan to pay for private legal advice unless it is secured against their property. This would take many weeks or months to arrange. It would then be too late for the original problem.

Private practice rates are about £150 per hour, far higher in commercial firms. Without the level 1 service, the public will be reliant on the goodwill of private practitioners resulting in a piecemeal and less accessible service.

Again the level 1 service is particularly useful for migrants who have particular difficulty in proving eligibility, see question 6.1. The UK is currently experiencing a massive influx of migrant workers (partly as a result of government policy) who are in great need of specialist advice in order to protect the employment conditions of the entire workforce and hence secure community cohesion.

Further, again by analogy with the GP service, one of the reasons that GP appointments are free at the point of delivery, is that this encourages hard-to-reach patients attending. Also GPs, by their basis and standing in the local community, are, in practice, far more accessible than a hospital. A middle-aged man with chest pain is far more likely to pop into his local GP for a quick appointment (and thus have his serious heart condition diagnosed and treated before he suffers a heart attack) than he is likely to attend a hospital heart unit.

In this way the GP service not only prevents the patient suffering a heart attack, it also saves the tax payer the vast cost of an emergency admission for a heart attack.

Level 1s, like GPs, are cost effective as well as practically effective.

**11.10 Do you agree with our proposals to change the way that contract sanctions are imposed and our proposed changes to the CRB?**

We are concerned about some of the proposed changes to the review and sanction process. We believe that the composition of the CRB must include representatives of the providers' networks including the Law Society, ASA and LCF, as well as a member of LSC senior personnel. In the interests of transparency, we believe that the CRB should have a minimum of 3 representatives at all times when reviewing all termination decisions including a representative from the provider's network.

**11.11 Do you agree with our proposal for amending contracts and allowing the LSC to introduce contract amendments at times other than April and October?**

We disagree with this proposal. Our view is that any proposed substantive amendments should be scheduled to coincide with six month cycles, either April or October. This encourages and facilitates better planning and decision-making.

**11.12**

**Are there any other points that you either agree or disagree with that have not been specifically addressed in these questions? Please give your reasons for either agreeing or disagreeing?**

**No**