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Glyn Hardy
Legal Services Commission
By email: glyn.hardy@legalservices.gsi.gov.uk

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Dear Mr Hardy,

This is the response of the Young Legal Aid Lawyers (YLAL) to the Legal Services Commission (LSC) consultation on the future of the Specialist Support Service (“SSS”).

YLAL is a group of junior lawyers who are committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded. YLAL members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. Currently, we have around 1,700 members.

In brief, we support the retention of the SSS. The service is arguably cost-efficient for public funds and it helps to ensure that individuals receive holistic and quality advice on their legal problems. We also feel it is important that the service should continue at this particular time, given the uncertainty surrounding providers’ continued existence and their ability to advise clients post-implementation of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act.

Question 1: Do you agree with the proposal to discontinue funding for the Specialist Support Service? If not, why not?

Question 2: Do you believe that providing support services for specialist legal advisors is a priority for legal aid funding? If so, please explain why.

We oppose the abolition of the SSS. Removing the service is likely to have the greatest impact on smaller providers who may not have sufficient depth of knowledge within their organisation. Abolishing the service will also impact on advisers at the start of their careers, such as our members, who have had to rely on the SSS in urgent cases or where their supervisor has had insufficient experience or knowledge of a specific point of law or procedure. We further believe that removing the SSS will have an adverse effect on the range and quality of services available to clients.

In opposing the abolition of the SSS, we wish to make it clear we are not promoting the view that the SSS should be prioritised over other areas which are currently funded by legal aid. We certainly do not believe funding should be withdrawn from other areas of publicly funded law in order to finance its continued existence. However, our response is predicated on the reality that legal aid is being cut back across the board; that publicly funded advice will no longer routinely be available in many areas of civil law; and that firms will be facing increased pressure on their resources in order to continue providing a service to their clients. In these circumstances, the expert service provided by the SSS will provide an essential safety net.

Access

Concern about clients' access to advice was one of the prime reasons for the introduction of the SSS. Access to advice is just as important today.

The LSC states SSS funding is not a priority when "the purpose behind it has been addressed by other means"¹. However, when considering whether to retain the SSS the LSC must bear in mind the impact of the LASPO Act on the ability of clients to continue to access advice services.

¹ LSC Specialist Support Service Consultation, para 5.9

There is considerable evidence that shows that the number of legal advice services will significantly reduce following implementation of the Act. The Government's own estimates state that the LASPO Act will remove 75% of legal aid funding from the not for profit sector, and almost 50% of funding from solicitor providers.²

A study by Otterburn Legal Consulting with 163 law firms in 2011 predicted that removing work from scope as set out in the LASPO Bill would have a "catastrophic impact on the supplier base" and that firms who specialise in civil areas of law such as housing, immigration or clinical negligence would find the impact of the proposals unsustainable³.

It is likely that both niche and volume providers will find it more difficult to sustain legal aid work once LASPO is fully implemented given the severity of the scope cuts and also the remuneration changes.

These predictions are even more concerning for advisers who already work in "advice deserts", which still exist, despite the LSC's best efforts. A user survey conducted by SSS provider Wilson & Co revealed a shortfall in specialist immigration advice in several areas across the UK. One respondent from a CAB said this:

"We have lost three legal aid providers in the whole of East Sussex area and in fact can only now locate one provider which is out of our area. To lose the Specialist Support Service on top of this will leave us absolutely adrift, with virtually no resource (sic) to legal help. We rely on help from providers such as Wilson & Co and BHT [Brighton Housing Trust] as the number of clients with immigration problems approaching the Bureau increases weekly. The implications and repercussions of pulling the plug on all these Specialist Support Services ... have hardly been considered yet. The consequences for our clients will be dire."

Another CAB respondent commented:

"In this rural area (Cumbria) we have no access at all in the county to specialist immigration support work on LSC, all is fee paying. That is clearly an issue and not satisfactory for those clients who may already have a precarious position, no recourse to public funds etc. LSC funded advisers in other areas (eg North East, Lancs) only

²[Reform of Legal Aid in England and Wales: Equality Impact Assessment \(EIA\)](#), Ministry of Justice, 21 June 2011, para 1.40 and para 1.9 (For female owned and controlled solicitor providers the average reduction in income was estimated to be 47%. For their male counterparts the estimate was 49%.)

*deal with clients in their area so we cannot refer out of county. Therefore the service provided by Wilson and Co is invaluable to us.*⁴

It seems that specialist providers can be few and far between in some areas of law if you live outside a major urban centre. This makes the retention of the SSS a priority to support the specialist advisers that do remain. Many people who may be eligible for legal aid help might not be able to receive it at all in these places. The SSS offers such clients a lifeline, with expert advice delivered by face to face local advisers. This in-person contact is particularly important for the client group covered by the areas of work under the SSS, as they will often have particular characteristics that make it harder to take instructions and give advice over the phone, such as language barriers, trauma (for example, in immigration) or disability (for example, in community care). This was recognised by the Constitutional Affairs Committee when it considered the future of the specialist support service in 2006:

*“Many consumers of legal aid services will find it difficult to understand complicated legal advice over the telephone. This is especially so since the advice concerned is specialist legal advice which is being provided to vulnerable groups including those with mental health, immigration and complex public law problems. We do not accept that CLS Direct (which itself uses specialist support) is an adequate alternative to specialist support services. In his evidence Mr Harvey missed the point when dealing with the issue of carrying into effect complicated legal advice. Peer review of the quality of that advice can give no guarantee of a client’s ability to act on it.”*⁵

If access points for advice services decrease then clients will find it harder to obtain specialist advice. Even with the introduction and future expansion of the Community Legal Advice (CLA) helpline there will be clients who require face to face assistance. Where they can only access general advice agencies there is a risk that they will suffer if their advisor is unable to have recourse to the SSS.

Quality

The SSS was also created to address concerns about the quality of mainstream face to face advice. We welcome the quality standards that the LSC now includes in its contract requirements. However, some of the quality standards are relatively low and even with those safeguards removal of the SSS will risk reduction in quality of advice.

³Otterburn Legal Consulting, [Impact of the MOJ Green paper proposals on legal aid firms](#), February 2011, p.6

⁴User survey, Wilson & Co, 2011

We question the assumptions in the consultation about how that quality standard negates the need for specialist support. The consultation document states that,

*“All legal aid providers are expected to provide the full range of specialist advice within a category, employ specialist supervisors and provide a high quality service. There should therefore be significantly less need in today’s environment for a Specialist Support Service to support these providers.”*⁶

The contract does not require supervisors to be “specialists”. The main focus of the supervisor standards appears to be broad knowledge in the field and appropriate management of personnel and files. To qualify as a supervisor in civil work you must meet the Case Involvement Standard in your category, which requires 350 hours of casework, file reviews, training, research or supervision in each of the last three years. You must also meet the Supervision Standards, which require you to have attained supervisory skills through training or practice. You must also meet the relevant Legal Competence Standard.⁷

In the field of immigration, the Legal Competence Standard requires an immigration supervisor to be fully accredited at Level 2 or Level 3 under the Immigration and Asylum Accreditation Scheme (IAAS) and requires the *additional* IAAS supervisor’s qualification. Supervisors must take account of any changes in legislation and case law and maintain access to at least one specialist journal containing updates on immigration case law and statutes).⁸

These requirements do not mean the supervisor will necessarily know more about the law than a Level 2 accredited colleague. There are only 41 Level 3 Advanced caseworkers nationwide, of whom 27 also have the supervisor qualification (and eight work at Wilson & Co, suppliers of immigration advice for the SSS).⁹

The majority of accredited supervisors are at Level 2 standard,¹⁰ the same level as many of those they supervise. The competence standard may require experience in the field but the

⁵ [House of Commons, Constitutional Affairs Committee, Legal Services Commission: removal of Specialist Support Services](#), Fourth Report of Session 2005-6, paras 14-15

⁶ Specialist Support Consultation paper, LSC, para 4.7

⁷ [2010 Standard Civil Contract - Specification, Sections 1-6](#), paras 2.20-2.32

⁸ *Ibid*, section 8, paras 8.14-8.15

⁹ [Immigration Law Advanced Members by Region](#), Law Society (correct as at 01.04.12)

¹⁰ *ibid*

focus is firmly on issues more relevant to contract compliance and general good practice in casework, not on an advanced level of legal expertise.

The IAAS supervisor's examination in 2011 consisted of exercises in assessing the need for corrective action on a file, personnel management and an "in tray exercise" to prioritise allocation of work.¹¹ The website of the examining body specifically states that the test is not about the law:

"Supervisor Level

One Assessment - Timed Assessment

*This assessment will test candidates on supervisory skills, **it is not a test of legal knowledge**. The assessment will require candidates to answer questions based on the review of case studies and file reviews in timed examination conditions. The time allowed for this assessment is 3 hours plus 45 minutes reading time."* [our emphasis]¹²

Immigration law is immensely complex, and encompasses a large number of niche subjects. It is not possible for all caseworkers (or their supervisors) to be experts in every aspect of the field. By contrast, the SSS immigration line provided by Wilson & Co has a high level of advanced expertise so a caller will consistently get the most experienced help whenever they access the service. The advice line is staffed by nine advisers, eight of whom are Level 3 accredited and one who has achieved Level 2.

The other civil areas of work covered by the SSS all require a certain minimum amount of casework from a supervisor in order to meet the Legal Competence Standard. Only mental health measures supervisors against the standard of a designated accreditation scheme, but this standard is also satisfied by showing a certain level of casework, plus attendance on a training course.¹³

Our members do not necessarily have years of their own experience to draw on. They have used the specialist support service when supervisors have not been able to answer questions, in order to obtain quick and authoritative guidance. The service has also been invaluable when supervisors are simply not available, which is all the more important when you work in a small team as you may have no one else to ask for help with urgent problems.

¹¹[Supervisors' Timed Assessment](#), February 2011, CLT

¹²[CLT website](#), accessed 05.05.12

¹³[2010 Standard Civil Contract – Specification, Section 9](#), paras 9.10-9.14

One of our members explained her experience of using the service while working as an immigration caseworker in a small department in the north of England:

"I have used the Wilson's helpline on a regular basis. It was especially helpful in cases involving the most vulnerable clients, for example, unaccompanied asylum seeking children (UASCs). One example which comes to mind is a very troubled refugee lady, who was a victim of torture and had very severe mental health issues as well as being suicidal. She had her refugee status revoked, quite incorrectly, and Wilson's were very very helpful in guiding me. Without their help at that stage I would have had to turn her away as I would not have felt I had the capacity to assist her. I couldn't turn to my supervisor as it was a point he hadn't dealt with for some time and specialist guidance was needed. Another example is the case of a UASC who was issued with removal directions. My supervisor was not available and I needed to issue a judicial review urgently. I rang the helpline and they were able to guide me through the process. I rang loads of other firms to refer the case but due to the urgency of the matter no one was able to assist. Without help from Wilson's I wouldn't have felt able to assist and the client would have been removed without legal advice and assistance."

For someone in a smaller organisation there are likely to be fewer people to ask for help in your department and probably fewer categories of work done overall, removing the option of internal referrals if a client has a problem outside your own area of law. Smaller providers also have more limited funds, which can put pressure on the training budget. The law is constantly on the move and keeping on top of developments can mean significant investment. To free up one caseworker for training on new caselaw or policy can cost several hundred pounds in both course fees and lost fee-earning time.

Further, advisers may have access to a legal update service but this will not always have the answers as to how the law should be applied in a particular case. Wilson & Co conducted a survey of users of their advice line in 2011 and respondents noted the value of having a specialised consultancy service, even when they had access to good reference material. One adviser from a CAB said this:

"Wilson's Solicitors have provided an absolutely first class service to this bureau. Their advice has always been clear, informative, and most importantly, immediate. We have

only used them when Advisernet has not answered our questions – what will we do now?”¹⁴

The SSS allows specialist practitioners to provide a holistic service

The LSC suggests that providers should refer clients to another specialist when the case needs specialist advice, on the “rare” occasion that a case will fall outside the expertise of a supervisor¹⁵ or when providers identify an associated legal problem.¹⁶ It states that cases beyond an experienced supervisor will be in the minority and it could be more appropriate to refer to another specialist organisation or instruct counsel.¹⁷

We disagree that cases outside the abilities of a supervisor come up only rarely. It is also the case that an adviser without a specialist contract in an area of law may simply need input to an existing case from a specialist line where a referral would be inappropriate. For example, a prison lawyer preparing representations for a parole hearing may require advice or guidance on what steps the client can take to resolve any immigration issues to support the application for parole. Alternatively, she may require advice from a mental health lawyer on the impact on the client of a transfer to prison. In a family case it may be important for the family adviser to seek specialist advice or guidance on the client’s housing options to properly progress the case. Another example is of a community care lawyer getting advice from a housing lawyer about alternative options for a vulnerable client in need of accommodation.

Referring matters to a different provider will not necessarily cut costs in the long run. To identify a problem, the adviser has already opened a matter and seen a client. Referring to another organisation would involve opening a second matter start so both providers could claim the fixed fee. This is clearly a more expensive solution than a one off call to the SSS, even with its ancillary “standby” costs. If the LSC’s objectives include using finances “consistently and reliably to achieve value for money” and improving business by “simplifying processes, driving efficiency and eliminating waste”, these would not be met by creating another layer of bureaucracy and cost.¹⁸

Practical problems

There is a risk that there is insufficient higher level specialist advisers across the country for clients to be referred to for this help. Other providers may be at capacity and so unable to take

¹⁴ User Survey, Wilson & Co, 2011

¹⁵ Specialist Support Consultation paper, LSC, para 4.9

¹⁶ *ibid* para 4.19

¹⁷ Evaluation of the Specialist Support Service, Annex B, LSC, para 4.12

¹⁸ Specialist Support Consultation paper, LSC, para 3.7

on the case, especially if they are taking on referrals from everyone that may previously have contacted the SSS.

A member's experience highlights this:

"I worked for a large provider of debt advice in the local area. There were no other providers in the local area that offered specialist advice in debt. We had three debt supervisors who had considerable experience individually and between them. One day a client came in to see me and it became apparent that she would be suitable for an administration order, something that not many of our clients met the criteria of. None of the supervisors in the firm had dealt with such an application before as despite their many years of experience, none of their clients had met the criteria or had been suitable for various reasons. I carried out some research; however I got to the point where I needed more clarity on a procedural issue. I called the Specialist Support Service who were very efficient. They explained the procedure and law over the phone as well as emailing me the answer. The case progressed efficiently and we secured a positive outcome for the client."

Question 3: Are there particular elements of the Specialist Support Service which you think should be retained even if other elements are discontinued? If so, which elements and why?

We believe all the elements of the SSS should be retained. Although we understand the pressures on the legal aid fund, a sustainable system must remain in place. It is not enough to "closely monitor" access to advice services as the LSC suggests, when it also concedes that "legal aid reforms are likely to impact on the civil provider base",¹⁹ and the Government's own estimates as to the impact on providers are so severe. We think it would be a false economy to remove established services at this critical time if they may only be brought back later and recommend a review of the sector if nothing more, once LASPO's implementation has had time to take effect.

The service will be needed even more as advisors will no longer have day to day experience of certain areas of law that have been excluded. The Act now has provision to bring areas of law back into scope, and the use of the SSS has shown how areas like immigration and welfare

¹⁹ Specialist Support Consultation, para 3.16

benefits support are in demand even now. We believe this need will only increase, for example, once the change set out in the Welfare Reform Act takes effect. Retaining expertise already in place with the SSS is surely in line with the LSC's stated objective to "build capability to ensure we have the right people with the right skills to meet our goals".²⁰

If the service is changed at all then the LSC could consider a reduction of the core hours that the specialist line must remain open. The evaluation report suggests removing all standby payments as an alternative to closure, but this does not take into account the time that providers must have an adviser ready to answer queries which limits the other fee earning they can do, for example, having face to face appointments. Alternatively, there could be greater use of email to answer non-urgent queries, although the telephone service should still remain in place.

Question 4: We have annexed the evaluation report to this consultation. Do you agree that the report is an accurate reflection of the current Specialist Support Service, please explain why.

We are unable to assess whether the evaluation report is truly accurate as we do not provide the service. We have already given our view on the assumptions about supervisors being able to "fill the gap" if the SSS is removed. We would also reiterate that areas that the LSC may expect providers to know could be outside the daily experience of an adviser and it may be perfectly reasonable to seek specialist support in that case. Further, in our view the SSS has lacked adequate publicity and therefore it may be that low take up in certain areas may be more a reflection of this rather than the potential of the service to drive up quality and make a real difference to outcomes for clients.

Question 5: The EIA sets out the equality considerations to which the LSC has had regard in formulating this proposal. Do you agree that the EIA accurately capture the equality impacts of the proposal? Are there any other factors you think we should consider before making a decision about the future of the Specialist Support Service?

The EIA seems to have focused more on the Specialist Support Service providers than the advisers that use the service or the clients about whom they are calling. It is important that the

²⁰ Ibid para 3.7

equality impact of the removal of such a vital service is not just assessed by looking at one affected group, but rather everyone who benefits from such a service.

We would submit that a full equality assessment has not been carried out with the most recent data. We do not agree that mainstream advice services will be sufficient to cater for the groups serviced by the SSS, and refer to our comments regarding issues of access and quality above. The EIA states that there are “no longer areas of the country where clients can only access non-specialist advice”²¹. This is simply not true. We refer again to the user survey conducted by Wilsons, and our own experience, for example, signposting a detainee on the south coast to immigration advice, where the nearest provider who could take the case was several hours away in London and vastly oversubscribed. In addition, as we have highlighted above, we are concerned that the changes contained within the LASPO Act will have a severe impact on the supplier base and that the proliferation of advice deserts will increase. Hence in future there will be considerably more areas of the country where clients can only access non-specialist advice. The EIA does not consider this factor.

Question 6: Are there any other impacts on client or provider groups that you think we should take into consideration?

We are aware that this service will be removed at the same time as other funding cuts for those who are not LSC contracted providers. The evaluation of the SSS indicates that many of those who use the service may be not for profit providers. Not for profit agencies made up 86% of referrals in the evaluation, with 45% of all referrals reviewed coming from Citizens Advice Bureaux.²² We note the comments made by the LSC about continuing to support generalist advice, but are concerned at how removing the service will affect providers who are about to see an increased number of people coming to them for help when there is more pressure on more specialist advisers.

Further, the MOJ itself has raised concerns about the ‘juniorisation’ of the profession since the introduction of fixed fees. As illustrated in some of the examples in this report, the SSS is able to compensate for this by providing a service for junior lawyers in specialist firms who can access the line independently of their supervisors to ensure their client’s needs are met.

²¹ EIA, p.19

²² Specialist Support Consultation Paper, LSC, para 4.3

Conclusion

Given our concerns above, we would ask the LSC to retain the Specialist Support Service. It forms an essential part of crucial legal services provided to vulnerable individuals and ensures the client can receive efficient and effective advice to help resolve their legal issue.

Yours sincerely,

Katie Brown and Connor Johnston
Co-Chairs YLAL