

**CIVIL BID ROUNDS FOR 2010 CONTRACTS
LSC CONSULTATION**

Response on behalf of the Family Justice Council

1. The Family Justice Council's primary role is to promote an inter-disciplinary approach to family justice. Its membership includes a representative cross section of those who work in, use, or have an interest in the family justice system. It is grateful to the Legal Services Commission (LSC) for agreeing to extend the time for submitting a response to the consultation.
2. The Family Justice Council (FJC) recognises the validity of the principles on which the LSC bases its proposals for future contracting: 'the vision for a civil and family legal aid system that was more closely focussed on people in greatest need; better coordinated and cost effective; and more effectual in tackling the causes of legal problems'. It notes that the Commission has 'sought to balance the need to change with the capacity of providers to deliver it and our desire not to disrupt services that are working well'.
3. The FJC particularly welcomes the commitment in the Family Strategy: 'It identified priority areas of funding as services for children, adults at risk of abuse and parents whose children are the subject of care proceedings'. Domestic abuse and the effect of abuse on children and women have been at the forefront of work done by the FJC in the private law sphere, particularly in relation to contact disputes.
4. It is for the various professional organisations to respond to the detail in the consultation document; however, the FJC wishes to make known its concerns about the proposed changes in contracting, which it believes are likely to drive out a number of experienced practitioners from legal aid work in some areas. Reports from local FJCs have pointed to an exodus of experienced care lawyers, for example in Kent. The age profile of those on the children panel is high and a number of practitioners are reaching retirement. They are not being replaced with a new generation.

5. The FJC also has concerns that the proposals will have a disproportionate impact on the recruitment and career advancement of BME solicitors. BME solicitors are much more likely to join firms undertaking legal aid work arising out of choice/recruitment practices and patterns or a mix of both. A reduction in the number of firms will be likely to reduce the numbers of BME practitioners. This will raise issues of diversity and choice of representation, since BME litigants frequently tend to instruct BME solicitors. These tend to be in smaller practices which would be less equipped to expand areas of practice. If they merge with larger firms there is a significant risk of loss/dilution of the specific service they will be able to offer BME clients. In addition BME practitioners are only now reaching the point where sufficient progress has been made for them to be better represented on bodies such as the children panel. The proposed changes will have a negative impact on this.

6. The service combinations in family law (chapter 4) requiring firms to provide a complete range of work in service area A and a minimum number of matter starts of 100 may drive out specialist children practitioners in those areas. The LSC cannot assume that those who at present focus on children work will wish or be in a financial position to develop their practices to cover all the work which will be required. A number of firms have developed expertise in children work because of a commitment to work concerning the welfare of children even in circumstances when it is not economical to do that work. The undertakings given by solicitors on the children panel to be responsible themselves for the cases both in the office and at court are not consistent with the model being developed by the LSC of a number of junior members of staff being supervised by a more senior person. Care cases are of the utmost importance; the consequence can be the removal of a child from his or her family for ever, or leaving a child in an abusive family. The LSC must recognise the importance of maintaining access to lawyers who have the necessary skills and experience to cover these cases.

7. The FJC questions whether it is sufficient to have five firms within a bidding zone. The LSC recognises that the mean number of parties in care proceedings is four - but there are cases where there are more than four

parties, for example, where family members need advice, or where there is more than one child and each child has a different father; or where there have been previous proceedings in relation to other children which raise a conflict in the present case. We would suggest that it is necessary to have more than five firms in a given area to avoid the need for parties to travel in order to seek advice. Fewer firms will also give rise to listing problems and these are likely to lead to clients getting a poorer service where lawyers are appearing in different cases listed on the same day. More clients will have to rely on a substitute for their lawyer - counsel or another solicitor. This is most likely to impact negatively on representation for parents and joined parties because of the expectation that children's representation is continuous. The problems in areas with a low population and a sizeable geographical spread, such as Cumbria, are already acute and are likely to be exacerbated by the proposed changes.

8. It seems that one of the purposes of requiring a range of services and a minimum number of matter starts is to ensure that all firms have some work that is paid at lower rates and some work that is paid at higher rates (although all legal aid rates are very much lower than commercial rates). Some firms may already be providing a good range of services over the various different rates and others may be able to develop such practices, but there will certainly be firms who are not able to continue to provide services at all if they are obliged to provide the range of services that will be required. At present these firms are doing legal aid work and contributing to provision of legal services for those who cannot afford them. The FJC does not agree that it is sensible to structure future contracts in order to exclude those providers, although it does accept that there should be a minimum value to contracts so that the LSC is not contracting with providers who do very little legal aid work.
9. The LSC argues that there needs to be a seamless service for those seeking advice so that they can be advised on a full range of services in the same firm. Although that is desirable, experience of those doing care work, for example, is that there is a greater overlap between crime and care and immigration and care than there is between care and ancillary relief. However, the LSC is not insisting on crime being available to all family law

providers. It is illogical to insist on ancillary relief being available by all family law providers.

10. The proposed new framework will also drive out organisations such as NYAS who have been committed to providing a service for children; it is not in their remit to provide a range of family legal services for adults. It provides specialist legal advice, support and services to vulnerable children. Its services are of high quality and great value and, consequently, the LSC should maintain a system which allows excellent organisations such as NYAS to continue their work.
11. The loss of the skills both of solicitors in private practice and in organisations such as NYAS is not only a loss to individual children and their families in particular cases; it is a loss to the sensible running of the family justice system as a whole. The experience of practitioners is one of the key features in the efficient running of cases - not only in care cases which require careful timetabling, but also in cases about contact and residence, where solicitors with experience are more able to help their clients take reasonable positions, and are more able to distinguish with confidence those cases where, for example, fact finding in relation to domestic violence is necessary and those cases where it is not.
12. In area B, it will be possible for firms to bid for contracts to do care work alone, but this proposal again demonstrates that the new framework will create artificial difficulties for children practitioners and their clients. At present, those who have developed practices focusing on children are able to do the range of cases which concern children. For example, a practitioner might be appointed by a guardian ad litem to represent a child in a difficult contact dispute; the problems for the child might be such that the court orders the local authority to investigate under section 37 of the Children Act 1989; the local authority might then take care proceedings in relation to the same child. It would be unfortunate if there needed to be a change of firm at that point. Likewise, care proceedings sometimes lead to adoption proceedings which are regarded as private law cases by the LSC.

13. It is the view of the FJC that the present LSC proposals will create artificial boundaries to work. In insisting that all practitioners do a full range of work, experienced practitioners will be lost to legal aid work and that will have a negative impact on the Family Justice system as a whole, and upon children and parents who will lose a range of providers.