



House of Commons

Committee of Public Accounts

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# **Community Legal Service: the introduction of contracting**

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**Twenty-fourth Report of  
Session 2002–03**





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# Community Legal Service: the introduction of contracting

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**Twenty-fourth Report of  
Session 2002–03**

*Report, together with formal minutes and  
minutes of evidence*

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## The Committee of Public Accounts

The Committee of Public Accounts is appointed by the House of Commons to examine “the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit” (Standing Order No 148).

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Angela Eagle MP (*Labour, Wallasey*)

### Powers

Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [http://www.parliament.uk/parliamentary\\_committees/committee\\_of\\_public\\_accounts.cfm](http://www.parliament.uk/parliamentary_committees/committee_of_public_accounts.cfm). A list of Reports of the Committee in the present Session is at the back of this volume.

### Committee staff

The current staff of the Committee is Nick Wright (Clerk), Leslie Young (Committee Assistant) and Ronnie Jefferson (Secretary).

### Contacts

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## Summary

In April 2000, the Legal Services Commission (the Commission) was given responsibility for establishing and maintaining in England and Wales the Community Legal Service (the Service), which incorporates the old civil legal aid scheme. The Service provides eligible people with access to legal services, for example on family law (including advice in support of family mediation), social welfare issues, and advice on asylum applications. Most applicants for civil legal aid are required to undergo a means test. In 2001–02, net expenditure borne by the Community Legal Service Fund totalled £734 million. The Commission is accountable to the Lord Chancellor's Department (the Department).

The Commission funds the provision of civil legal aid through contracts with suppliers under two headings:

- *Controlled work* consists of all legal advice, and legal representation before certain tribunals. The supplier decides whether to provide services in a case, under a contract which limits the number of cases it may take, and which limits expenditure on individual cases to specified approval thresholds. Expenditure on controlled work totalled £258 million in 2001–02.
- *Licensed work* covers all legal representation before the Courts, including all high cost cases, which are managed under individual contracts with the Commission. Most work on representation follows on from advice cases. Expenditure on licensed work totalled £476 million in 2001–02.

At 31 March 2002, 4,543 solicitors' firms and 389 not-for-profit agencies had contracts with the Commission to provide legal help, and a further 389 solicitor's firms were licensed to carry out legal representation work.

On the basis of a Report by the Comptroller and Auditor General,<sup>1</sup> we took evidence from the Department and the Chief Executive of the Legal Services Commission. We draw the following main conclusions from our examination:

- Suppliers of Civil Legal Aid provide an important service to some of the most disadvantaged people in society. The good service provided by many suppliers may, however, be tarnished by poor quality advice and persistent over claiming of costs by some. The Department and the Commission needs to act quickly in such cases to bring about early improvements in performance to protect the interests of those needing advice, and to protect public funds. Firms who consistently underperform or overcharge should have their contracts terminated and, where appropriate, be referred to their professional body.
- Shortages of expertise exist in some areas of legally aided work such as family law, creating potential access difficulties especially for those living in rural areas. The Commission should consider how the supplier base can be developed further, for

1 C&AG's Report, *Community Legal Service: the introduction of contracting* (HC 89, Session 2002–03)

example by extending accreditation schemes for people training as specialists in particular aspects of the law only. Such an approach may reduce the overall costs of advice, and provide greater flexibility of supply.

- The Commission should obtain more evidence about the quality of service provided by suppliers by evaluating outcomes achieved for clients where appropriate, and by extending the use of its peer review system, already trialled successfully on asylum and immigration work in London. Past service quality should be evaluated in making decisions about the award of contracts and costs of services.
- The Commission should evaluate the costs and benefits of its current approach to administering the Community Legal Aid Scheme, and devote resources to those activities which have the most impact in protecting public funds or which address areas of greatest risk. The Commission's debt recovery team, for example, recovers one pound for every three pence spent on the team, and a similar evaluation of the compliance audit regime should be undertaken. The outcome should be compared to alternative methods of oversight such as analysing the profile of claims submitted by suppliers and automated review of trends in claims and payments, especially where a supplier's audit record is good. An investigation should also be made into how the application of new technology could offer significant savings in the auditing of suppliers' compliance.

# 1 Controlling the cost of civil legal help and advice

1. Expenditure on civil legal aid rose rapidly during the 1990s, reaching a peak in 1999. Recent trends suggest that whilst total expenditure has declined (**Figure 1**), expenditure on controlled legal help work has increased. The amounts claimed for completed work, for example, on immigration increased from £58 million in 2000–01 to £138 million in 2001–02 and are expected to increase further in 2002–03. The decline in expenditure on licensed work reflects changes in the law and the reclassification of personal injury and some commercial disputes, for example, to a conditional fee basis.<sup>2</sup>

**Figure 1:** Summary of expenditure on civil legal aid between 1995–96 and 2001–02

Overall, expenditure on civil legal aid has decreased over the last six years. While expenditure on legal help has increased over this period, expenditure on legal representation has reduced.



Source: National Audit Office analysis of Legal Services Commission data

2. The Commission has introduced compliance audits to validate the claims received from suppliers on controlled work. It has some 450 people involved in auditing work, at a cost of £6 million a year. The audits include a review of suppliers' case files, and in 2001–02 auditors examined a sample of 20 claims from each of 2,571 suppliers, representing 52% of participating suppliers. The results of each audit are categorised 1 to 3 on the basis of the percentage of costs disallowed. The categories correspond to downward assessments of costs claimed of 1 to 10%, 11 to 20% and over 20% respectively.

3. In 2001–02, 35% of suppliers were assessed as Category 3, and the overall average level of downward assessment was 24%, amounting to £2.5 million across the cases examined. These results were prior to mediation and appeal by suppliers. The National Audit Office reported that some suppliers were dissatisfied with the initial assessments because, for

example, work had been done by the supplier but not recorded in a transparent way on their file. Informal discussions between the Commission and suppliers usually resulted in reduction of the initial assessment, and in 2001–02, 10 firms made formal appeals, one of which was accepted, four partly upheld and five rejected.<sup>3</sup>

4. In 2001–02, the Commission recovered £2.1 million in overpayments and reduced bills by a further £4.25 million. In one case, a supplier had to repay almost £700,000 out of a total value of £2.3 million, a reduction of around 30%. The Commission attributed overcharging in this case to bad file keeping. The Commission acknowledged that some suppliers' performance needed to improve but the Commission did not believe there had been systematic fraud.<sup>4</sup>

5. The Commission can issue a formal notice of contract termination to suppliers who do not respond to a warning to improve. The Commission said around 30 such notices had been issued at the time of the Committee's examination, with the number likely to increase over the following months. The removal process, however, takes at least 18 months. 69 suppliers had withdrawn as a result of a Category 3 assessment, and 26 firms had contracts terminated. The Commission agreed that the time taken to remove contractors for poor service or persistent and significant over claiming should be reduced. It was about to commence consultation on proposals to tighten the contracting regime.<sup>5</sup>

6. The Commission acknowledged the Committee's concerns about the quality of advice on asylum issues provided by some suppliers. In London the Commission had employed expert immigration lawyers to peer review the files of asylum legal help suppliers rated as Category 3. This exercise had provided evidence to support the recovery of money from firms making unreasonable claims, and evidence of work which had placed clients at risk. It had also developed the existing expertise in the Commission's London office for managing the contracts of immigration practitioners. Peer review resources would be expanded further from April 2003. Where peer review identified that a client had been placed at risk by the firm, the firm's contract would be terminated immediately. If public money had been placed at risk, a contract rectification notice would be issued immediately giving the firm six months to improve or have their contract terminated, as the Commission did not believe a Court would accept contract termination without warning in such circumstances. Category 3 firms would also have their number of case starts for 2003–04 reduced by 20% from 2002–03 levels.<sup>6</sup>

7. In 2001–02 the proportion of all suppliers classified as Category 3 varied between 18% in the Cambridge region and 58% in Nottingham. The Commission acknowledged that there was a lack of consistency in approach to compliance audits between its regional offices. The Commission was planning to identify the reasons behind the variations, and address them, for example through further staff training. Some variations were inevitable, but the

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3 C&AG's Report, paras 2.4–2.10

4 Qq 4, 125, 128

5 Qq 90, 106, 131; C&AG's Report, para 2.12

6 Ev 28

Commission accepted the need to reduce the range of variations across the 12 regional offices.<sup>7</sup>

8. The average cost of legal help across all categories of law excluding immigration increased by around 20% in 2001–02. The Commission’s research suggested that billable time had increased even though the life span of cases had not changed since the introduction of contracting. A debt case, for example, took on average 240 minutes to complete in January 2002 compared to 155 minutes in January 2000, and a family case took on average 147 minutes in January 2002 compared to 127 minutes in January 2000. The Commission suggested that the controls on the number of cases taken on by suppliers had encouraged solicitors to focus less on routine processing of simple cases of little added value and more on cases of higher quality, leading to an increase in unit costs. Complexity and better time recording had played a part. The Commission was, however, unable to say which factors were the most significant.<sup>8</sup>

9. Legal advice and help for those who cannot afford it might be provided more effectively by training people to specialise in those areas of law where advice is needed rather than through solicitors whose training covers all legal areas. The Department confirmed that contracting was leading to more focus on firms specialising in particular areas of law, and that the not-for-profit sector had brought in people with different skills and training. The Department was not certain, however, that the market would sustain profit-making firms staffed only by people trained in one particular area of law. The Department had funded training and development schemes to encourage people to enter particular branches of the law. Accreditation schemes were run with the Law Society to, for example, enable people to deal with criminal work in a police station. The Commission acknowledged that the principle could probably be extended to areas such as asylum.<sup>9</sup>

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7 Q 218; C&AG’s Report, para 2.16

8 Q 1; C&AG’s Report, para 2.3

9 Qq 1, 29, 32, 41, 125, 167; C&AG’s Report, para 2.3

## 2 Assessing the means of applicants

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10. In its 1996 Report on Civil Legal Aid Means Testing our predecessor Committee endorsed improvements in arrangements to verify the means of applicants for civil legal aid. When an application for legal aid is made, the Commission is obliged to serve notice on the other party in the case. The number of representations contesting eligibility for support, usually made by the other party, has fallen from 18,000 in 1996–97 to 5,800 in 2001–02. The Commission therefore considered that the current assessment procedures were screening out a larger proportion of ineligible applicants leading to the decline in representations received.<sup>10</sup>

11. The Commission's Special Investigations Unit, comprising 13 staff, investigates the applications for legal aid when significant issues about eligibility are raised, particularly in costly cases. In 2001–02, the Unit concluded full investigations into 150 civil cases, of which 85% led to the refusal or withdrawal of funding or to an increase in contributions payable by the applicant. Three successful prosecutions for false disclosure had been made in the previous year. Where information on fraudulent claims might be relevant to other agencies, for example the Benefits Agency, the Commission said that it was bound under the Statute of Confidentiality not to disclose information about legal aid applications to third parties. The Lord Chancellor's Department suggested, however, that recent legislation would now allow disclosure where there was suspicion that an offence may have been committed.<sup>11</sup>

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10 Q 153; C&AG's Report, para 2.20; 25<sup>th</sup> Report from the Committee of Public Accounts, *Civil Legal Aid Means Testing* (HC 314, Session 1995–96)

11 Qq 147–148, 150; C&AG's Report, para 2.22

## 3 Maintaining access to high quality services

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12. Since April 2000, providers of legal and advice services have been able to apply to the Commission for a Quality Mark, and potential suppliers of civil legal aid must obtain a Specialist Help Quality Mark. To attain a Specialist Help Quality Mark, the Commission requires suppliers to meet standards covering seven key aspects: access to services; seamless service; running the organisation; people management; running the services; meeting the clients' needs; and commitment to quality.<sup>12</sup>

13. The Department considered that contracting had improved the quality of civil legal aid services. The Department had commissioned a survey of people's need for legal advice and advice on disputes, which had suggested that 84% of the people contacted were satisfied with the quality of service received, and 81% would recommend the same advisor to someone else.<sup>13</sup>

14. The Quality Mark sets minimum standards but no quality measures are available to identify the best suppliers, or to determine whether work undertaken added value for clients. The Commission acknowledged that suppliers' experience and ability will affect performance. In some areas of the law success could be measured relatively easily, for example contractual claims or an application for judicial review were either won or lost. But in some cases, for example in family disputes which cover 140,000 of the 160,000 legal aid certificates issued each year, the notion of winning or losing was inappropriate. Whilst data on the outcome of cases could be meaningful in assessing quality, suppliers should not be discouraged by such a measure from taking on marginal cases where that was in the public interest, for example in areas such as clinical negligence. The Commission suggested improvements in quality might be achieved if a higher level of individual accreditation under the Service were to be encouraged, which would recognise specialist expertise, and might attract a higher level of remuneration.<sup>14</sup>

15. The Commission estimated that the introduction of the Community Legal Service in April 2000 reduced the number of solicitors providing legal help and advice from 11,000 to under 5,000. For some applicants, particularly smaller firms, the investment required to attain a quality mark, for example in supervision and training, would not be matched by the potential pay-back from publicly-funded business. Since April 2000 the number of solicitor firms providing legal help and advice had declined further from 4,733 at the launch of the programme to 4,427 in July 2002 (**Figure 2**).<sup>15</sup>

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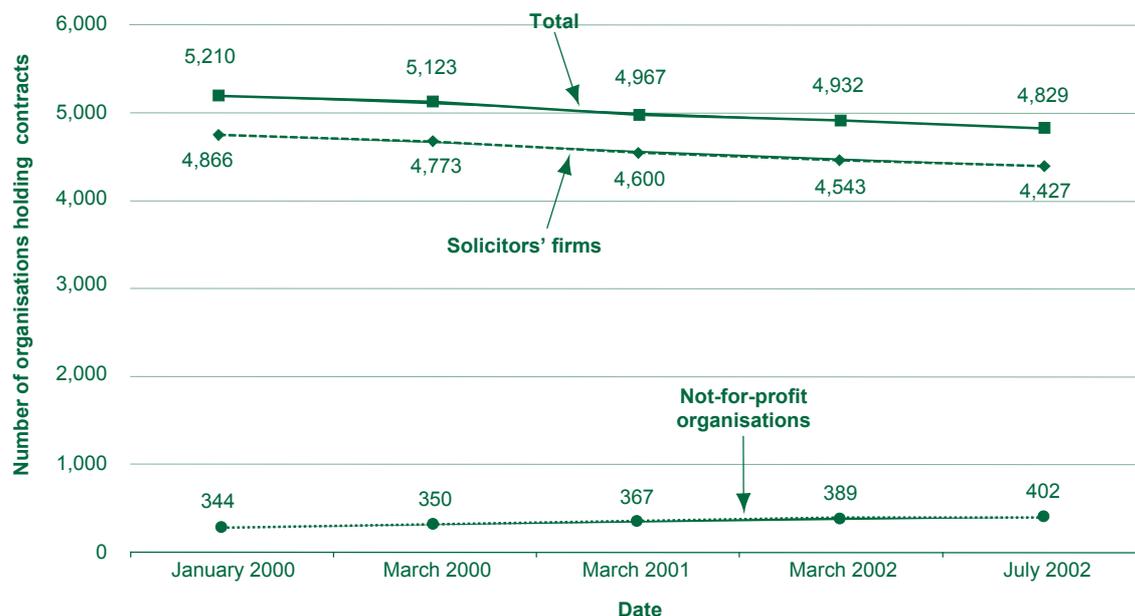
12 C&AG's Report, para 3.3

13 Q 7

14 Qq 22–24, 119, 126

15 Q 29; C&AG's Report, paras 3.10–3.11

**Figure 2:** The number of solicitors' firms with contracts has declined, partly compensated for by an increase in the involvement of not-for-profit bodies



Source: National Audit Office and Legal Services Commission data

16. The Commission did not believe that access to services had deteriorated, as they considered that solicitors remaining in the scheme were more specialised at the work. On whether people were having to travel further for advice, the Commission suggested that, for example, people outside urban areas had traditionally travelled into local towns to obtain advice. A network of Community Legal Services Partnerships had been established to assess the need for legal services in local areas against supply. These partnerships comprised representatives from the Legal Services Commission, local authorities and other funders, legal service suppliers and users. The Commission's regional offices were working to meet the needs identified.<sup>16</sup>

17. The availability of legal help and advice varied depending on the area of law. A lack of experience and expertise existed in some important sectors of law. In family law, for example, 16.8% of practitioners had left the legal aid scheme since contracts were introduced. Solicitors had suggested to the National Audit Office that the remuneration levels were a factor in firms leaving. Solicitors advising on debt, housing and welfare benefits had also left the scheme, often because they had been unable to meet quality standards. Not-for-profit agencies had taken on some of this work. The Commission noted that suppliers were also required in mental and community care, and accepted that more effort was needed to attract suppliers into specialist areas. Funding had been given to training and development programmes to encourage people to work as solicitors on publicly-funded work, and the Commission intended to consult on training non-solicitors to work in the advice sector.<sup>17</sup>

18. The Commission had encouraged greater involvement from the not-for-profit sector, and the number of such suppliers had risen from 350 in April 2000 to 402 by July 2002.

<sup>16</sup> Qq 13, 16, 29, 81

<sup>17</sup> Qq 8, 32, 80, 158–159

The Commission had established six new law centres in the previous two and a half years. Research undertaken for the Commission had suggested that the not-for-profit sector generally obtained better results for clients but took longer to bring cases to a conclusion. Most not-for-profit bodies were paid by the Commission to provide an agreed number of hours of advice, rather than to handle a specified number of cases. Whilst the role of the not-for-profit sector had expanded, the Commission did not envisage any further significant increase in the sector's share of the work.<sup>18</sup>

19. The Commission had established a Partnership Innovation Budget to encourage providers of advice to be imaginative in reaching people who might not access legal services in the traditional way. Research had suggested that people in temporary accommodation, people with disabilities, and younger people tended to make less use of services. In areas of law such as housing, employment, debt and welfare benefits, advice could now be sought by telephone. The Commission confirmed that telephone advice was not intended as a substitute for private practice or advice agencies.<sup>19</sup>

20. On advice to those seeking asylum in this country, the Commission acknowledged that it was only just coping with the challenges posed by the increasing number of asylum applicants, and of people going through the appeal process, and the dispersal of asylum applicants from the South East into areas where there had been little previous asylum work and therefore no supply. Some of the best solicitors handled asylum issues but the Commission was also concerned about the number of poorer performing firms identified by the cost assessment audits and the system of peer review recently introduced in the London region.<sup>20</sup>

21. Members of Parliament are aware of people who have received poor service and advice on legal matters, and remain concerned about the action taken when lawyers do not meet professional standards. They have been approached by lawyers to take action on asylum cases, even though the lawyer is being funded through legal aid to provide advice to the applicant. The Commission asked to be informed of any cases where a provider of legal help had performed badly or not fulfilled contractual obligations. Where, for example, it had evidence of overcharging or poor advice it could approach the Law Society. Since 1996 the Law Society's Office for the Supervision of Solicitors had made decisions on thirty cases referred to them by the Commission and 10 referrals were outstanding. No further action had been taken in 12 cases but in the others, solicitors had been fined, reprimanded or suspended.<sup>21</sup>

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18 Qq 113, 156–157; C&AG's Report, para 3.12 and Figure 11

19 Qq 9, 13, 17

20 Qq 11, 35, 98

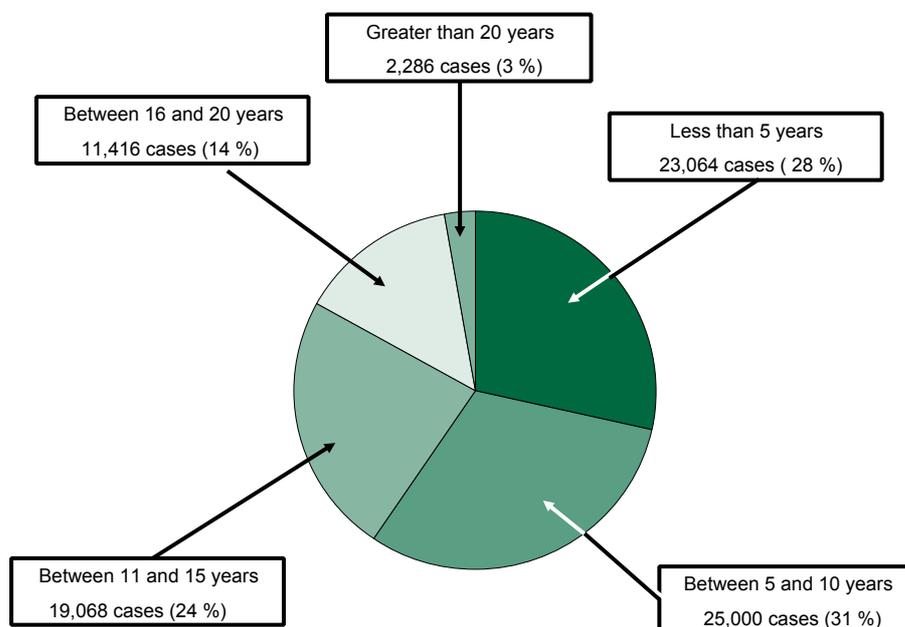
21 Qq 194–202, 132, 220, 223, 227; Ev 26

## 4 Collecting debts and reducing administrative costs

22. At the end of March 2002, the Commission was owed almost £371 million from three main sources: clients required to make contributions to legal costs; court orders awarding costs to the Commission; and statutory charges on the property of funded clients. During the year, debts totalling £20 million were written off, comprising £11.7 million irrecoverable costs and £8.2 million contributions from funded clients. Once an initial request for payment has not been met outstanding amounts are referred to the Commission's Debt Recovery Unit. The Unit recovers one pound for every three pence it spends.<sup>22</sup>

23. Statutory charges comprise the major part of the Commission's debtors (£254 million in 2002). Usually arising from marital cases, these debts are secured by a charge on the property of a client with the legal aid costs recovered when the property is sold. The Commission said that these charges were usually recouped, but recovery could take many years (**Figure 3**). The matrimonial home is often the only significant asset and a statutory charge secures repayment of the debt. Debts can be repaid voluntarily if the financial circumstances of the debtor change, but the Commission agreed that there was no obligation on people to pay more quickly in such circumstances.<sup>23</sup>

**Figure 3:** Analysis as at 31 March 2002 of the length of time that statutory charges have been in place



Source: Legal Services Commission data

22 Qq 65, 67; C&AG's Report, para 2.28

23 Qq 44–50; C&AG's Report, para 2.29

24. In 2001–02, the Commission spent £71.7 million on administrative costs, of which around £60.4 million was attributable to the Community Legal Service. The Department had set objectives and targets for the Commission, and the Commission’s systems had been benchmarked against those of other bodies. On whether administrative costs could be reduced, for example by relying less on audit and more on information technology systems to monitor suppliers, the Commission planned to bring together administrative systems for monitoring cost and quality to provide a more rounded assessment of supplier performance. On why 1000 staff were needed to manage 5000 providers of legal advice and representation, the Commission was currently running two systems of legal aid as cases still existed under the previous scheme. It had set up and managed telephone advice lines and specialist support services, and was also managing criminal defence service contracts and public defender services.<sup>24</sup>

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24 Qq 207–208, 213–214, 216; C&AG’s Report, para 1.19

## Conclusions and recommendations

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### Controlling the cost of civil legal help and advice:

1. The Commission's auditors' understanding of suppliers' businesses should be sufficient to allow the accurate assessment of potential overcharging at the time of the audit, reducing the burden on suppliers arising from mediation processes following the audit.
2. The Commission should reduce from eighteen months the time taken to remove contracts from those suppliers where there is evidence of persistent and significant overcharging.
3. The Commission should identify the principal reasons contributing to downward assessments of suppliers' costs arising from its compliance audits, and provide feedback to all suppliers on common problems and how to avoid them.
4. The Commission should examine the reasons underlying the large variation in compliance audit results across the country, and take action to improve consistency through measures such as training and peer review.
5. The Commission should review outcomes achieved for clients by different supplier types (including solicitors, not-for-profit organisations, those with specialist accreditation), and the average costs of the advice and help provided, and use the results of the review to inform plans for developing the legal aid sector.
6. The Commission's audits of supplier contracts has shown that overcharging is most prevalent on immigration and asylum work, particularly in London. The Commission should act quickly to remove known poor suppliers, and consider whether the establishment of a specialist unit to manage asylum contracts would address this problem more effectively.

### Assessing the means of applicants:

7. Whenever it has evidence that an applicant for legal aid may have made a fraudulent claim, the Commission should disclose information to other relevant public bodies, for example the Benefits Agency, where permitted to do so under statute, and refer such claims to the prosecuting authorities for further investigation.
8. The Commission should set measurable performance targets for its Special Investigations and Special Cases Units, to enable their effectiveness to be assessed, including an assessment of the outcome of publicly funded cases.

### Maintaining access to high quality services:

9. The Department should examine the work undertaken since set up by the Community Legal Service Partnerships to determine whether they are assisting in developing local services as intended.

10. Together with the Community Legal Service Partnerships, the Commission should determine how to mitigate the risk of a two tier system of legal aid developing with, for example, telephone enquiry rather than face to face advice becoming the only help available to some clients such as those in rural areas.

#### **Collecting debts and reducing administrative costs:**

11. The Commission should manage more actively debts in respect of legal assistance which are held as a standing charge on property, and which are effectively a subsidised finance arrangement for those owing money to the Community Legal Service. It could, for example, take greater account of changing circumstances which may make repayment more affordable for the debtor, or consider a limited incentive programme to stimulate voluntary repayment.

## Formal minutes

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**Monday 19 May 2003**

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Mr Nick Gibb

Mr George Howarth

Mr Brian Jenkins

Mr David Rendel

Mr Gerry Steinberg

The Committee deliberated.

Draft Report (Community Legal Service: the introduction of contracting), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 24 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Twenty-fourth Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

*Ordered*, That the provisions of Standing Order No 134 (Select Committees (Reports)) be applied to the Report.

[Adjourned till Wednesday 4 June at 3.30 pm]

## Witnesses

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**Wednesday 11 December 2002**

*Page*

**Sir Hayden Phillips GCB**, Lord Chancellor's Department, and **Mr Steve Orchard CBE**, Legal Services Commission

Ev 5

## List of written evidence

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The reference number of the Treasury Minute to each Report is printed in brackets after the HC printing number