



Legal aid: the quashing of the 2010 contracts for family and social welfare work

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For legal aid contract purposes, England and Wales is split up into procurement regions. Firms have a contract with the Legal Services Commission (LSC) to provide legal assistance under the legal aid scheme.

In 2010, the LSC completed a round of bidding for new crime and civil contracts. The process of tendering for and letting new contracts attracted criticism and controversy, most notably in the case of the contracts for legal aid in the area of family law. Those criticisms for the most part centred on the reduction in the number of firms receiving contracts and the consequent effects on access to justice.

Following the tendering process in 2010, it emerged that there had been a significant drop in the number of firms awarded contracts for family and social welfare work: the LSC's own figures indicated that the number of family providers had fallen by almost half. The Law Society then sought a judicial review. In September 2010 judgment was handed down, with the court ruling that the LSC's family legal aid tender round was unlawful, and the outcome of the tender round was therefore quashed. In October 2010, the LSC announced that it would not be appealing against the decision. Following consultation with the Law Society, the LSC announced that the current unified contract for family matters would be extended until midnight on 30 November 2011.

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1 The procurement of legal aid: contracts

The current legal aid scheme was established by the *Access to Justice Act 1999*, which set up the Legal Services Commission (LSC) to administer it. The scheme is, in essence, the same as it was when founded in 1948; it is not a system of direct provision by the state but, rather, one in which the government funds private practitioners to provide the service. Nonetheless, since its inception, numerous changes have been made to the way in which the scheme is organised and managed.

The Labour government, for example, oversaw more than 30 reviews and consultations on the subject of legal aid. The [story of legal aid](#) on the LSC website offers a brief overview of the history of legal aid procurement from 1994, with a timeline:

- 1994: the introduction of franchising, the first quality assurance for legal aid providers
- legal aid door opened to Not for Profit (NfP) agencies: this supported services such as welfare benefits and debt traditionally left to the voluntary sector
- October 1997: Lord Chancellor (Lord Irvine) describes the future of the Community Legal Service (CLS) asking the Legal Aid Board to prepare proposals for providing all civil advice and assistance under contracts
- July 1999: the Access to Justice Act 1999 put a reformed scheme into place that promoted and developed services that could be delivered within a controlled budget and targeted according to need
- it also replaced the Legal Aid Board with the LSC and gave us the power to develop and maintain the CLS and the CDS
- 1 April 2000: launch of the Quality Mark meant only contract holders could carry out civil legal aid work - contract awards are dependent on meeting our quality standards
- 1 April 2001: the CDS now delivers criminal legal aid to ensure that people suspected or accused of a crime have access to advice, assistance and representation.¹

For legal aid contract purposes, England and Wales is split up into procurement regions. Firms have a contract with the LSC to provide legal assistance under the legal aid scheme. Every few years, when the contracts expire, there are fresh bid rounds open to all firms to tender for a contract.

In 2010, the LSC completed a round of bidding for new [crime contracts](#). Details of the [2010 standard crime contract](#) are on the LSC website. In March 2010, the then Lord Chancellor and Secretary of State for Justice, Jack Straw, made a statement on the future of criminal

¹ 27 July 2009

legal aid, in which he reiterated the need for radical change and suggested that contracts would become larger and would be let to fewer, more efficient providers, so encouraging economies of scale.² The new contracts run from 14 July 2010 for three years (subject to early termination or extension by up to two years). It was always planned that the tendering process would run to this timescale and it was not affected by the change of government.

Likewise, the new [standard civil contract](#) came into force on 15 November 2010.

2 Judicial review of the tender for family law contracts

The process of tendering for and letting new contracts has attracted criticism and controversy, most notably in the case of the contracts for legal aid in the area of family law. Those criticisms have for the most part centred on the reduction in the number of firms receiving contracts and the consequent effects on access to justice.

The tendering process for family and social welfare work was launched in February 2010.^{3,4} In July 2010 it emerged that there had been a significant drop in the number of firms awarded contracts for family and social welfare work: the LSC's own figures indicated that the number of family providers had fallen by about 46%, from 2,400 to around 1,300.⁵ In an interview with the *Law Gazette*, the chief executive of the LSC Carolyn Downs commented on the drop:

Now the one set of contracts that did have a higher level of quality criteria in the tender process was family, and the outcome of that has been to reduce the provider base. I do not believe that was the stated intention of the LSC in going into the tender process, but that is the outcome of applying that criteria. And actually I absolutely agree with providers when they say we should be strengthening quality criteria.⁶

The Law Society sought a judicial review of the tender exercise; its skeleton argument in support of its case is available on its website.⁷ On 30 September 2010 judgment was handed down, with the court ruling that the LSC's family legal aid tender round was unlawful.⁸ The outcome of the tender round was therefore quashed.

On 27 October 2010, the LSC announced that it would not be appealing against the decision.⁹ Following consultation with the Law Society, in November the LSC announced that the current unified contract for family matters would be extended until midnight on 30 November 2011. Regarding the allocation of new matter starts between now and then, it said:

The LSC will also allocate new matter starts to cover the period from 15 December 2010 to 30 November 2011. That allocation will be set out in the new contract schedule which will be sent to providers before 15 December 2010.¹⁰

² HC Deb H22 March 2010 c13-14WSH. The Government's outline proposals can be found in the Ministry of Justice's policy statement [HRestructuring the delivery of criminal defence servicesH](#), published on the same date.

³ Community Legal Service press release, [H2010 contracts in Family \(including Family Mediation\) and Social Welfare LawH](#), 18 March 2010

⁴ Community Legal Service press release, [HSocial Welfare Law and Family tender processesH](#), 14 April 2010

⁵ "HFamily law supplier base 'decimated' by LSC tenderH", *Law Gazette*, 29 July 2010

⁶ "HInterview with LSC chief executive Carolyn DownsH", *Law Gazette*, 5 August 2010

⁷ Law Society news release, [HLegal aid: judicial review updateH](#), 21 September 2010

⁸ [HLaw Society of England and Wales v Legal Services Commission \[2010\] EWHC 2550 \(Admin\)](#)

⁹ LSC press release, [HLSC will not appeal the Law Society judicial review judgmentH](#), 27 October 2010

¹⁰ LSC press release, [HLSC statement on family and family with housing contractsH](#), 12 November 2010

The LSC¹¹ and Law Society¹² have each published a list frequently asked questions.

Rosie Cooper tabled a series of questions about the case and its implications for the tendering process and complaints in January 2011. Parliamentary Under-Secretary of State at the Ministry of Justice, Jonathan Djanogly, described developments since the judicial review:

In early 2011 the LSC will undertake a lessons learned review of the tender process for both civil and crime 2010 contracts, which will consider feedback received from representative bodies and providers.

(...)

Following judgment in *R (On the application of Law Society of England and Wales) v. Legal Services Commission* [2010] All ER (D) 01 (Oct) which quashed the 2010 family tender, two further extensions to the Unified Contract (2007) have been made (details are provided on the LSC website) for only the providers who currently deliver "family only" and "family and housing" publicly funded legal services. The Unified Contract (Civil) 2007 was extended first until midnight on 14 December and then until midnight on 30 November 2011. This was necessary to ensure continued provision of services following quashing of the family law tenders for new contracts.

The extension provisions of the contract were again amended this time pursuant to Clause 13.2 (and not 13.4) of the Unified Contract (Civil) 2007 Standard Terms, in reliance on the above judgment. This approach was approved by the court at the final hearing.¹³

¹¹ LSC, [HFAQ on extension of the Unified Contracts \(Civil\) 2007 - Family and Family and Housing Categories of LawH](#), November 2010

¹² Law Society, [HQ&A: judicial review outcomeH](#), 15 October 2010

¹³ HC Deb H10 January 2011 c184-7W