

Agenda item:

**VOLUNTARY SECTOR COMMITTEE**

**23<sup>rd</sup> NOVEMBER 2009**

Report Title. **The Legal Services Commission (LSC) Legal Advice Procurement Reforms - Update Paper**

Report of **Wayne Longshaw – Interim Assistant Chief Executive – PPP&C**

Signed :



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Wards(s) affected: **ALL**

Report for: **Non Key Decision**

**1. Purpose of the report**

- 1.1. To provide an update on the feasibility of Haringey Council entering into a joint funding relationship with the Legal Services Commission (LSC) for the procurement of social welfare legal advice in Haringey
- 1.2. To make recommendations for a way forward

**2. Introduction by Cabinet Member (if necessary)**

- 2.1. Having explored the feasibility of the Legal Service Commission (LSC) proposal of joint funding for the procurement of Social Welfare Law (SWL) in Haringey this report concludes that it would be prudent to postpone any further negotiations as the benefits are unproven and there is potential of destabilise long established and respected local providers.

### **3. State link(s) with Council Plan Priorities and actions and /or other Strategies:**

#### **Council Priorities-**

- 3.1 Encouraging lifetime well-being, at home, work, play and learning
- 3.2 Promoting independent living while supporting adults and children when in need
- 3.3 Delivering excellent, customer focused, cost effective services.

#### **Council Strategies**

- 3.4 Haringey Local Area Agreement/Haringey Community Strategy

### **4. Recommendations**

The Voluntary Sector Committee to agree:

- 4.1 That the Council does not enter into a joint funding relationship to provide Social Welfare Law with the LSC.
- 4.2 That the Council work in partnership with the Haringey Community Legal Services Partnership (HCLSP) to explore the possibility of developing a Community Legal Advice Consortium in Haringey that could – if desired – bid for the LSC contract for the provision of Social Welfare Law (SWL) in Haringey once it goes out to tender.

### **5. Reason for recommendation(s)**

- 5.1 The Haringey Citizen's Advice Bureaux (HCAB) and the Haringey Law Centre (HLC) were reviewed as part of the 2009 Review of Community Organisations and Legal Advice Centres and both organisations demonstrated a high level of service delivery, good partnership working and a clear understanding of the needs of the local community. Both organisations have been recommended for 3 year continuation of funding.
- 5.2 The LSC approached Haringey in 2006 with a view to jointly tender for Social Welfare Law on a 3 year funding arrangement. The proposal is to have one provider (not necessarily Borough based) who may or may not sub contract to local legal and advice providers. It was agreed by the Voluntary Sector Committee held on the 27<sup>th</sup> April 2009 that Officers explored this proposal and report the finding back to the next Committee.
- 5.3 Officers have consulted with the local advice sector through the Haringey Community Legal Services Partnership and have reviewed the current position with other local authorities as to the take-up and success of the LSC proposal.
- 5.4 To date the established CLACs have been developed outside of London. These are: Gateshead, Hull, Derby, Portsmouth and Leicester. Tenders are currently open to deliver services in another two areas: West Sussex and East Riding.
- 5.5 The only London authority that has expressed an interest in developing a CLAC is Barking & Dagenham. However, there is no date for when this will be put out to

tender.

- 5.6 The impact of the introduction of CLACs appears to be mixed. In Gateshead and Derby the contracts were awarded to consortia led by the local Law Centres. The consortia included Law Centre, CABx and legal aid solicitors. In Hull and Leicester the contract was awarded to Action for Employment (A4e) a private sector agency, who uses a legal aid solicitor to deliver the service. The consequence of this has been the loss of valuable and long established advice provision in the local area as in Hull the CAB which had been around for more than 50 years closed and in Leicester the Law Centre closed.
- 5.7 A report published by the Ministry of Justice (MoJ) in June 2009 stated that it was too early to assess the impact of CLACs, however there was concern at the loss of key voluntary sector provision in Hull which led to Government providing funding to retain a service at Hull CABx and also East Riding CABx on the basis that during a time of economic hardship it was vital to maintain locally recognised services where people could access debt advice. Attached at Appendix 1 for supplementary information is an extract from the MoJ report.
- 5.8 EU Procurement regulations state that all procurement processes must be opened up to fair and transparent competition. Therefore the Council and the LSC cannot jointly draw up a service specification which is favoured towards Haringey advice providers. This means that when the LSC SWL tender is released there is the risk that it may be awarded to an out of the Borough agency with limited knowledge or direct experience of Haringey's diverse needs. Additionally Council funding would be tied into a restrictive three year contract and would limit the Council's and the advice provider's independent ability to be responsive to the community's changing needs, which would be a particular area of concern given the current economic downturn.
- 5.9 There is the risk that by not entering into a joint funding contract with the LSC, the LSC will establish a separate independent service for delivering their specialist legal services via an out of borough or private agency. But by the same token should the Council enter into a tendering arrangement with the LSC, with the expectation of pooling some financial resources, and the SWL contract was awarded to an agency outside of the Borough, credible local advice providers – mainly the HCAB and Haringey Law Centre – would not only lose their LSC contracts but potentially Haringey's contribution to legal and advice funding. This would undoubtedly affect their sustainability and ability to provide essential services, unless the successful organisation agreed to sub-contract work to them.
- 5.10 To mitigate this risk the Haringey HCLSP have agreed to work together to establish an independent Community Legal Advice Consortium in Haringey that could – if desired – bid for the LSC contract for the provision of Social Welfare Law (SWL) in Haringey.
- 5.11 The aim of the Consortium will be not only to make funding bids to deliver services but to also build on the Haringey's Advice Providers Network to provide a seamless cross agency service to ensure clients are able to get help with their legal problems

through services which are easily accessible, culturally appropriate and well established.

5.12 Subject to the Committee agreeing the recommendations made in the related Review of Community Centres and Legal and Advice Organisations 2010 – 2013, the Council will continue with current advice funding arrangements of contributing to funding core advice services that are not covered by legal aid, such as general help services and some specialist level work that falls outside of the LSC's eligibility criteria.

## **6. Summary**

- 6.1. The Council were initially approached by the LSC in 2006 to discuss the possibility of jointly commissioning a Community Legal Advice Centre (CLAC) or a CLAN in Haringey from 2010. In this arrangement the LSC would expect Haringey to put a realistic level of funding into the new service jointly commissioned service.
- 6.2. EU Procurement regulations prohibit the weighting of bids in favour of one group/organisation therefore the Council and the LSC cannot jointly draw up a service specification weighted towards Haringey local advice providers. Open competition could mean that the SWL contract is awarded to an agency outside of the Borough thereby putting an element of the Council's funding for advice at risk.
- 6.3. The Council should not, at this time, enter into a joint funding contract with the LSC for the delivery of SWL specialist services. There appears to be no real added benefit to Haringey to the LSC proposal and so far there is no convincing evidence that the LSC proposal has been successfully adopted by any of the London Borough's.
- 6.4. The way the LSC proposes to commission their community legal services in the future through one delivery agency for the Borough appears to have little benefit other than less contract management for the LSC.
- 6.5. The Council should work in partnership with the HCLSP to assist them in the formation of a Community Legal Advice Consortium that will be able to bid for the SWL contract for Haringey once it is tendered by the LSC and be in a position to take advantage of other funding opportunities as they arise.
- 6.6. All legal and advice funding from Haringey should remain exclusively for Haringey providers.

## **7. Chief Financial Officer Comments**

- 7.1. The proposals set out in this report seem sensible and will allow service provision to continue for residents whilst supporting the development of a community legal advice consortium which should enable these groups to access work under the SWL contract in the future. There are no additional financial implications from this recommendation.

## **8. Head of Legal Services Comments**

- 8.1. The Head of Legal Services notes the contents and recommendations of the report.
- 8.2. The European treaty principles of equality of treatment for bidders mean that it is not possible to discriminate in favour of providers in the borough, hence the recommendation against working with the LSC on a procurement for Social Welfare Law in Haringey.
- 8.3. The Head of Legal Services notes the proposed partnership between the Council and the HCLSP to assist in the formation of a CLAC which will be able to bid for the LSC contract in Haringey.
- 8.4. The Head of Legal Services advises that there are no legal reasons preventing Members from approving the recommendations in this report.

## **9. Head of Procurement Comments**

Not applicable

## **10. Equalities & Community Cohesion Comments**

- 10.1 The Equalities Team are aware that the Corporate Voluntary Sector Team have consulted and considered in detail, the implications of the approach from the LSC.
- 10.2 As the report makes clear, entering into a joint funding arrangement with the LSC could place at risk, the continuation of accessible and efficient advice services that are sensitive to and meet the needs of the diverse residents of Haringey.
- 10.3 Monitored data suggests that the services of both Haringey Law Centre (HLC) and the Haringey Citizen's Advice Bureaux (HCAB) are used predominantly by some of the most vulnerable and deprived sections of Haringey community. Therefore, any arrangement which has the effect of threatening the existence or independence of these two organisations would potentially exacerbate the disadvantage already faced by this group.
- 10.4 Consequently, the Equalities Team concur with the recommendations of this report.

## **11. Consultation**

- 11.1 The changes in LSC funding arrangements have been discussed on an ongoing basis with the voluntary sector through the Haringey Community Legal Services Partnership. Membership of the HCLSP includes Haringey Citizen's Advice Bureau, Haringey Law Centre and HAVCO.

**12. Service Financial Comments**

12.1 The Corporate core grants budget is currently fully committed and with the need to make ongoing efficiency savings over the next 2 years there is no funding available to contribute to the LSC proposal unless additional reductions are made to the corporate grants budget or the Council wishes to identify funding for this purpose from other funding sources.

**13. Use of appendices /Tables and photographs**

13.1 Appendix 1: The LSC Legal Advice Procurement Reforms – Update Paper

**14. Local Government (Access to Information) Act 1985**

- a. Ministry of Justice Report: Study of legal advice at local level, conclusion and recommendations. (June 2009)
- b. [Also list reasons for exemption or confidentiality (if applicable)]

**Extract from Ministry of Justice Report: Study of Legal Advice at Local Level, Conclusions & Recommendations (June 2009)**

**Community Legal Advice Centres/Networks**

- The concept of a Community Legal Advice Centre or Network [CLAC/N] is to co-ordinate local authority and LSC funding in order to provide “easily accessible face-to-face services (from early advice to legal representation) to address the combinations of problems people experience”. It should be noted that only five CLACs have been established so far, and that these have only been in operation for a short time. It is too early to draw any firm conclusions – whether positive or negative – about the impact of CLACs. Where CLACs have been established, they appear to be working well, and customer satisfaction ratings are good.
- Whilst there are wide variations between the different CLACs which currently exist, they do appear to demonstrate that the model can be an effective way of structuring case mix and associated costs appropriately to the fixed fee scheme. The addition of private sector skills and infrastructure to an advice delivery partnership can result in an efficient business model which allows advisers to concentrate on advising, whilst administration is carried out by specialist administrators.
- Some concerns about the CLAC model have been expressed: first, there is a risk that co-ordinating the two major streams of funding in an area will lead to further fragmentation of the other funding streams (from trusts and foundations, the lottery etc.). The original description of the CLAC/N approach was to integrate LSC, local authority and “other funding”. In recent work and in the CLACs in place so far, the focus appears to have narrowed.

**We recommend that the LSC should take steps to monitor the impact of the establishment of a CLAC or a CLAN on other funding streams in the area, and should aim to involve other existing funders of local advice in plans for a CLAC or a CLAN wherever possible.**

- Second, whilst the establishment of a CLAC should ensure that existing gaps in supply are filled, the reduction of funding to non-CLAC providers may reduce access in areas which previously had a range of different suppliers. Although this was a concern in areas where a CLAC or CLAN had been mooted, but not implemented, there is, so far, no firm evidence to show whether this is happening in CLAC areas.

**We recommend that the LSC monitors the impact of the establishment of CLACs on local advice providers, including the potential for future competition in the area.**

- One of the issues with the creation of CLACs is the different responsibilities and constraints on local authorities and the LSC. Where a local authority has a good knowledge of local communities’ needs, and of existing advice provision, and uses this to shape the CLAC/N in its area this could ensure a CLAC/N which avoided many of the concerns expressed to us by providers and local authorities. It is not clear how much scope local authorities have felt they had (or wanted) to shape the CLAC/N in this way.

**We recommend that action be taken to encourage and support local authorities in shaping local CLAC/Ns.**

VSC 23<sup>rd</sup> November 2009.

The LSC Legal Advice Procurement Reforms – Update Paper

**APPENDIX 1**