

LSC SPECIALIST SUPPORT SERVICE CONSULTATION GARDEN COURT RESPONSE



Introduction

1. This is the response of Garden Court Chambers to the Legal Service Commission's review of the Specialist Support Service issued in June 2007.
2. Garden Court Chambers has been a service provider since the pilot began seven years ago. Under the successive contracts we have provided telephone advice, support with casework (continuing assistance including written work) and training in three areas: Immigration, Housing and Employment. Since January 2006 we have also provided regular electronic legal updates in all three practice areas. We note that Garden Court is the third most frequently used of the SSS providers (review paper Appendix 2 para 6.6 p38).
3. We contributed to and have seen, in draft, the Joint Response for the Specialist Support Providers and agree with its contents. What follows is what we consider we can add.

Consultancy performance

4. In a detailed response to the LSC on 30 July 2007, we demonstrated that the performance statistics used to assess value for money were clearly flawed, so far as Garden Court's figures are concerned. We were able to show monthly performance statistics of between 70 and 80 percent for months when the LSC's figures for us were 32 and 55 percent. At the meeting between the LSC and SS service providers on 24 July, and in the letter of 30 July, we explored some of the reasons for the disparity in the figures, including the LSC's exclusive reliance on figures generated from AIMS software and its predecessor Casetrack, which does not record all types of consultancy work done, such as supervision, file review and legal updates, all of which count towards our total hours. We discovered that the statistics in the review were from 2005, the year when all service providers had to switch from one software package to another (with all the teething problems in the new package, with training interrupted by the July bombings, and the year when we moved chambers and had to suspend the telephone line service for a month. In addition, we discovered at the 24 July meeting that the LSC records *nil hours* for months when (for whatever reason) no report is received, and this *nil hours* is fed into the average. We discovered that the LSC claimed not to have received reports in months when reports were in fact sent. But we were unable to get to the bottom of the extreme disparity between LSC's figures and ours, and have received no clear explanation of the figure of 26 percent publicly recorded as our performance figures.

5. We have expressed our dismay that these figures were not put to us for comment before the LSC's consultation paper was published, and wish to record here our disappointment that no correction or amendment has been issued since we indicated that the figures used are inaccurate. Other responses to the consultation exercise must therefore be read subject to the caveat that the figures on which value for money was calculated are unreliable.

The nature of and need for specialist support

6. The LSC appear to believe that there should come a point when all the first tier advisers (or their supervisors) will be possessed of all the knowledge required to advise clients without assistance. This is not reality. No factor involved is static. The need for specialist advice is constant. The law is not static. Case-law, statute and regulations are constantly introducing changes day by day. Moreover, no case in a given area is exactly the same as another. Advisers in firms and advice agencies (including supervisors) are constantly changing as persons leave or join at different levels. Nor are supervisors necessarily available at the point when advice is required. Importantly, many requests call for the exercise of judgement – does a case have enough merit to justify the grant of public funding or the commencement of litigation? The exercise of judgement is a factor which only comes with experience. This is a significant reason for a consultancy service. Early advice can ensure that it is cases with merit that are continued and that time and money is not spent on unmeritorious ones.
7. Here are some quotations from the *Specialist Support Pilot User Satisfaction Survey*, published by the LSC in October 2003, which we believe encapsulate the role of the Specialist Support Service.

'This service is excellent and a valuable source of current information. In a smaller firm, you are not always in a position to afford all the updated information and we use the service as a support mechanism to clarify certain complex points. It also reduces the cost of seeking Counsel's opinion as you are able to decide the strength and weakness of a matter without using extra public funds.'

'... of invaluable assistance in our casework and hence the service we provide to our clients ...'

'... access to advice on merits for clients [on legal help] is crucial, particularly in view of the cost risks. These advices were also useful for our assessment of whether a CFA is appropriate'

'... it is in the interest of providers as well as clients to strengthen these services'

8. And here are some recent pieces of feedback received from users of our own services.

'Very effective, sometimes you cannot deal with everything over the telephone so this allows you to get additional advice' – Immigration Advisory Service Aug 07

'Extremely [effective]; I will definitely use the service again' – Harrison Bunday July 07

'Very effective – we have used it a number of times and it has always been helpful' – Trafford Law Centre June 07

'Very [effective], to focus strength of case from specialist barristers' – Avon & Bristol Law Centre

'Very useful for cases where a legal representation certificate is not quite justified but contains point of law' – Centre 70 Advice Centre June 07

'Very effective. Homelessness cases often involve acting within set timescales to initiate possible county court/judicial review action and without the supported casework scheme it is unclear whether this could have been explored as efficiently as we would've been required to apply for legal aid investigative help first before instructing counsel' – JR Jones Aug 07

9. What comes through time and again from users of the service is the saving of time and cost represented by the ability to obtain fast, authoritative specialist help at the earliest stages of a legal problem. We are not convinced that the LSC fully appreciates the importance of this aspect of the service even to more experienced solicitors: the value of checking with an expert.
10. It is, with respect, useless to devise policy on the basis of what 'should' be the case (see eg Appendix 2 para 3.16 of the Consultation Paper). Assuming, without evidence, that the researchers referred to in this and the previous paragraph were qualified to make this judgment (that up to 90 percent of the consultancy enquiries could or should have been handled in-house by an SQM supervisor), the best policy is that which addresses reality rather than 'ideal world' conditions.
11. The scheme was successful in part because it was so simple. Anyone with an LSC contract or a Quality Mark could access the service. Attempts to hedge it around with restrictions will result in a decline in take-up as front-line suppliers become unsure of their eligibility to access the service.
12. The LSC does not seem to have factored in to the 'low take-up' its own complete lack of support for the service over the past three years, and the consequent lack of any publicity save that given to its termination of the contracts and the subsequent legal proceedings.

Training (question 5)

13. The LSC proposes to withdraw funding for specialist support training courses (paras 2.7, 4.31). However, the Consultation paper records that the take-up on training courses had been good (para 4.9) and those who attended rated them highly (para 4.7 and Appendix 2 4.9). The reason for withdrawal appears to be that the training courses are high cost as to the

amount spent on each trainee and do not provide value for money (para 4.21, and 4.31 and also page 12 of the draft regulatory Impact Assessment).

14. It is our view that the training courses are a valuable part of the service and should be retained for the reasons that follow. Firstly, they are a successful part of the service, so far as those the Service is intended to assist is concerned. This is not a surprise. They receive quality training from those with whom they have dealings on the advice lines. The training is at low charge (£30 per head to the front-line advisers according to our records when we administered the training) compared to most other training courses (even those from non-commercial organisations are at £100- £200 or above per head). We doubt whether front-line advisers would receive the training they now receive under the SSS contract if training was no longer available. Secondly, courses provide a valuable opportunity to publicise and explain the work of the advice lines to individuals who will come on a course but may not necessarily have used the line. Thirdly, courses enable Support Service personnel to meet front-line advisers, obtain a better understanding of the different kinds of problems in different localities, and hopefully result in suppliers better appreciating the service.
15. The only or main reason for withdrawal appears to be value for money. It is our view that value from that aspect could be greatly increased. Garden Court particularly recalls that in the initial stages of the Contract, when the arrangement was that the Specialist Support provider handled the publicity and marketing of the training, attendances were much higher. Garden Court recalls audiences in excess of 100 for its London training, whereas since the LSC took over marketing the courses, numbers have shrunk to 10-20. Our records show 158 attendees for Housing training in London on 7/3/02, 49 in Manchester and 29 in Bristol on 28/2/02 and 6/2/02 respectively (out of London always lower in that kind of proportion).
16. To increase take-up of training needs constant reminders, distribution of publicity material at every opportunity and the booking of appropriate venues with adequate capacity. In recent years none of this has been happening. The sum total of publicity appears to be the annual distribution of the training brochure. Venues are frequently booked by the LSC with capacity for no more than a dozen or so participants.
17. In our view, the training is attractive and competitive. We propose that it be retained as part of the service. Were Garden Court's contract renewed, we would propose that the publicity, marketing, and administration be carried out by ourselves. Much could be done to meet the LSC's concerns as to value, and that part of the contract should be retained to provide that opportunity.

Restricting the scope of the service: immigration (question 7)

18. We have addressed earlier in this response the inadvisability of restricting the service to specified providers (paras 6 and 11 above). This applies with particular force to those working in the field of immigration. This is an extraordinarily fast-moving, complex and politically charged area of law, where deadlines are generally extremely tight (a decision to remove generally needs litigating, if at all, within 72 hours; applications for reconsideration must be lodged within five days of the immigration judge's decision, or two days if the case is detained fast track). It is also an area where legal aid cuts have decimated the numbers of solicitors working in the publicly funded sector. Those who remain need all the help they can get to respond quickly and appropriately.
19. We believe that our consultancy service is of significant help in allowing those solicitors to continue to provide services in that field. It would be an act of almost criminal short-sightedness to reduce yet further the help for solicitors and accredited caseworkers in the field. If and when this sector demonstrates that it no longer wants the SSS, against a background of proper and adequate marketing of the service – ie if the LSC can demonstrate that immigration solicitors are fully aware of the service but have decided they do not need it, then it might be proper to restrict the service to non-specialists; but not before.

The Bar (questions 9 and 10)

20. The requirement that providers of specialist support must hold a Unified Contract would effectively exclude barristers' chambers from the service. Barristers' chambers cannot enter into Unified Contracts – barristers are not organised to have direct dealings with the general public and are professionally prevented from doing so. Para 205 of the Code of Conduct of the Bar of England and Wales makes this clear:
- A practising Barrister must not supply legal services to the public through or on behalf of any other person including a partnership, company or other corporate body...*
21. There are exceptions, but they relate to barristers employed in particular functions eg by a government department or a legal advice centre (paras 501-2). The same professional difficulties apply to Chambers engaging in referral arrangements with particular solicitors, in our view.
22. To impose this requirement would remove a valuable part of the service, we suggest. Counsel's opinion for free is a unique aspect of the service and part of its appeal. Moreover the quality of the service provided by barristers' chambers over the years has been at least as high as the other providers. It would not appear to be in the interests of the service to deprive it of a quality participant by such a rule. Finally it would seem anti-competitive to remove the Bar from the bidding process – at the least not within the spirit of the

Competition Act 1998, in particular s18 (2)(a)-(c) on imposition of unfair conditions.

23. If the concern is that the SSS should be able to provide legal services as well as advice, it is observed that a significant proportion of those who use the advice lines are solicitors or agencies who have contacted the service because they have a case on which they wish to take advice and are able to take action, based on what they have been advised.
24. The opportunity for barristers' chambers to be Specialist Support Service providers should be retained, and they should be able to participate as a wholly 2nd tier agency.

Conclusion

This concludes our response. We hope that you will find it helpful and we look forward to continuing to work with the LSC in what we regard as an important and valuable project.

David Watkinson and Frances Webber
For Garden Court Chambers
10 September 2007
www.gclaw.co.uk