

Providers of Mental Health Legal Aid Services  
**Sent via email only**

28<sup>th</sup> March 2010

Dear Sirs

We are contacting you as a current holder of a Legal Services Commission (LSC) mental health contract to ask your views about the adverse impact (if any) of High Security Hospital (HSH) clients having to change their legal advisers following our tender.

As you may be aware the LSC is undertaking this consultative exercise following the judgment in the Public Interest Lawyers v Legal Services Commission [2010] EWHC 3277 (Admin) judicial review case. We have attached a consultative questionnaire and would be grateful if you could complete electronically and **return by close of business on 8<sup>th</sup> April 2010 to [oliver.toop@legalservices.gsi.gov.uk](mailto:oliver.toop@legalservices.gsi.gov.uk)**. Unfortunately to adhere to our timetable (below) if you do not return the questionnaire by this date your views will not be able to be taken into account.

The remainder of this letter sets out the context of the tender process, the judicial review case and our next steps.

Although the tender process itself was found to be legal the LSC accepted that as a public body under S49A of the Disability Discrimination Act (DDA) our duties were engaged with regard to the outcome of the tender exercise. Our duties focuses on having 'due regard' to the potential adverse impact of many HSH clients (who are considered *de facto* disabled under the DDA) switching legal advisers and/or providers.

Current arrangements are that the providers who have won contracts through the tender exercise were awarded with exclusive contracts to deliver mental health 'controlled work' (includes advice and representation up to first tier tribunal level) in HSHs. This means that HSH clients who experience new legal issues and request assistance from legal advisers can only do so from legal advisers who were awarded exclusive contracts following the tender exercise.

There are some exceptions to this notably where a legal adviser/ provider without a contract has a client who is transferred into an HSH, and the legal adviser/ provider meets the increased quality standards (which include Panel Members undertaking all legal advocacy before the Mental Health Tribunal and having experience of restricted work) and the client wishes them to continue to act for them, then they may do so. It is also the case that legal advisers/providers without contracts may deliver the higher level mental health 'certificated work' (which is assessed for funding on a case-by-case basis by the LSC) and work in other categories of law.

In order to comply with the essence of the judgment, we will be consulting with the following people in the three HSHs:

Criminal  
Defence Service



Community  
Legal Service



community  
legal advice

0845 345 4 345

[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

- a) Service users (one or more focus groups)
- b) Advocacy services (meeting)
- c) Clinical staff (meeting)
- d) Mental Health Act Administrators (meeting)
- e) Social workers (meeting)

We will be asking the same broad questions of each of these groups. We will also be consulting with other stakeholders including you, providers' representative bodies, the Equalities & Human Rights Commission, the Tribunals Service and the Administrative Justice & Tribunals Council.

We have already met with hospital staff (including b),c),d) and e) above) and are currently meeting with patients. We expect to complete these activities by 8<sup>th</sup> April 2011.

The following timetable is indicative only. The LSC believes these activities will ensure that we comply with our duties under S49A of the DDA:

<b>Activity</b>	<b>Completed by</b>
Develop consultation	18/02/2011
Consult with all stakeholders	08/04/2011
Draft Disability Impact Assessment (DIA)	30/04/2011
Final DIA	30/04/2011
<i>(If necessary- develop mitigating steps and formal consultation)</i>	<i>(30/04/2011)</i>
<i>(If necessary- formal consultation on mitigating steps)</i>	<i>(15/06/2011)</i>
<i>(If necessary- implementation of mitigating steps)</i>	<i>(01/07/2011)</i>

Thank you for taking the time to read this letter. I look forward to hearing your views.

Yours sincerely



Sara Kovach-Clark  
Head of the Community Legal Service