

SLAB's experience of implementing grant funding, understanding costs/ profitability and developing contracting in 2012/13

Purpose

1. The purpose of this background material is to support the panel in thinking about issues related to the legal assistance market, profitability, evidence and options for change. The notes provided all draw heavily on information prepared at various points in the last ten years or so. As such, they do not necessarily reflect the current policy position of SLAB on the issues addressed, but they do provide hopefully useful contextual information and analysis of some of the key issues being considered by the panel.

Cost base and profitability

2. SLAB has undertaken work in the past (2009/10) to help understand the cost base of firms and whether any given throughput would produce profit. This was to understand whether the then prevailing market was potentially sustainable for practitioners, depending on their business model.
3. The pack provided includes a version of a paper provided to SLAB's Board on the conclusion of this work, alongside the cost assumptions used in the analysis. These assumptions were shared with a number of firms, who provided their own firm specific information which was then used in the analysis set out in the paper.

Contracting

4. SLAB explored contracting as part of the work flowing from the Scottish Government's 2011 policy paper A Sustainable Future for Legal Aid. In that context, contracts were framed as having capacity to:
 - a. Deliver substantial savings
 - b. Encourage firms to create efficient business models to deliver services and ensure that the market operates efficiently
 - c. Improve consistent and equitable access to justice
 - d. Allow for better planning of service delivery in relation to need
 - e. Provide clarity and precision around specific types of work, for example by ensuring that public sector service level requirements are met (including public sector equality duties).
5. The drivers were access, quality, equalities, sustainability and cost.
6. As part of that work, SLAB published information about the general shape of the criminal legal assistance market. A partially updated version of that analysis (with data up to 2015/16) is provided in this pack for the panel.
7. Contracting did not go ahead at that time. The focus instead shifted to fee reform, another means of addressing some of the issues in the payment arrangements that might otherwise have been resolved as part of a move to a

contracted system. The pack contains some additional information about the drivers for and possible approaches to fee reform.

Grant funding

8. Another means of paying for services in via grants. SLAB runs a relatively small grant funding programme, focused on priority issues identified by Ministers. The general process involves high level Ministerial specification of outcomes and the setting of a financial limit of expenditure; SLAB develops a plan to address these priority outcomes (which must be approved by Ministers) and issues detailed guidance and criteria to help relevant organisations bid for funding and the programme overall to meet the outcomes.
9. Grant funding is not like contracting as envisaged in Sustainable Future, in that it is:
 - a. additional: not replacing another funding model or stream
 - b. piecemeal: grants are not seeking to provide a baseline level of service to meet all demand in any area, but meeting some demand in a particular way
 - c. non-profit: based on full cost recovery, rather than generating any level of profit
 - d. non-prescriptive: there is no detailed specification of work but a general set of outcomes to be met: this is linked to-
 - e. focussed on best value at the project level: looks at how well the project is meeting its aims, rather than comparing between project