



# **Establishing an Alternative Advice Service Commissioning Model for Local Authority and Assembly Government Funding in Wales**

The Advice Services Alliance's response to the DG Legal  
consultation paper

September 2009

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## 1 Introduction

- 1.1 The Advice Services Alliance (ASA) welcomes the opportunity to respond to this discussion paper.
- 1.2 ASA is the umbrella organisation for independent advice networks in the U.K. Full membership of ASA is open to national networks of independent advice services in the U.K. Currently, our full members are:
- adviceUK
  - Age Concern and Help the Aged England
  - Citizens Advice
  - DIAL UK (the disability information and advice service)
  - Law Centres Federation
  - Shelter
  - Shelter Cymru
  - Youth Access
- 1.3 Our members represent some 1,700 organisations in England and Wales which provide a range of advice and other services to members of the public. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising.
- 1.4 With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care (now commonly referred to as 'social welfare law').
- 1.5 In preparing this response, we have consulted adviceUK, Citizens Advice, Law Centres Federation and Shelter Cymru, and have taken account of the views they have expressed. We understand that some or all of them may be submitting their own responses to this consultation.

## 2 Consultation Questions

*Q1. Do you agree with the merits of the various alternative funding models summarised in section 3 (a) and (b) of this paper on funding mechanisms? What other advantages and drawbacks can you foresee?*

### **The LSC CLAS model**

- 2.1 We consider the possible advantages to be overstated.
- 2.2 We are not convinced that clients' travel time may be reduced. The implementation of a CLAS is likely to result in a reduction in the number of organisations providing advice. As a consequence, many clients may have to travel further to receive advice.
- 2.3 We do not necessarily agree with the proposition that "*Services will be more fully integrated and should cover the range of levels of advice from basic information to representation in court*".

- 2.4 While services should be “more fully integrated” in the sense that they should be better linked to each other, the extent to which they “cover the range of levels of advice” depends very much on the funding provided to the CLAS and how it is earmarked. Our analysis of the specifications of the first five CLACs and the proposed CLANs shows considerable variation in
- The level of funding provided
  - The services to be provided
  - The extent to which any significant services are to be provided for clients who are ineligible for legal aid
  - The extent to which services will be provided that are outside the scope of legal aid, especially representation at tribunals.
- 2.5 We generally agree with the perceived disadvantages outlined, save that
- The loss of specialist expertise (from providers who do not form part of a winning bid) is not limited to “single category” providers
  - There will also be a loss of the generalist expertise and community links of other organisations that do not form part of a winning bid
  - Where third sector providers are lost, there will also be a loss of funding that they obtain from other sources, including charities and the Big Lottery Fund
  - We anticipate that many additional services currently provided pro bono to charitable organisations would also be lost
  - There is likely to be a general reduction in the number of advice giving organisations and the diversity of such organisations.
- 2.6 There is an implicit assumption in the LSC model that there are too many advice organisations that do not really fulfill a need, and that the number of advice organisations can therefore safely be reduced.
- 2.7 We do not accept this assumption.
- 2.8 We note that the recent study of discrimination advice prepared by academics from Bangor University<sup>1</sup> found that, in Wales:
- There are “significant advice deserts”
  - There is some correlation between advice outlets and the distribution of benefit claimants
  - There is a “much closer” congruence between advice outlets and likely need, when county court judgments are taken as an indicator of deprivation
  - There is a “reasonably close” relationship between the distribution of advice agencies and the spatial distribution of ethnic minorities.<sup>2</sup>
- 2.9 This suggests that advice organisations in Wales are meeting need but that there needs to be more of them (rather than fewer) to fill some of the gaps or “deserts”.

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<sup>1</sup> John Borland and others “Responding to Discrimination: the Geography and Geometry of Advice Provision in England, Scotland and Wales”, Final Report April 2009, available at [http://www.lawcentres.org.uk/uploads/2Gs\\_Report\\_on\\_Legal\\_Advice\\_and\\_Representation.pdf](http://www.lawcentres.org.uk/uploads/2Gs_Report_on_Legal_Advice_and_Representation.pdf)

<sup>2</sup> Ibid, pp.27, 57, 59 and 62.

## Alternative funding mechanisms

### Stand alone grant funding

- 2.10 We agree with the advantages outlined. We would highlight in particular the statement that this process is significantly cheaper to administer than commissioning or tendering. This is significant in the present context, given that the amounts spent on advice by several local authorities are quite low.<sup>3</sup>
- 2.11 We consider that the suggested disadvantages are overstated.
- 2.12 We do not agree that the process might be more expensive in the long term, particularly if the number of providers reduces through a commissioning or tendering process. By definition, if an authority continues to grant fund then there would not need to be a commissioning or tendering process. Even if, for other reasons, there is a reduction in the number of providers, this would be unlikely to make the process more expensive. The advantage of grant funding, from the funder's perspective, is that the funding is essentially in their gift. If providers were to attempt to exploit their monopoly or semi-monopoly position, the funder can easily change to a commissioning or even a tendering model. A mere threat to do so is likely to have the desired effect.
- 2.13 We do not agree with the suggestion that grant funding "*does not necessarily allow providers to design services that put users at the heart of the service planning process*". Insofar as this refers to matters such as opening hours, or advice outreach locations, there is no reason why such matters cannot be included in a Service Level Agreement. Insofar as this refers to user involvement more generally, we refer to our comments in para 2.19 below.
- 2.14 We agree that grants tend to be shorter in duration, but there is no reason for this to be the case. Annual grants are generally seen as advantageous from the funder's point of view. Service providers would be much happier with grants for three years, and many do receive them.

### Commissioning

- 2.15 As the paper points out, grants based commissioning often involves funding for three years, consultation with potential providers and an emphasis on outcomes, all of which we would support.
- 2.16 We agree with the paper's suggestion that

*"On the face of it, both stand alone grants backed by SLAs and grant based commissioning appear very attractive. Either or both models might be considered as a starting point for building an alternative model to a jointly commissioned CLAS."*  
[p.14]

### Sustainable commissioning

- 2.17 We welcome the paper's consideration of this model and are supportive of an approach that focuses on outcomes. As you remark in Appendix B, ASA is currently undertaking pilot work to help advice agencies develop approaches to outcomes monitoring. The most important lesson we have learned from the pilots so far is that outcomes monitoring is extremely time-consuming. Most advice agencies are

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<sup>3</sup> In the CLAN specification, the Vale of Glamorgan proposes to contribute £140,000, Bridgend £159,000 (of which £35,000 is ring fenced for specific housing advice) and the WAG contribution is £47,677 – see p.38 of the consultation paper.

already overstretched and therefore implementing a new system of monitoring often requires staff to commit significant amounts of their own time. Working Together for Advice pilot agencies are being supported through the pilots by development consultants but even so it has been very difficult to find agencies that are willing to commit to the work. This is not due to lack of enthusiasm or interest but a fear of taking on any more work.

- 2.18 Other than simply recording what happens at the end of a case, most advice agencies do not currently collect outcomes on an ongoing basis. Therefore any project to commission for outcomes must not under-estimate the importance of working with advice agencies to agree realistic outcomes that they can measure and allowing them the time and resources to develop ways of monitoring those outcomes that fit with their existing procedures.
- 2.19 The emphasis on user involvement in this model is also potentially problematic. It seems to us that there is quite a difference between a Mental Health Day Care Service (as in Camden) with a defined group of users and an advice service for a large area, with a large and relatively diffuse population of users and potential users. The challenge for advice services is that most clients are short-term users only. Another Working Together for Advice project is currently looking at how best to involve users in the advice sector.
- 2.20 There is clearly a strong case for this mechanism to be piloted in an advice context, but it may be that the context for such a pilot should be more limited and more strictly defined than the provision of what is meant to be a full range of advice services over a large geographical area.
- 2.21 On the whole, it seems to us that the advantages and disadvantages outlined in the paper are reasonable.

#### **Joint SLAs across funders**

- 2.22 We generally agree with the advantages outlined and the suggestion that this represents a stepping stone between the current position and either commissioning or tendering.
- 2.23 We are not convinced of the desirability of this model however. One of the features of the design of CLAS tenders, particularly in relation to CLANs, has been an escalation of the demands made by individual funders without any proper consideration of whether they are realistic, particularly given the amount of funding available. If a group of funders were to get together to design a joint SLA the risk is that each would put forward its own “shopping list” of requirements, all of which would be accepted, without any proper reality check of what is being required.

*Q2. Do you have any preferences for any of the funding models outlined? What improvements, if any, would you suggest to the options outlined? If you do not agree with any of the options or feel that they might disproportionately impact on a particular group(s), can you explain your reasons why? What alternatives would you suggest?*

- 2.24 As stated above, we agree with the paper’s suggestion that

*“ On the face of it, both stand alone grants backed by SLAs and grant based commissioning appear very attractive. Either or both models might be considered as a starting point for building an alternative model to a jointly commissioned CLAS.”*  
[p. 14]

Q3. Do you prefer the LSC's CLAS model in preference to the other funding mechanisms outlined in this paper?

2.25 No – see above

### **Geographic Clusters**

Q4. Do you agree with the LSC's regional model? If you do not agree with this model you explain your reasons why? If you prefer the national model or the local authority model, please explain your reasons. Similarly, if you prefer a model not mentioned, please explain the basis of your views? Does your answer depend upon which funding model or geographical cluster is chosen? If so, why?

2.26 We do not feel sufficiently qualified to answer this question, and would defer to the views of our Wales-based members on this issue.

### **Improving Access to Specialist Advice**

Q5. Which of the three options described for improving access to specialist advice do you prefer? Please explain your reasons. If you do not agree with any of these options or feel that this model disproportionately impacts on a particular group(s), can you explain your reasons why? For instance, you may feel that other methods of delivering advice in rural locations are more appropriate such as outreach services, telephone advice, advice via a webcam or internet based services. If so, please explain the basis of your views? Does your answer depend upon which funding model or geographic is chosen? If so, why?

2.27 The paper seems to assume that specialist advice will only be funded by the LSC. Whilst this is an option for funders to adopt in Wales, we hope that they will not do so. Where there are shortages of supply, another option would be to earmark some local authority and/or WAG funding to meet such shortages, either alone or in conjunction with the LSC. This could be particularly important where part of the problem is the shortage of demand from clients who are eligible for legal aid funding, which is likely to be the case particularly in relation to employment.

2.28 We would prefer proactive options such as these to each of the three options identified.

2.29 We do not think that the LSC would agree to the first option, which they would be likely to see as setting a dangerous precedent.

2.30 We do not believe that best value tendering has any role to play in delivering advice services that aim to provide a quality service to clients.

2.31 We do not think that CLAS tendering is the way forward, for the reasons set out above. We appreciate that the same result could be achieved by Commissioning. The danger of the third option is that the additional services might be seen as an unwanted add-on, and may not be sufficiently funded to make them attractive. We prefer solutions that are more likely to attract bids from providers that actually wish to provide the services in question.

### **Referral Systems**

Q6. Do you consider that use of a robust referral system should be made mandatory? If you do not agree, please explain the basis for your view?

2.32 We are not clear what is meant by a "robust referral system" in this context. We note that the paper uses the notion of "referral fatigue" differently from that normally used

by the LSC, so that it means a failure to refer when a referral should be made. The paper highlights some of the reasons why this may happen. It misses however the important point that one of the major problems is the tendency of advisers (in both advice agencies and solicitors firms) to give advice outside their area of expertise without realising that they are doing so, and that a referral should be made.<sup>4</sup>

- 2.33 It would appear to us that a “robust” referral system would include
- Proper training to all staff about the need to refer cases (whenever possible) when a client needs advice of a kind (or level) that the organisation is unable to give
  - Proper information about the services provided by other organisations, and the quality of those services
  - Up-to-date information as to the capacity of other organisations to take referrals
  - Simple procedures for actually making referrals

- 2.34 To that extent, we would agree that all participating organisations should have a robust referral system in place. However, this does not mean that such a system would actually work, if there is insufficient funding to provide the necessary capacity in all participating organisations to take on cases where a referral is appropriate.

*Q7. Do you have a preference for a paper based system or an electronic referral system? Please explain your reasons for preferring one of the options.*

- 2.35 Our preference is for an electronic referral system, since it would seem to be the only mechanism that is likely to provide quick feedback as to whether the intended recipient organisations does in fact have capacity to take a referral.

- 2.36 We are not clear that all such systems presently work this way. What is essential in any system is that it clearly and quickly identifies whether a referral has been successfully made or not. It must then be clear where responsibility lies for advising the client accordingly and considering alternative options with her or him.

### **Quality Standards**

*Q9. Do you consider that possession of a quality standard should be made mandatory? Please explain the basis for your view. If you consider that it should be made mandatory, how regularly do you think that providers should be audited? Every year, two years, three years or four years? If not, how often? If you have any alternative suggestions to improving and/or maintaining quality, please provide us with your views.*

- 2.37 We believe the benefits of holding a quality standard outweigh the disadvantages. However, we agree that there are disadvantages that should be taken into consideration. In particular, cost is a key issue. It should be borne in mind that there is a trend towards charging for the audit of quality standards that were previously not charged for (the GQM is already being charged for and there are current proposals in relation to the SQM and OISC). Therefore, if quality standards are made compulsory, funders should be prepared to pay for the audit costs as part of the funding award.
- 2.38 Furthermore, funders should allow flexibility as to an agency's choice of quality standard. Having said that, we would favour a system that gave preference to organisations that could demonstrate that they had in place systems for monitoring

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<sup>4</sup> See Moorhead, R and Sherr, A “An Anatomy of Access” (2002) available at <http://www.lsrc.org.uk/publications/modelclientpaper.pdf>

quality of advice directly. This could be done as part of a quality standard or by way of a local arrangement between agencies to peer review each other's work.

## **Branding & Logo**

*Q10. Do you consider that the use of a shared logo should be made mandatory? Please explain your basis for this view. If you have any alternative suggestions to demonstrate membership of a shared network, please provide us with your views.*

- 2.39 We do not have strong views on this question. We do not believe that the CLS logo has been successful. We believe that the old legal aid “picnic table” was more successful. Perhaps that could be used instead.
- 2.40 Although a common logo may have its advantages, we believe that providers should also be allowed to use their own logos, as it is very important that clients are clear about who is actually advising them.



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