

CLACs – are they worth it?

Adam Griffith

Foreword

A number of people have helped me with this paper, and have helped to make this paper considerably better than it would otherwise have been.

I would like to thank my colleagues at ASA who commented on various drafts, notably Ann Lewis, Shanta Bhavnani, Val Reid and Richard Jenner.

I would like to thank other colleagues for reading a draft of this paper and giving me their comments, notably Nony Ardill, James Kenrick, Noeleen Adams, Claire Blades and Vicky Ling.

I would also like to thank Sophie Brookes and her colleagues at the Legal Services Commission for doing their best to answer a large number of requests for information, clarification and documents.

Needless to say, none of the above bears any responsibility for the contents of this paper, which is mine alone.

Adam Griffith
Advice Services Alliance
May 2008

1	Introduction	1
2	What are they?.....	1
	Introduction	1
	Key services	2
	Targets	2
	Variations between the CLACs	3
	A note on sources	4
3	Will they work?	4
4	Structural Issues	5
	Prescription versus flexibility	5
	The CLAC as the only supplier of social welfare law services	5
	Combining generalist and specialist advice.....	6
	Multiple providers	6
	Conflicts of interest within the CLAC	7
	Regulatory issues	7
	The CLAC’s relationship with other providers	8
	Do CLACs have catchment areas?	8
5	Responding to need?.....	9
	The needs analysis	10
	Targeting priority groups.....	12
6	Independence	15
	Relationship to funders generally.....	15
	Relationship to the local authority.....	16
7	Funding and Services Issues	19
	Funding	19
	Provision of generalist advice.....	20
	Provision of specialist advice and representation.....	24
8	Quality	28
9	Conclusion	29
	Annex 1: CLACs - The Basics	31
	Annex 2: Details of The Bidding Process	37
	Annex 3:	40
	Annex 4: Advice Funding in CLACs	46

1 Introduction

- 1.1 First mooted in 2005, CLACs have generated a lot of interest and fear, heightened perhaps by the time they have taken to get off the ground. Soon, however, there will be five CLACs up and running.
- 1.2 At the time of writing (May 2008), the position seems to be as follows:
- The LSC and the relevant local authorities launched a tender process for a CLAC in Gateshead and Leicester in May 2006.
 - In Gateshead there was a successful bid and the centre started in April 2007.
 - In Leicester there was no successful bid. In April 2007 the LSC and Leicester City Council issued a draft specification for consultation. A second tender process followed in July 2007. This produced a successful bid and the CLAC started in April 2008.
 - In Derby a tender process started in June 2007, was successful, and the CLAC started in April 2008.
 - In Portsmouth a tender process started in September 2007, was successful, and the CLAC started in April 2008.
 - In Hull, a tender process started in November 2007. Negotiations with the preferred bidder are ongoing.
- 1.3 Based on an analysis of the various tender documents produced so far, this paper identifies the key requirements specified for CLACs and a number of concerns. It does not attempt to balance these concerns with the positive results that CLACs may achieve, as these results cannot be assessed until a number of CLACs have been in operation for some time. The LSC has confirmed that there will be an evaluation of the first round of CLACs. This paper identifies a number of issues that may need to be considered in that evaluation.

2 What are they?

Introduction

- 2.1 The evolution of the concept of CLACs is described in Annex 1 to this paper. For present purposes, we have assumed that the most important aspects of CLACs are that they should:
- Be responsive to local needs
 - Take legal services to groups of people that currently do not access mainstream services (such as certain BME clients) and to clients that are particularly vulnerable (such as clients with mental health problems)
 - Be independent of funders and the government
 - Take strategic action to resolve the causes of problems, through policy work, campaigning and public legal education
 - Be quality assured
 - Deliver a seamless service, from basic advice and assistance to specialist representation in the highest courts
 - Cover a broad range of categories of law, including, as a minimum, debt, housing, welfare benefits, community care, employment and family

- Cover other categories of law where there is a specific need
- Be able to deal with “clusters” of problems
- Reduce the extent to which clients need to be referred, and refer effectively when this is necessary.
- Be a jointly-funded single legal entity.

2.2 Annex 1 to this paper describes

- The concept of CLACs as set out in the LSC’s two papers entitled *Making Legal Rights a Reality*
- The process involved in setting up CLACs
- The requirements for bidders
- How TUPE applies when CLACs are established

2.3 Details of the bidding processes to date are set out in Annex 2.

Key services

2.4 The specifications state that CLACs must:

- Provide general (face-to-face) legal advice – usually in specified categories of law
- Provide specialist legal advice (i.e. controlled work) – in specified categories of law
- Provide legal representation in proceedings (i.e. certificated or licensed work)
- Provide representation at specified tribunals
- Provide a housing possession court duty scheme at the local County Court¹
- Have procedures to deal with emergency cases (e.g. domestic violence and imminent possession proceedings)
- Use alternative means of dispute resolution, where appropriate
- Have an effective and appropriate referral system, including a database of locally provided services
- Prevent legal problems from arising

Targets

2.5 Linked to the core services are a number of performance standards or targets², which can be summarised as follows:

Number of clients receiving general legal advice each year	Ranging from a minimum of 2,000 in Portsmouth ³ to 7,338 in Hull (and 9,400 in the first Leicester specification)
Number of clients and/or cases receiving specialist legal advice in the first year	Ranging from 1,710 in Derby to 2,984 in Hull (and 3,030 in the first Leicester specification)
Percentage of clients belonging to “priority groups”	Ranging between 50% and 80% for general advice and 50% and 85% for specialist advice

¹ With the exception of Gateshead

² See Annex 3 for the detailed targets set out in the various CLAC specifications

³ In Portsmouth the target of 2,000 generalist cases was described as a minimum. The successful bidder committed to delivering 6,000 generalist cases a year.

Successful specialist casework and representation outcomes	Generally set at 60% ⁴
Quality of advice as measured by peer review	Originally set at “2” for all the CLACs except for Hull, which is only required to get a “3”
Client satisfaction as captured in annual client feedback exercises	Generally set at 80% saying “good” or “excellent” ⁵
Complaint resolution targets	100% to be responded to within 5 working days; 95% to be resolved internally; 90% to be fully resolved within 28 days
Appointment targets	Within 10 working days for general or specialist advice; within 4 working days for priority cases; within 1 working day for emergencies or urgent proceedings
Opening hours of main Centre building	Generally set at 9-5 five days a week plus one evening or Saturday morning
Referrals of clients who require (specialist) legal advice and whom the Centre is unable to help	95% to be “effectively referred” . ⁶

Variations between the CLACs

- 2.6 Each CLAC has a specification that is the product of negotiation between the LSC and the local authority concerned, although based on a template developed by the LSC.
- 2.7 While LSC funding is limited to expenditure on specialist services within the scope of the legal aid scheme for eligible clients, the role of local authority funding in CLACs is undefined. It is expected to cover the generalist advice service, specialist services for ineligible clients and services that are out of scope, notably tribunal representation. However, there is no identifiable minimum standard for such services and the specifications for the first five CLACs reveal considerable variation.
- 2.8 A comparison of the specifications is contained in the table at Annex 3. This demonstrates significant differences in
- The budget of each CLAC both in absolute terms and relative to the size of the local population (between £9.75 and £13.98 per head of population over three years)
 - The financial contribution of the two funders
 - The targets for general advice clients helped per year
 - The targets for specialist advice cases started, both overall, and as between different categories of law
 - The extent to which the CLAC will provide services to clients who are financially ineligible for legal aid
 - The extent to which the CLAC will provide representation at tribunals

⁴ Portsmouth has a further target of 80% in year 2.

⁵ Portsmouth has a further target of 95% in year 2.

⁶ Portsmouth has a further target of 100% in year 2.

- The types of clients identified as priorities
 - The proportion of clients who are expected to come from these priority groups.
- 2.9 The differences are not just between the different CLACs but are apparent also in Leicester where two full and one draft specifications were issued.
- The LSC contribution dropped by 19% between the first specification and the subsequent ones, which seems only partly explicable by the change in the funding arrangements.⁷
 - There were dramatic differences in the general advice target between the three specifications, from 9,400 to 4,450 to 6,000 clients for basically the same amount of local authority funding.
 - There were significant differences in the numbers of specialist cases being required and the distribution of cases between the different categories of law.
 - The list of priority client groups changes from five groups to thirteen to ten.
- 2.10 In terms of the services to be provided, the key variable is the local authority funding contribution, which varies considerably between the CLACs. A breakdown of the funding for four of the CLACs is set out in Annex 4. This shows that local authorities are contributing
- Between £200,000 and £250,000 each year to fund the generalist advice service
 - Between £100,000 and £330,000 each year towards specialist services.

A note on sources

- 2.11 Each tender process has produced a number of documents: a needs analysis, an Information for Applicants (setting out the service requirements and the tender process, and referred to below as the “specification” or “IFA”), an application form, and one or more published Questions and Answers (Q&A).
- 2.12 The LSC has templates for these documents and has provided us with recent versions in relation to the needs analysis and Information for Applicants. The LSC has also provided us with template or generic versions of the CLAC contract, with the main part of the Gateshead contract, and with edited versions of the successful bids in Gateshead, Leicester and Portsmouth.

3 Will they work?

- 3.1 We have a number of concerns about CLACs, which can be summarised as follows, and are discussed further below:
- There are **structural issues** arising out of the need for a tendering process and the CLAC’s monopoly position in a particular geographical area
 - The CLAC specifications are highly prescriptive, creating a risk that CLACs will be inflexible in their operation
 - Establishing CLACs as local monopolies creates difficulties for clients, if the CLAC is unable or unwilling to help them, and funders, who will have “put all their eggs into one basket”

⁷ The first Leicester specification assumed that 10% of the work done would be certificated work, which was included within the budget. The later specifications assumed that certificated work would be paid for separately.

- Requiring CLACs to provide generalist and specialist advice may be problematic, as the provision of both types of advice within one organisation on the scale envisaged is largely untested
 - Having two or more providers increases the likelihood of complicated organisational structures, potential conflicts of interest, and regulatory confusion
 - There is ambiguity as to the extent to which CLACs' services are to be limited to local residents.
- There are serious questions as to the extent to which CLACs are **responding to local need**. The requirement to target priority client groups is problematic, seems unlikely to work, and needs serious reconsideration.
 - There are concerns as to the extent to which CLACs will be, and will appear to be, **independent** of their funders. Some of the specifications tie the CLACs very closely to council services.
 - There are doubts as to whether the **funding** is sufficient to match the expectations that are likely to be created by the establishment of CLACs.
 - It seems that the generalist advice service is being asked to achieve too much for too many people given the resources available. Many clients are likely to be disappointed by the limitations that will inevitably be placed on the service.
 - There are concerns as to whether the specialist services will be sufficient
 - There are serious concerns about **quality**, now that CLACs are no longer required to obtain a score of 1 or 2 at peer review

4 Structural Issues

4.1 There are a number of structural issues arising out of the need for a tendering process and the CLAC's monopoly position in a particular geographical area.

Prescription versus flexibility

4.2 The CLAC specifications and contracts are very prescriptive. They contain detailed targets for different types of casework and clients. There are restrictions on the materials that the CLACs can use and publish.⁸ There seems to be little room for the CLAC providers to exercise professional judgement, knowledge and skill, in terms of the work that they take on, and how they use their resources. A three-year contract surely needs more flexibility, and some spare capacity, to enable the CLAC to respond quickly to changes in need and demand in its local area.

4.3 In our view, this problem is compounded by the inadequacies of the needs assessments. This issue is discussed further below.

The CLAC as the only supplier of social welfare law services

4.4 From the client's point of view, the fact that the CLAC is supposed to be the only supplier of social welfare law in the area means

⁸ See below para 6.2

The client has no choice⁹

- The client will have to go into another area to obtain face to face advice if
 - there is a conflict of interest between two potential clients of the CLAC in categories of law other than family¹⁰
 - the client falls out with the CLAC or one of its constituent parts
 - the client is dissatisfied with the advice received and wants a second opinion
 - the CLAC is unable to act because it has reached capacity in a particular category of law, or because it is short staffed.

4.5 From the funders' point of view

- Funding a CLAC means that the funders are putting all their eggs in one basket, with the exception of any council in-house services that are kept out of the CLAC
- If the CLAC runs into difficulties (or even fails) there will be nowhere else for clients to go.

Combining generalist and specialist advice

4.6 The specifications assume that CLACs will be able to provide generalist and specialist advice within the same service, without any recognition that this may be problematic. The evidence on this appears to be mixed. Some previous attempts to combine Law Centres and CABx¹¹ were unsuccessful, with the organisations subsequently separating. It is to be hoped that the merger of Derby Law Centre and CAB will prove more successful. Some Law Centres seem to have been successful in running a generalist service alongside a specialist one.¹² There are currently some large NfP organisations that do combine both types of advice, but their numbers are small. Some solicitors firms¹³ claim to provide a generalist advice service in addition to their specialist service, but the extent of that service is not clear.

Multiple providers

4.7 Requiring CLACs to provide general advice and specialist advice in a range of categories militates against single providers. Having two or more providers however increases the likelihood of complicated organisational structures, potential conflicts of interest and regulatory confusion.

4.8 The position in relation to the first five CLACs seems to be as follows:¹⁴

- In Gateshead, the CLAC was awarded to Gateshead CAB and Gateshead Law Centre in a setup that involves using three solicitors firms as subcontractors. The centre started in April 2007. In March 2008, however, the Law Centre went into administration. It is understood that the work done by the Law Centre has been reallocated to the other participants.

⁹ Compare the LSC's proposals for best value tendering in crime, which emphasise the importance of client choice and the possible knock on effect on quality.

¹⁰ Conflict could arise within the same category of law, e.g. between housing occupants, or fellow employees, or between categories, e.g. if a someone seeking employment advice is also a small landlord

¹¹ Notably in Hackney and Paddington from the 1970s onwards, and more recently in Battersea.

¹² Notably Islington and Leicester

¹³ Including Howells, the subcontractors in the successful A4E bids for the Leicester and Hull CLAC contracts.

¹⁴ See Annex 2 for details of the bidding process in the various tenders

- In Derby the successful bidder was Access to Law, involving four subcontractors: Derby Citizens Advice and Law Centre, Derbyshire Housing Aid and two solicitors firms.
- In Leicester the contract was awarded to A4E, with one subcontractor, Howells.
- In Portsmouth, the contract was awarded to The Southern Focus Trust, with one subcontractor, Portsmouth Citizens Advice Bureau.
- In Hull, it is understood that the successful applicant was A4E, with one subcontractor, Howells.

Conflicts of interest within the CLAC

4.9 The CLAC papers contain no recognition that there could be conflicts of interest within the CLAC, and no procedures for dealing with such issues.

4.10 There could be conflicts

- Between different organisations within the CLAC¹⁵
- Between different types of service within the CLAC – such as the generalist and specialist service
- Between the funders – who are funding different parts of the service and whose interests may therefore conflict.

Regulatory issues

4.11 The specifications make it clear that it is for organisations bidding to run the CLAC to sort out any regulatory issues, compliance with the Solicitors Code of Conduct, the rules on fee sharing and effective supervision and charity law (if relevant).

4.12 One issue that in our view needs to be resolved in any CLAC is the extent to which some or all of the solicitors employed in the CLAC are subject to duties imposed by the Solicitors' Code of Conduct 2007. In our view rule 5 requires that one of the solicitors in a CLAC must be "qualified to supervise" and must then ensure that there is in place a system for supervising work undertaken for members of the public. Where the CLAC is one single organisation then it seems to us that the solicitor's responsibilities would clearly include the general advice service. Where the CLAC consists of different organisations, such as a CAB and a Law Centre, the position is less clear.

4.13 Other issues arise out of the funders' insistence on branding all services provided as being provided by the CLAC. Where a solicitors firm has an LSC contract in family and also provides family services as part of the CLAC, the official position seems to be that "clients accessing family services through the Centre would be 'Centre clients' and clients accessing services at the firm's offices would be the clients of that firm."¹⁶ This does not seem logical. If the solicitors' firm is acting for the client on what is basically a referral from the CLAC, there must surely be a solicitor-client relationship. The fact that the solicitor may receive payment via the CLAC does not alter this. Looked at in another way, if the client is dissatisfied with the service received, whom does he or she complain to? The official answer is presumably the CLAC, but we doubt if a solicitors' firm can delegate its duty to have a procedure and to consider complaints to another body.

¹⁵ Conflicts could arise, for example, where different organisations provide overlapping services at specialist level, as appears to be the case in Gateshead and in Portsmouth.

¹⁶ Derby Q&A 10

The CLAC's relationship with other providers

- 4.14 It has always been clear that spending on social welfare law would be concentrated in the CLAC, at the expense of providers or contracts outside the CLAC.¹⁷ At the same time, there is a strong emphasis on the role of CLACs in referring cases, which fall outside their remit, to appropriate providers.
- 4.15 The CLAC's relationship with other providers raises a number of issues that have yet to be resolved, or indeed included within the contract between such providers and the LSC, notably:
- Do other providers have any obligations to refer certain cases to the CLAC or to accept referrals from the CLAC?
 - How much will they be allowed to do under tolerance in categories of law that are otherwise monopolised by the CLAC?
- 4.16 The relationship between CLACs and other legal aid providers is not generally spelt out in the CLAC documentation. The Leicester Q&A suggested that immigration providers would be required to accept referrals from the CLAC.¹⁸ The Portsmouth Q&A state that
- The LSC and local authority would be looking at ways to provide incentives for other providers to build relationships up with the CLAC
 - Suppliers outside the CLAC could have some contractual obligation to refer to the CLAC and vice versa¹⁹
 - Suppliers outside the CLAC could do small amounts of tolerance work in social welfare law, but would be expected to refer a case to the CLAC where the social welfare law element of a case becomes substantive.²⁰

Do CLACs have catchment areas?

- 4.17 An issue that seems unresolved concerns the extent to which the CLAC's services are limited to residents of the area or city in question. The local authority would understandably want its funding to benefit its own residents. However, a significant number of legal aid clients obtain help from suppliers outside their local area,²¹ and this is likely to happen particularly when services are concentrated within a city and accessed by people from outlying areas.²²

The Leicester Q&A illustrates the problem:

"The General Help services are restricted to residents of Leicester, except that employment advice may be given to people who work in Leicester.

Although there is no formal restriction for those clients that are receiving specialist casework/representation under legal aid, the services are primarily intended for the people of Leicester, and this should be reflected in the marketing, outreach arrangements, targeting etc.

¹⁷ See e.g. *Making Legal Rights a Reality* (2006), p.9

¹⁸ Second Leicester Q&A 6

¹⁹ Portsmouth Q&A 24

²⁰ Portsmouth Q&A 27 also states that "further guidance on this will be issued in due course."

²¹ Statistics for this, by reference to "procurement areas" are set out in Annex 1 to the letter from the LSC to ASA which can be found on the LSC's website at http://www.legalservices.gov.uk/civil/cls_newsupdates_7321.asp?page=1

²² The Hull needs analysis, for example, states (p.5) that "Hull is a sub-regional centre. Services located within Hull are used not only by Hull residents but also by people living in the surrounding areas of East Riding."

The intention is that the housing duty scheme is to become part of this contract, but that it should continue to assist both City and County residents.”²³

4.18 This answer does not explain how non-residents can access specialist casework or representation if they are unable to go through the General Help service.

4.19 The issue appears particularly strongly in Derby. The needs analysis provides a breakdown of Legal Help cases in 2005-06 in terms of the local authority district in which the clients live. This analysis

“highlights that Derby city is a key centre for advice provision locally. Just over one-half, 52.1%, of clients receiving advice from city providers live outside of Derby. It indicates significant numbers of clients from outlying districts including Amber Valley, East Staffordshire, South Derbyshire and Erewash. Some clients even reside in the north of Nottinghamshire and Derbyshire.”²⁴

4.20 Other Derby documentation refers to clients who are “not geographically or financially eligible”, to the “target area”, and to the ability to bring additional funding into “Derby City only”.²⁵ The Q&A suggests that Derby City Council funding “may be restricted to residents of Derby City or restricted to particular target groups.”²⁶

4.21 While this may be understandable from the local authority’s point of view, the restriction of the CLAC services, or even just the City funded ones, to Derby residents would reduce access to advice and specialist help for large numbers of people in the surrounding areas.

4.22 It is noticeable however that the Gateshead CLAC contract states that the centre’s services “will not be restricted to clients from [the five neighbourhood management areas of Gateshead] or the Gateshead area.”²⁷ Similar wording appears in the latest version of the generic contract.²⁸ It is to be hoped that this wording will prevail and be reflected in the CLACs’ practice, notwithstanding any views to the contrary from the local authorities involved.

5 Responding to need?

5.1 A key stated aim of CLACs is that they will be responsive to local needs and will take legal services to groups of people that currently do not access mainstream services, and to clients that are particularly vulnerable.

5.2 The documentation for each CLAC includes a Needs Analysis, which is intended to explain and justify the decisions made as to the nature of services to be provided and the priority groups to be targeted.

5.3 However it is often difficult to see how one gets from the analysis to the conclusions, and from there to the specification for each CLAC.

²³ Leicester first round Question & Answer 4

²⁴ Derby needs analysis p.18

²⁵ Derby first IFA p.10, 26; second IFA p.16

²⁶ Derby Question & Answer 12

²⁷ Gateshead CLAC Contract for Signature para 1

²⁸ Draft of 1.3.08

The needs analysis

5.4 With the exception of Hull, the needs analyses follow a standard format, based on a template prepared by the LSC. These analyses generally:

- Set out several pages of “Statistical Indicators” under the headings “People, Places and Families”, “Health Inequalities”, “Housing/Accommodation” and “Work & Economic Activity”, summarising their implications for legal and advice services.
- Set out key information from the Index of Multiple Deprivation and similar information (often including Ward and Lower Super Output Area information)
- Summarise the key findings of *Causes of Action* and set out statistics for the number or proportion of predicted justiciable problems at ward and city level
- Summarise the key aims of *Making Legal Rights a Reality*
- Refer to other local strategies, plans and reviews
- Set out information on the current demand for legal aid
- Set out conclusions as to
 - The categories of law that need to be covered
 - The client groups that should be prioritised
 - The geographical areas that should be prioritised

Categories of law

5.5 The LSC policy papers had already stated that CLACs should provide services in debt, housing, welfare benefits, community care, employment and family as a minimum.

5.6 What is interesting is the extent to which the needs analyses, and subsequently the specifications, do or do not add to this list:

- In Gateshead and Leicester the needs analyses appear to identify the needs of asylum seekers and refugees. The Leicester analysis notes that Black and Minority Ethnic communities represent 36% of Leicester’s total population. Neither analysis recommends the inclusion of immigration advice as a priority.
- In Gateshead the needs analysis and the specification add mental health to the basic list.
- In Leicester, the needs analyses add mental health to this list. This is included in the first specification but not in the final one.
- In Derby, the needs analysis adds immigration and mental health to the list. In the specification immigration becomes optional and mental health disappears.
- In Portsmouth the needs analysis adds immigration and mental health but neither appears in the specification.

5.7 The Hull needs analysis follows a different pattern. It concludes that there is likely to be a high overall need for advice in five categories and a relatively high need for advice in eight categories. In the specification however, mental health is lost from the “high overall need” category²⁹ and neighbour disputes, consumer, and unfair treatment by the police are lost from the “relatively high need” category.

²⁹ In Hull the downgrading of mental health starts in the executive summary of the Needs Analysis, where it is downgraded to the lower priority category.

Estimating need

- 5.8 The needs analyses try to quantify both need and demand.
- 5.9 As far as need is concerned, the analyses cite figures based on data from the LSC's Legal Services Research Centre (LSRC), which suggest that the numbers of people needing advice within the CLAC area run into the tens of thousands every year.³⁰ These numbers are of course many times greater than the numbers of generalist advice cases that the CLACs are required to provide.
- 5.10 Using LSRC data, the needs analyses generally give the predicted number and/or percentage of the population by CLAC area and/or by ward
- With any justiciable problem
 - With a problem falling within each of four different "clusters".
- 5.11 These figures show relatively little variation between wards in terms of the predicted proportion of the population with problems of various kinds.³¹ The Portsmouth analysis states that, "when broken down by individual ward the proportion of the population likely to face a civil problem remains relatively constant, around 31-35% for each ward."³² The same "relative consistency" applies to the distribution of the different categories of cluster problems.

Estimating demand

- 5.12 Based on data provided by the local CAB and the Council's in house advice service, the Portsmouth analysis estimates demand for generalist legal and advice services at approximately 10,000 cases a year in finance and debt, 5,000 in welfare benefits, 3,500 in housing, 3,000 in family, 1,500 in immigration and employment, and 1,000 each in "legal" and consumer.³³
- 5.13 The Derby analysis considers demand by analysing the specialist cases started under Legal Help in 2005-06. It plots clients' addresses against postcodes and claims that this "demonstrates that need for legal advice is highest in the areas of high deprivation." An analysis by category of law shows: 67% family; 11% housing; 8% debt; 5% benefits. The analysis concludes that "the demand for specialist advice in the family/matrimonial category is by far the strongest, with significant demand also indicated in the housing, debt and welfare benefit categories."³⁴
- 5.14 The Gateshead analysis considers the specialist cases started under Legal Help by Gateshead providers during 2005. It lists the percentages of such cases by ward – showing variations between 1.3% and 7.7%. It also sets out the distribution by category of law, showing: 49% family; 21% welfare benefits; 12% debt; 11% housing and 3% employment. It states:

"The map showing the demand for Legal Help clearly shows a strong correlation with that for the IMD 2004 deprivation analysis and the Gateshead Vitality Index. The analysis by category of law shows that the demand for specialist advice is strongest

³⁰ The Leicester, Derby and Portsmouth needs analyses give figures for the number of people predicted to have a justiciable problem over a 3.5 year period – which translate as approximately 27,000, 21,000 and 18,000 per year respectively.

³¹ This can be seen most clearly in the Gateshead needs analysis, which gives the percentages rather than the numbers in each ward.

³² Portsmouth needs analysis p.15

³³ Portsmouth Needs Analysis p.15. The data is provided in a chart from which these figures have been estimated.

³⁴ Derby Needs Analysis p.19

in family/matrimonial, welfare benefits, housing, debt and employment law. The low demand for advice in the remaining categories is largely explained by the absence of organisations with LSC contracts in these categories of law.”³⁵

Problems with these analyses

5.15 The Portsmouth, Derby and Gateshead figures can be summarised as follows:

	Portsmouth	Derby	Gateshead
Debt	38%	8%	12%
Benefits	19%	5%	21%
Housing	13%	11%	11%
Family	11%	67%	49%
Immigration	6%		
Employment	6%		3%
Other	8%	9%	4%

5.16 It is hard to see any relationship between these figures. With the exception of housing, they show large differences between estimates of demand based on the CAB and council data in Portsmouth, and the use of Legal Help statistics in Derby and Gateshead. They also show significant differences in the use of Legal Help in Derby and Gateshead.

5.17 It is very unlikely that demand varies between these three areas as greatly as suggested by these figures. As the last quote recognises, there are problems in treating actual use of Legal Help as an indicator of demand, since it only shows the demand that providers are able and willing to meet.

5.18 There appears also to be a contradiction between the LSRC findings (that need is evenly distributed between council wards), the findings that use of Legal Help is highest in the most deprived wards, and the recommendations, which are then made, that services should be targeted on residents of those wards. If the LSRC findings are correct, it is arguable that the CLAC should not be consciously targeting people in the most deprived wards (who apparently make greater use of existing legal advice services), but people in the wards whose residents make least use of existing services (which may well tend to be the less deprived areas). They may well be experiencing high levels of legal need because of attributes that are not linked to ward level deprivation, such as age, family circumstances, or a range of life events.

Targeting priority groups

5.19 The targeting issue arises also in relation to “priority groups”.

5.20 One of the key requirements of CLACs is that they should take legal services to groups of people that currently do not access mainstream services and to clients that are particularly vulnerable. This is a reasonable and proper requirement, provided that these groups and clients can be properly identified. There is evidence, for example, that young people do not access mainstream advice services to the extent that one would expect given their numbers.³⁶ We have argued elsewhere that

³⁵ Gateshead Needs Analysis p.10

³⁶ See Kenrick (2002) *Right to Access: Meeting Young People’s Needs for Advice*, London: Youth Access; Balmer, Tam and Pleasence (2007) *Young People and Civil Justice: Findings from the 2004 English and Welsh Civil and Social Justice Survey*, London: Youth Access

Causes of Action provides a strong argument that advice services should be targeted on people living in temporary accommodation.³⁷

- 5.21 The CLAC documentation does not set out any evidence that particular groups of people do not access mainstream services. It seems to rely on *Causes of Action* as identifying types of clients that are particularly vulnerable.³⁸ However the priority groups identified include several that are not so identified.³⁹
- 5.22 The specifications seem to prioritise certain rather vaguely defined priority groups and then set targets for the proportion of clients that should belong to at least one such group.
- 5.23 There seems to be little logic in the prioritisation of some groups, but not others. Details of which groups are prioritised in each of the specifications are set out in Annex 3, which shows that the number of priority groups varies between five and twelve. The apparently random nature of this process is indicated most clearly in Leicester, where the first specification lists five, the draft specification lists twelve, and the final specification lists ten priority groups.
- 5.24 Of the thirteen main categories identified in Annex 3, those prioritised in all seven specifications (including the three Leicester ones) are:
- The unemployed and/or people or families on low income
 - People with disabilities and/or people suffering from long-term illness, with or without a specific reference to people with mental health problems
 - BME and/or faith communities
 - Young people – variously described
 - Older people – sometimes identified by age (over 60 or 65)
- 5.25 The next most popular categories (and the number of specifications in which they appear) are:
- Victims of violence and/or domestic violence (6)
 - People with accommodation problems and/or people who are homeless or at risk of homelessness (5)
 - Lone parents (4)
 - Asylum seekers (4) including new arrivals to the city (2)
 - Carers (3)
 - People with learning difficulties (2)
 - Ex-offenders and their families (2)
 - People who are geographically isolated (2)
- 5.26 None of the groups are fully defined. A few are self-explanatory or will be familiar to advisers who already perform equal opportunities monitoring under Legal Help (e.g. in relation to ethnicity and disability). Some are very vague however.
- What does “low income” mean? Is it different from being eligible for legal aid? If it is different, all clients receiving specialist advice are likely to require two means

³⁷ Adam Griffith *The CLS Strategy – is this really evidence based policy making?*, p.9 - available at <http://www.asauk.org.uk/fileLibrary/pdf/clsstrategy.pdf>

³⁸ Notably people who are unemployed or on low income, people suffering from long-standing ill-health and disability, and lone parents.

³⁹ Notably members of BME and faith communities and older people

tests. If it is the same, then most clients receiving specialist advice are likely to be so classified.

- Who are members of faith communities? Does this include Christians? Does it include Jews? Does it include agnostics and atheists? ⁴⁰
- 5.27 The extent to which the CLACs are expected to prioritise members of such client groups also varies considerably.
- In Leicester and Portsmouth the target is 80% of clients for general and 85% of clients for specialist advice
 - In Derby both targets are 50%.
- 5.28 In any event, it is not clear how CLACs are supposed to monitor clients' membership of the different priority groups. The specifications state that CLACs need to record the profile of each client and report the location and frequency of outreach sessions. However, to clarify whether CLACs are reaching members of all the priority groups would require advisers to check and record whether clients are members of all the groups in question. Not only would this be time consuming, it might also be seen as intrusive.
- 5.29 The Gateshead contract and the generic contract state that CLACs need to report monthly on the use of the centre by "people in priority target areas" and "priority community groups." ⁴¹ They also state however that the monthly reports must give a breakdown of clients in relation to eleven factors, which only partly relate to membership of the most common priority groups. ⁴²
- 5.30 Setting targets in terms of the percentages of clients who should belong to one or more priority groups would appear to be insufficient if the CLAC is really to monitor the extent to which it is providing services to different types of clients. To be meaningful the CLAC would need to be set targets in respect of membership of each of the different client groups. The first Leicester specification recognises this by specifying the "current demography" within the City and therefore "the baseline expected" for each of the priority groups. ⁴³ However, if particular groups are to be prioritised (because members of such groups are seen as especially vulnerable) it may be necessary to set targets which are higher than the "baseline" figures.
- 5.31 It is of course vital that CLACs do take legal services to groups of people that currently do not access mainstream services and to clients that are particularly vulnerable. Local authorities and the LSC have duties under the discrimination legislation. It is essential that CLACs do not discriminate, either directly or indirectly. Sensitive monitoring of clients' characteristics will be required in order to ensure that these objectives are met. However, in our view, the whole issue of priority groups, whether and how they should be prioritised, and if so, how this is to be monitored, requires serious reconsideration.

⁴⁰ The needs analysis template we have seen suggests recording the proportion of the population stating their religion as Hindu, Muslim and Sikh. This is followed in the Leicester and Derby analyses. The Gateshead analysis gives the proportion of Jewish and Muslim people. The Portsmouth analysis records the proportion who are Christian, of no religion, whose religion is not stated, Muslim, Hindu, Buddhist, Sikh, Jewish and other. The Hull analysis does not refer to religion.

⁴¹ See Annex A of the Annexes to the Standard Terms

⁴² See Annex B of the Annexes to the Standard Terms, which require client breakdown by gender, age, ethnicity, home area, disability/long-term illness, income level/employment status, benefits (which), housing tenure, marital status, number and type of dependents, and number of people in household.

⁴³ Leicester, first IFA p.12

5.32 In our response to the consultation on the Leicester draft specification, we said:

“We are extremely concerned about the requirement for the centre to provide services to priority client groups.

Selecting clients on the basis of a list of ill-defined groups is a crude tool that will not serve the purpose of ensuring that it helps clients in greatest need.

Rather than selecting on the basis of client type, it is our view that the Centre should select on the basis of:

- *Severity of problem/s*
- *Impact of the problems*
- *Whether or not the client can deal with the problem alone*

Apart from the fact that the prioritisation of groups in the way proposed will not ensure that the most vulnerable clients get helped, it may well be in breach of discrimination legislation (see section 45(1) Equality Act 2006 in relation to faith groups for example).”

6 Independence

6.1 Questions as to the independence of CLACs arise in terms of their relationship to their funders and specifically their local authority funder.

Relationship to funders generally

6.2 CLACs’ freedom of movement is restricted in a number of ways by the terms of their contracts

- They are not allowed to publish and distribute their own generic information (leaflets etc on legal rights for distribution to clients or the public) without the written approval of their Liaison Board.⁴⁴ Unless they have such approval they should only use materials supplied by the funders.⁴⁵
- They may only carry out publicity or promotion that has been approved in advance by their Liaison Board.⁴⁶
- They are not allowed to create a website for the centre separate to the LSC’s CLS Direct or community legal advice website.⁴⁷
- The LSC may refuse to issue legal aid certificates “if we consider that you should focus on General Legal Advice or Controlled Work”⁴⁸
- The funders may “impose targets to ensure an appropriate balance of cases as set out in the Performance Standards”⁴⁹
- The generic contract prescribes to whom (and in what order of preference) referrals must be made.⁵⁰

⁴⁴ In the Gateshead contract, the Liaison Board is made up of two LSC and two Council representatives. The generic contract includes two representatives of the Centre.

⁴⁵ See Annex C to the Annexes to the Standard Terms of the Gateshead contract and the generic contract

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Generic Contract for Signature [draft of 1.3.08] p.7

⁴⁹ Ibid

⁵⁰ Ibid p.8. The contract states that states that referrals must be made (a) to CLA Direct if appropriate, and (b) to private practice if it is appropriate for the client to pay, and (c) to non-legal advice service

Many of these issues throw up conflicts of interest that could prevent an adviser acting in the best interests of their client.

Relationship to the local authority

- 6.3 A particular concern raised in relation to CLACs is the extent to which they will be independent of the local authority. The Q&As typically respond as follows:
- The LSC has supported individuals taking action against local authorities and other public bodies in the past. It does not compromise its independence, always acting to protect people's fundamental rights.
 - The centre's services will deliver against criteria set jointly by the LSC and LCC and the requirement to give independent advice, including advice on people's rights and obligations in relation to local and central government, will be included in the specification.
 - The Council will not be able to remove funding if challenged on a point of law.
 - The Council will not be involved in the auditing of case files.
- 6.4 The question is whether these assurances will be enough. Three issues arise in particular: the CLAC's willingness to take action against the Council; the CLAC's relationship to Council services; and the CLAC's strategic role.

Taking action against the Council

- 6.5 Local authorities play several roles that are directly relevant to social welfare law. They levy tax in the form of council tax, and are therefore a potential creditor to all households in their area. They are responsible for the administration of housing benefit and council tax benefit. They are service providers, with statutory duties in relation to housing, education and community care. They are large employers. They may also be landlords.
- 6.6 Recent research by Moorhead and others into the experience of "clusters" in advice agencies and solicitors firms found that 37% of the clients whose interviews were observed had problems that involved their local authority.⁵¹ They comment that
- "Robust mechanisms need to be in place to ensure that [CLACs] are not tempted to under-represent clients with problems to be pursued against local authorities."*⁵²

Relationship to Council services

- 6.7 The relationship of the CLAC to the Council's own services is a crucial issue for most of the CLACs.⁵³ In Leicester and Portsmouth, the Council's in-house advice services⁵⁴ are remaining outside the CLAC initially, with a view to integration within the Centre at a future date.

providers if appropriate, "or if none of the above apply" (d) to alternative face to face legal advice providers who hold an LSC contract in categories of law not provided by the centre.

⁵¹ Moorhead et al *A trouble shared – legal problems clusters in solicitors and advice agencies*, DCA Research Series 8/06 (2006), pp. ii, 26-27

⁵² *Ibid* p.92

⁵³ The exception appears to be Gateshead, where no reference is made to the council's in-house services, save for a statement that the centre contract will contain "a process for joint working with Gateshead Council's in-house services." Gateshead IFA p.17

⁵⁴ The Welfare Rights and Employment Support service in Leicester and the Money Advice service in Portsmouth

- 6.8 In Derby, it is stated that the council's own service, Derby Advice, will operate as part of the CLAC, "as a delivery partner", bringing substantial extra resources, and enabling the centre to provide a wider range of services, including training, campaigning and strategic policy work, representation in welfare benefits cases, outreach sessions, telephone advice and a first tier generalist advice service. The successful CLAC bidder is invited to consider if co-location of the services is possible.⁵⁵
- 6.9 The proposed integration with council services goes furthest in Hull.
- The Council's in-house Welfare Rights advice services will operate as part of the CLAC, delivering specialist welfare benefits advice and representation, benefit take up and campaigning work.⁵⁶
 - The CLAC will be required to make services available through the Council's eight Customer Service Centres (CSCs), which "will identify presenting problems, ensure timely and proper referrals and take part in the promotion of advice services, acting too as a physical resource for the CLA Centre to enable delivery of services close to the customer."⁵⁷ The successful tenderer will be expected to provide the necessary training to CSC officers and to provide advice surgeries in specified CSCs.⁵⁸
 - Advice on consumer protection issues will be available through the council based consumer advice service, which will work with the CLAC to ensure integrated advice and effective mutual referral processes.⁵⁹
- 6.10 Where Council-run advice services are incorporated within the CLAC it is obviously vital that they act, and are seen to act, independently of the council. This is particularly the case where they monopolise certain functions, such as representation in benefit appeals, as appears to be the case in Hull.
- 6.11 Making services available directly through council offices carries the risk that the CLAC will be seen as part of the council. If someone in Hull wants to take action against the Council, how likely are they to go into one of the Council's Customer Service Centres in order to make an appointment with the CLAC?

The strategic role

- 6.12 CLACs' strategic role appears to have been redefined over time as the specifications have developed.
- 6.13 The Gateshead and first Leicester specifications set out the CLAC's strategic role as requiring "work to prevent legal problems from arising by identifying issues that are repeatedly causing problems for clients and developing an action plan for preventing the identified problems." Such a plan could include
- A casework strategy, e.g. proposals for a test case
 - Using influence to work at Council level to effect change in other services' policies or procedures
 - Community legal education for specific client groups or geographical locations.

⁵⁵ Derby first IFA pp.2, 6-7, 11, 41-45

⁵⁶ Ibid pp.3, 9, 10, 40

⁵⁷ Hull IFA p.3.

⁵⁸ Ibid pp.35-36

⁵⁹ Ibid p.10

- 6.14 Although the Centre provider would be expected to develop the plan, the cost of delivery would not be included in the centre's funding. The LSC would consider the action plan and agree whether additional resources need to be sought or whether existing resources should be diverted to carry out the work.⁶⁰
- 6.15 Subsequent specifications require CLACs to
- "Identify and address issues that are repeatedly causing problems for clients. This may include influencing policies and procedures of particular services or undertaking community legal education for specific client groups or geographical locations."*⁶¹
- 6.16 This suggests that the strategic role has been watered down, as the reference to litigation has been dropped. Arguably, however, the role has also been redefined to coincide more closely with the interests of the local authority.
- 6.17 In Derby, as noted above, it is stated that the inclusion of the council's own service, Derby Advice, within the CLAC will enable the centre to provide a wider range of services, including training, campaigning, publicity, benefit take-up and strategic policy work.⁶²
- 6.18 In Portsmouth, the specification states that the centre will take a lead in promoting the uptake of benefits, and will run take up campaigns within targeted areas of the City (subject to additional funding).⁶³
- 6.19 In Hull, the centre is required to
- Provide detailed reports on the impact of policy, procedure and practice upon individuals groups and communities in order to exercise an influence in the improvement of local services
 - Undertake defined social policy work in education and discrimination
 - Produce a Financial Inclusion Strategy for the City and co ordinate the identified activities that are needed to progress the strategy.⁶⁴
- 6.20 These activities raise questions about the relationship between the CLAC and the Council, and how the CLAC's strategic role should be determined. The specifications state generally that CLACs should "identify issues that are repeatedly causing problems for clients" and take action accordingly. The activities set out above have clearly been determined by the funders and sound as if they are meant to complement the Council's aims and objectives. This may be acceptable, provided that the CLAC is also able and willing to identify issues of its own initiative and take appropriate action, including strategic action (and litigation) against the Council when this is necessary.
- 6.21 This issue may be particularly problematic in Hull, where the CLAC's services are tied in so closely with the Council's services and the CLAC sounds as if it is effectively acting as an arm of the Council in developing and implementing a Financial Inclusion Strategy for the City.

⁶⁰ Gateshead IFA p.5; first Leicester IFA pp. 5-6

⁶¹ Second Leicester IFA p.6; Derby IFA p.10; Portsmouth IFA p.10; Hull IFA p.7

⁶² Derby IFA pp.6, 43

⁶³ Portsmouth IFA p.8

⁶⁴ Hull IFA pp.8, 38-39.

7 Funding and Services Issues

Funding

- 7.1 There are doubts as to whether the funding is sufficient to match the expectations that are likely to be created by the establishment of CLACs:
- With the possible exception of Hull, the amounts involved are not very large.
 - The amounts allowed for the general advice service are far from generous, and are likely to make it difficult to provide appropriate training and support for generalist advice volunteers.
 - Funding for services for ineligible clients, and for tribunal representation, varies dramatically between the CLACs
- 7.2 It is not clear whether the amounts committed by the local authorities concerned are more or less than the funding they provided before. The specifications are silent on this issue. In Derby, the Council's contribution to the CLAC seems to be almost identical to the amount previously provided to three specialist NfP providers. The Council's other advice funding has reduced by 9.5% however, within a total reduction of funding for advice of 5%.⁶⁵ In Portsmouth, the Council's funding for the two advice providers awarded the CLAC contract reduced by 1.5%. Funding to two other advice providers was stopped however, with the effect that advice funding overall reduced by 7%.⁶⁶ In the Hull Q&A a question specifically on this point is completely ducked in the response.⁶⁷
- 7.3 As far as the LSC funding is concerned, one can compare the amounts committed to the CLAC for specialist casework to the amounts spent on social welfare law (SWL)⁶⁸ in the same "procurement area" in 2006-07, and to the "indicative spend" calculated by the LSC for the same period.⁶⁹ The figures are as follows:

	Actual spend 0607 in SWL	Indic spend 0607 in SWL	LSC CLAC spend on SWL and family	LSC CLAC spend on SWL
Gateshead	£318,630	£267,119	£457,088	Not available
Leicester 2	£285,063	£417,864	£465,000	£405,000
Derby	£455,460	£321,949	£399,645	£350,645
Portsmouth & IoW	£428,768	£436,266	£373,645	£347,299
Hull	£198,622	£394,049	£486,100	£359,717

- 7.4 These figures suggest that
- In Gateshead the LSC CLAC spend is significantly more than the previous spend on SWL and the indicative spend
 - In Leicester the LSC CLAC spend on SWL is significantly more than the previous spend and slightly less than the indicative spend

⁶⁵ Information provided to the LSC by Derby City Council and forwarded to ASA.

⁶⁶ Information provided to the LSC by Portsmouth City Council and forwarded to ASA.

⁶⁷ Hull Q&A 7

⁶⁸ Debt, housing, employment, welfare benefits and community care

⁶⁹ For an explanation of the LSC's concept of "indicative spend" see their letter to ASA at <http://www.legalservices.gov.uk/aboutus/ati/5998.asp>

- In Derby the LSC CLAC spend is significantly less than the previous spend but slightly more than the indicative spend
- The position in Portsmouth is not clear as the procurement area in question includes the Isle of Wight
- In Hull the LSC CLAC spend is nearly twice the previous spend but less than the indicative spend.

7.5 The indicative spend figures are likely to be more important as far as future CLACs are concerned. The LSC has told us that

“In the early areas spend was not based upon Indicative spend but historical spend with some adjustment if there were category gaps (Indicative spend was not an indicator at that time). With the remaining phase 1 services we would expect services to be within range of indicative spend (85 – 115%). Past this, the approach will depend on how the LSC uses Indicative Spend in the future.”⁷⁰

7.6 The adequacy of the funding for generalist and specialist advice is considered in the following sections.

Provision of generalist advice

7.7 Budgets of between £200,000 and £250,000 a year are allocated to providing a generalist advice service to a minimum of 2,000 clients a year in Portsmouth,⁷¹ 6,000 in Leicester and Derby and 7,338 in Hull. In general, this works out at £33 - £42 per case.⁷²

7.8 It seems to us that the generalist service is being asked to achieve a lot, for large numbers of clients, in short periods of time. However, the service to certain clients will be quite limited.

The service specification

7.9 The service is generally described as being a free, face-to-face, general⁷³ legal advice service, which includes

- diagnosis of the individual’s problem(s);
- provision of information;
- provision of options available to the client;
- identification of further action the client can take;
- provision of brief initial (possibly up to 30 minutes) assistance (e.g. filling in forms, helping the client draft letters, contacting third parties to seek information on the client’s behalf and supporting clients to reach early agreement on a dispute through negotiation etc.);
- liaising with third parties to identify non-contentious ways of resolving the dispute (including via interagency working)⁷⁴

⁷⁰ Replies by LSC to questions from ASA 6.3.08

⁷¹ The successful bid by the Southern Focus Trust states however that Portsmouth CAB, which will be providing the generalist advice service, is committed to dealing with at least 6,000 clients in the first year of the Centre’s operation.

⁷² The Portsmouth figures would work out at £100 per head for 2000 cases, but the successful bid offered 6,000 cases, which would work out at £33 per case. No breakdown of the local authority funding for Gateshead is available.

⁷³ Or generalist, or General Help

⁷⁴ This wording appears from the Leicester draft onwards

- establishment of eligibility for legal aid where further (specialist) advice is needed; and
 - arrangement of referrals where the Centre is unable to deliver the necessary advice.
- 7.10 The early formulations do not specify any particular categories of law in which such advice is to be given, the implication being that such advice is to be given in relation to all queries. The last four specifications however list the categories of law to be covered. These include the five core SWL categories and family. In Derby, immigration is added as “desirable”. In Portsmouth, consumer is added. In Hull, immigration and education are added, plus any discrimination issues that relate to the categories listed.
- 7.11 The specifications state that CLACs are required to have an effective and appropriate referral system and to refer clients to:
- CLS Direct if the Centre has reached capacity or where this is appropriate and acceptable for the client in the circumstances of the case
 - alternative face-to-face legal advice providers who hold the CLS Specialist Quality Mark in categories of law not provided by the Centre (e.g. Mental Health, Immigration, Education, Clinical Negligence, Actions against the Police, Consumer and General Contract, Personal Injury and Crime.)
 - alternative face to face legal advice providers for clients who are not geographically⁷⁵ or financially eligible
 - an alternative [family] advice provider if there is a conflict of interest between two parties both accessing services at the Centre
 - private practice legal advice providers if it is appropriate for the individual to pay for the advice required
 - non-legal advice service providers, where the problem is or has aspects of a non-legal nature.⁷⁶
- 7.12 Linked to this duty to make appropriate referrals is the performance standard requiring the CLAC to make “effective referrals” for 95% of clients who require specialist legal advice whom the CLAC is unable to help.
- 7.13 The specifications define “effectively referred” as a referral to another source of legal advice, where the Centre provider makes an appointment for the client and hands over the clients’ details, any instructions taken and any relevant documents to the referral agency. The Centre must also follow up on the referral to ensure that the client has received the necessary help.

Complexity

- 7.14 This is all asking quite a lot. As Vicky Ling has commented

“This level of service may seem relatively straightforward. However, anyone who has been responsible for a generalist service will tell you that it is actually fiendishly difficult.

Qualified lawyers are not usually interested in basic advice. Using other bright people without in-depth legal knowledge is possible; but they must be appropriately trained and supervised, as the potential for negligence as a result of wrong or misleading

⁷⁵ See the discussion above of whether CLACs have catchment areas

⁷⁶ As previously noted however, the CLAC contracts prescribe the order of preference for referrals to different types of service. See note 50 above.

advice is frightening. This means ensuring that all those providing general advice have easy access to a supervisor and checking a high proportion of their follow-up work. General advice is an area of expertise in its own right, as high-level specialists do not generally keep up with developments outside their chosen field. So, it is likely that the centre would need to employ dedicated general advice session supervisors, whose job satisfaction would come from supporting and developing general advisers rather than solving clients' problems themselves.”⁷⁷

7.15 Similarly, in a recent study of intake systems in Not for Profit advice agencies, Mark Sefton comments that:

“The demands made of intake staff were significant. They arose from the volume of enquiries, the often vulnerable nature of clients, the judgments which had to be made, and the expectations which had to be managed. All this meant that good quality intake work could not be done on the cheap.”⁷⁸

Costing the service

7.16 With the exception of Gateshead, the targets for clients to be seen are high – 6,000 per year or more. It is not clear how these targets were arrived at.⁷⁹ Some indications are however given as to the time that the CLAC is expected to spend on such cases.

7.17 In the first Leicester tender the assumption was that each case or general advice appointment would take approximately 30 minutes, with 15-30 minutes follow up time writing up the advice.⁸⁰

7.18 In the second Leicester tender, it is stated that general help cases have been modelled on the basis that

- 75% will cost £35 (including Vat)⁸¹
- 25% will cost £59 (including Vat)
- 6,000 cases will incur total disbursements of £3,240.⁸²

7.19 In Hull the budget assumes that

- 85% will cost £30 (excluding Vat)
- 15% will cost £50 (excluding Vat)
- 7,338 cases will incur total disbursements of £1,835.⁸³

7.20 The LSC have told us that in Hull they worked on the basis that general advice would cost £40 per hour. As the majority of acts of general help were expected to take 45 minutes, this gives the minimum figure of £30.⁸⁴

⁷⁷ Vicky Ling “Why the sums don’t add up on CLACs”, *Independent Lawyer*, November 2006, p.28

⁷⁸ Mark Sefton, *Getting past reception: Access and intake systems in Not for Profit legal services providers*, Advice Services Alliance, April 2008, p.v

⁷⁹ The first Leicester IFA (p.12n) set a target of 9,400 clients p.a., based on “monitoring data which shows” that the ratio of generalist enquiries to specialist cases was 4.5 to 1. None of the other IFAs come close to such a ratio. In Portsmouth the Q&A state that the target of 2,000 cases p.a. came from existing monitoring data. Portsmouth Q&A 26. It has been reported that the Gateshead CLAC assisted over 2,000 people in the first six months, of whom almost 1,300 received specialist help. “Inside a Community Legal Advice centre”, *Focus* 55 p.9

⁸⁰ First Leicester Q&A 31 and 32, issued 20.7.06

⁸¹ Since the general advice service is funded by the Council, it is not clear why Vat is included.

⁸² Leicester Q&A 41

⁸³ Hull IFA p.43

⁸⁴ LSC response to questions from ASA, received 20.2.08

7.21 The general assumption therefore seems to be that most cases will involve 30 minutes with the client followed by 15 minutes follow up. This is significantly less time than is normally allowed for a “full advice interview” in an NfP agency. Whether 30 minutes is enough time for an adviser to properly diagnose the client’s problem(s), advise the client as to their options and provide initial assistance is doubtful. Such cases, involving actual advice and assistance, are more likely to fall within the category of longer cases referred to, which are however expected to be very much the minority of cases.⁸⁵

What will the service cover?

7.22 What is perhaps more likely is that the generalist service in CLACs will start by giving clients a short diagnostic interview or “gateway assessment”, lasting 10-15 minutes, and that many clients will exit the service at this point.⁸⁶ This appears to be the system adopted in Gateshead.⁸⁷ It is also the system proposed in Portsmouth. Whether the CLAC can provide the numbers of generalist advices required may well depend on the balance that can be struck between such short cases and all the clients needing significantly more time.

7.23 In any event, it seems clear that the “brief,” “initial” assistance is intended to be precisely that. Casework at generalist level is discouraged. The generalist advisers are expected to provide short pieces of one-off advice or refer either into the CLAC or to another service outside.

7.24 Little is said about the value or purpose of this work, although the Gateshead specification notes that there is no success target for general advice “since it is unlikely that these types of enquiries will be able to be resolved in a brief general legal advice slot.”⁸⁸

7.25 Given the targets set and the amount of funding allocated, it is likely that most of this generalist work will be undertaken by volunteers.⁸⁹ However, the amounts allowed for the general advice service are far from generous, and are likely to make it difficult to provide appropriate training and support for generalist advice volunteers.

7.26 Given the targets set for the CLAC as a whole there are clear incentives for generalist advisers to refer to specialists within the CLAC whenever possible, and indeed to refer anything that is unclear, contentious or likely to take more than maybe 30 minutes to deal with. Working against this however will be the natural desire amongst generalist advisers to hold onto a number of cases in which they feel that they can achieve something for clients without having to refer them to specialists.

⁸⁵ For a discussion of the problems of diagnosis, see Mark Sefton *Getting past reception: Access and intake systems in Not for Profit legal services providers*, ASA April 2008.

⁸⁶ For a discussion of such systems, see Mark Sefton, *op cit*.

⁸⁷ Natalie Purvis “Inside a Community Legal Advice Centre”, *Focus* 55, December 2007, p.9

⁸⁸ Gateshead IFA p.11n. The first Leicester Q&A suggests however that “greater provision of advice at General Help level could help to reduce demand for specialist case-work services.” Leicester Q&A 7, issued 3.3.06.

⁸⁹ The LSC have told us that the Gateshead CLAC is using volunteers to provide most of the generalist advice and that the Derby CLAC intends to do the same. The successful Portsmouth bid makes a virtue of the fact that the service will be provided by volunteers. The LSC say that the successful Leicester bidder proposes to use four paid caseworkers and two FTE volunteers.

7.27 The position is more complicated in terms of problems that the CLAC does not deal with at specialist level. Where problems fall within other SQM categories the generalist advisers are expected to be able to identify the need for specialist advice and make an effective referral where this is possible.⁹⁰ It is less clear what generalist advisers are expected to do in relation to

- Problems that fall outside the SQM categories, such as neighbour disputes or discrimination⁹¹
- Clients whom they are unable to refer for (face-to-face) advice in the categories not covered by the CLAC
- Clients who are “not geographically or financially eligible”, and whom the CLAC is unable to help, where there are no alternative face-to-face legal advice providers.

7.28 It would seem that many clients in these situations will receive only a limited service, consisting of a diagnosis of the problem and a statement that neither the CLAC nor anyone else can help. Whether the CLAC is able to help any more will presumably depend on the knowledge and skill of the generalist advisers and the amount of time they have available to assist such clients.

7.29 The documents do not seem to cover the need to refer clients to other providers where there is a conflict of interest, outside family. However the recent Q&A issued in Barking and Dagenham do cover this point, in the following terms:

“A conflict of interest in SWL is much less likely to occur than in family, however, if it did there would be other options available; for example the telephone advice service, CLA Direct, or other SWL providers in neighbouring boroughs, as a last resort. Additionally, some stand alone family providers may also have the capacity, for the time being, to perform some SWL work under tolerance.”⁹²

Provision of specialist advice and representation

7.30 The adequacy of the specialist services provided by CLACs seems to depend on six key issues

- Which categories of law are covered
- The extent of coverage in the different categories of law
- The degree of flexibility allowed between the different categories
- The extent to which those providing the specialist service are able to cope within the new fixed fee regime
- The extent of service that is available to ineligible clients
- The extent to which representation can be provided at tribunals

Categories of law

7.31 As previously noted, all the specifications require coverage in the five core categories of social welfare law plus family. In addition

- The Gateshead and first Leicester specifications include mental health
- The Derby and Hull specifications include immigration

⁹⁰ The first Leicester Q&A state that the target for effective referrals only applies to cases where an effective referral could reasonably have been made – i.e. there is an alternative supplier (including CLS Direct where appropriate). Q&A 24 issued 27.6.06

⁹¹ With the exception of Hull, where the generalist service is expected to cover discrimination advice.

⁹² Barking and Dagenham Q&A, question H.

7.32 It is not clear how decisions were made as to which categories should be included. As previously noted, various needs analyses make the case for immigration and/or mental health advice, which are not included in the specifications. No explanations are provided for these discrepancies, although the second Leicester specification contains the rather cryptic statement:

*“While we appreciate the unique demographic of the city of Leicester, we do not consider that the Centre model is the best means of delivery model for immigration.”*⁹³

The extent of coverage

7.33 The calculations for the numbers of cases to be delivered have since 2007 been based on the fixed fee figures set out in *Legal Aid Reform: The Way Ahead*, which came into force in October 2007. The specifications state that the number of cases has been calculated by dividing the allocated funding for each category by the relevant fixed fee, and then making adjustments for the anticipated proportion of exceptional cases, the average value of such cases, and the average value of disbursements.

7.34 The variation in the distribution of casework between the categories in the various specifications is set out in the table in Annex 3. The differences can be summarised as follows.

	Gates head ⁹⁴	Leic 1	Leic 2	Derby	P'th	Hull	Av. %
Debt	30%	48%	35%	25%	30%	26%	32%
Family	20%	16%	7%	8%	4%	6%	10%
Housing	22%	17%	23%	34%	31%	32%	26%
Benefits	19%	10%	23%	20%	27%	7%	18%
Employment	4%	3%	4%	8%	3%	12%	6%
Com care	2%	1%	5%	1%	4%	6%	3%
Mental health	2%	3%					
Immigration						11%	
Tolerance			2%	3%		1%	

7.35 Some of the figures are reasonably comparable, such as debt (with the exception of the first Leicester specification), and housing (with the same exception). The family figures drop significantly after the first two specifications. The low benefits figures in the first Leicester specification and in Hull may reflect the role of the council's in-house service (although this does not explain the variation in the Leicester figures). There is some variation in the employment figures – 3% or 4% in four specifications contrasting with 8% and 12% in the other two.

7.36 No explanation is given in any of the specifications as to why the casework targets were set in the way that they were. They seem to bear little relationship to the estimates of demand discussed above.⁹⁵

⁹³ Leicester second IFA p.7 The Q&A (Question 6) refers to the need to work closely with existing immigration providers and states that the latter will be required to accept referrals from the CLAC.

⁹⁴ The casework targets in Gateshead are changed in three respects in the contract. Most significantly, the proportion of debt cases falls to 22% and the proportion of welfare benefits cases rises to 27%.

⁹⁵ See above para 5.15

- 7.37 In relation to family work, the second Leicester Q&As state that the CLAC is expected to provide approximately 20% of family advice in the area and also to do significant amounts of family work under certificate – equivalent to several times the value of work done under legal help.⁹⁶

The degree of flexibility

- 7.38 The significance of the distribution of cases depends very much on the extent of flexibility that will be allowed in practice. The specifications generally state that

“There would be an expectation that the cases would broadly follow the distribution between categories as set out. . . . We understand that the Centre will have to be able to respond to demand as well as seek particular client groups; therefore there will be some flexibility within this i.e. some underperformance in one category of law may be compensated for by an over-performance in another. But not all cases take the same amount of time, for example, community care cases take longer than other categories, and therefore a shortfall in community care cases would be expected to be replaced by a much larger increase in other categories.”⁹⁷

- 7.39 An indication of what is meant by “some flexibility” can be gathered from the Gateshead contract, which states that “underperformance in one category may be set off by over performance in another category, subject to a maximum of 10%” (which may result in a change of payments).⁹⁸

Fixed fees

- 7.40 As noted above, the calculations for funding specialist cases are based on the fixed fees that came into force nationally in October 2007. The extent to which a CLAC will be able to provide the number of cases specified in each category for the funding allocated will therefore clearly depend on the extent to which the type of case arising in the area of the CLAC matches the national mix of cases on which the fixed fees are based. This may well vary significantly between the CLACs and between the different categories of law.⁹⁹ Where the CLAC providers have average case costs that are higher than the fixed fee they will have serious problems.

Ineligible clients

- 7.41 The extent to which CLACs will provide casework services to ineligible clients and representation at tribunals depends entirely on the amount of local authority funding available, since both matters fall outside LSC funding. The total amount of local authority funding for specialist casework and representation case varies dramatically between the CLACs: £100,000 per year in Derby and Portsmouth, almost £195,000 in Leicester and £330,000 in Hull. The extent to which specialist casework for ineligible clients and representation at tribunals can be provided by the CLACs therefore varies considerably between the CLACs, as can be seen in Annex 3.

- 7.42 The proportion of casework that may be carried out for ineligible clients can be summarised as follows:

⁹⁶ Second Leicester Q&A, Questions 26 and 37.

⁹⁷ Derby first IFA p.14

⁹⁸ Gateshead Annexes to the Standard Terms p.19

⁹⁹ For regional variations in average case costs, see the regional fees set out in the LSC’s consultation paper, *Legal Aid: a sustainable future*, July 2006, p.29, and the ASA paper *Case Lengths, Case Costs and Fixed Fees*, May 2007, available at <http://www.asauk.org.uk/fileLibrary/pdf/CaseLCFF.pdf>

	Gateshead	Leic 1	Leic 2	Derby	P'th	Hull
Benefits	100%	100%	3%	0%	10%	0%
Com care	0%	0%	0%	0%	0%	50%
Debt	50%	25%	30%	30%	50%	40%
Employment	75%	0%	14%	70%	70%	60%
Family	0%	0%	0%	0%	0%	0%
Housing	100% for homeless cases 25% for other cases	100% for homeless cases 0% for other cases	2%	15%	15%	40%
Immigration				0%		50%
Mental health	0%	0%				

7.43 It can be seen therefore that:

- In benefits there is a clear split between the first two specifications, where financial eligibility is not an issue and the last four, which make little or no allowances for ineligible clients
- In community care, financial eligibility is essential except in Hull
- In debt, the allowance for ineligible clients varies between 25% and 50%
- In employment there is a clear split between Leicester and the others
- In housing little allowance for ineligible clients is made save in Hull and for homelessness cases in the first two specifications
- In immigration there is a clear difference between the provision in Derby and Hull.

Tribunal representation

7.44 The extent to which tribunal representation is provided is also set out in Annex 3 and can be summarised as follows:

Gateshead	Leicester 1	Leicester 2	Derby	Portsmouth	Hull
Benefits and employment [max 50% of one FTE caseworker's time for each]	Benefits and employment, if eligible. Possible referral to Council in-house services if necessary	Some representation in benefits and employment if eligible. Possible referral to Council in-house services if necessary	Debt, employment, housing. Immigration desirable. Work must be counted as part of % of work for non-eligible clients.	Benefits and employment. Work must be counted as part of % of work for non-eligible clients.	Debt, employment, housing, immigration. ¹⁰⁰ Work to be counted as part of % of work for non-eligible clients, except in immigration

¹⁰⁰ In Hull, benefits representation is apparently to be provided by the Council's Welfare Rights Service

- 7.45 The problem lies in working out what any of these are likely to mean in practice.
- 7.46 The Gateshead specification states a maximum but this is presumably dependent on the extent to which other targets are being met. The Leicester versions imply that little representation will actually be available. The requirement in the other three CLACs that tribunal work must be counted as part of the percentage of work for non-eligible clients (even if the client is eligible for legal help) is quite problematic:
- It is not clear how the "counting" is to be done
 - In benefits, it means that no tribunal representation can be provided by the CLAC (as compared to the Council's in-house service) in Derby and Hull and very little in Portsmouth
 - It means that some tribunal representation can be provided in employment, but it puts tribunal representation in direct competition with casework for ineligible clients.

8 Quality

- 8.1 CLACs were conceived at a time when the LSC was committed to its Preferred Supplier Project, and specifically to a long term aim of contracting only with suppliers who had achieved a rating of 1 ("excellence") or 2 ("competence plus") at peer review. Until the most recent tender, in Hull, CLACs were required to obtain a peer review score of 2 as one of their performance standards. Although the wording is rather vague, CLACs were originally expected to receive such a peer review rating within the first 12 or 18 months of their operation.¹⁰¹
- 8.2 Recently however, the LSC has retreated from the Preferred Supplier programme, stating that suppliers generally only need to obtain a peer review score of 3 ("threshold competence").¹⁰² As a result of this change of policy, the latest CLAC, in Hull, is now only required to obtain a peer review score of 3.
- 8.3 We now understand from the LSC that
- The Gateshead CLAC has not yet been peer reviewed although it is intended that this will be done.
 - The LSC is no longer intending to peer review the Leicester, Derby and Portsmouth CLACs within the first 12 or 18 months. The providers were peer reviewed prior to signing the contract. The LSC has therefore taken the decision that these peer review scores should last for three years (unless the providers change significantly).
 - The LSC will no longer require any of the CLACs to obtain a 2. Until the LSC requires all providers to score a 2 then a 3 will be sufficient.¹⁰³

¹⁰¹ The Gateshead specification says that the CLAC should receive such a rating "in the first year of the contract". The others state that such a rating must be achieved "where the Commission undertakes a peer review" within the first 12 or 18 months of the contract.

¹⁰² According to the LSC, indicators of threshold competence include: clients' instructions are appropriately recorded; there is adequate but limited communication with the client; the advice and work is adequate although it may not always be extensive and may not deal with other linked issues other than the presenting issue; there may be areas that the supplier will need to address in order to progress towards Competence Plus (2) or Excellence (1). Legal Services Commission *Independent Peer Review* (November 2005)

¹⁰³ LSC response to questions from ASA, received 20.2.08. The generic contract for signature [draft of 1.3.08] says [at p.7] that the contract may be terminated "for your failure to achieve and maintain a pass standard in the Peer Review process."

8.4 It is our view that the dropping of the requirement to obtain a peer review score of 2 is a retrograde step, particularly in relation to CLACs. Although CLACs will no doubt start off with the best of intentions, the fact is that they will be monopoly suppliers, with demanding targets to reach, with no competition, with freedom to make their own staffing arrangements, and under no pressure to maintain quality standards higher than those required by the contract. If CLACs only have to get a 3 on renewal, there will be no incentive to keep standards high.

9 Conclusion

9.1 When CLACs (and CLANs) were originally proposed, consultees were asked whether they agreed with the proposals to pilot them. ASA gave the proposals a broad welcome, but set out some particular reservations. The LSC position at that time was that it did “not intend to replicate existing provision where this is serving communities well”,¹⁰⁴ a position which we whole-heartedly endorsed. We were concerned that CLACs might prove particularly attractive to local authorities that are seeking to reduce their funding of independent advice services. We noted the danger that CLACs would be local monopolies for social welfare law services within defined catchment areas. We were particularly concerned that CLACs would not generally cover immigration and asylum advice. We emphasised that it is vital that the pilot CLACs are properly and independently evaluated before CLACs are rolled out more widely.¹⁰⁵ That remains our position.

9.2 The importance of proper piloting and evaluation has been highlighted by the final report on the FAlnS pilots, which notes wryly that

*“It may be helpful to recognise the important role pilots can play in policy implementation, particularly when the findings do not indicate the overwhelming success of a new initiative, as in the case of FAlnS.”*¹⁰⁶

9.3 This paper has raised a number of concerns about CLACs. Some may be teething problems, since CLACs are a new idea. Some may prove to be endemic to CLACs because of their unique nature. Others however seem to us to be highly avoidable, and attributable to the way in which CLACs have been introduced, without consultation with the voluntary sector (or the private sector), and without the involvement of practitioners.

9.4 The LSC has stated consistently that there will be an evaluation of the first round of CLACs, to be conducted by the LSC’s Legal Services Research Centre. We are now told that an evaluation report will be produced in 2009. The LSC state that

“The evaluation will

- *Explore issues relating to the delivery and implementation of such services for funders and providers; and*
- *Assess the benefits to clients from establishing such services.”*¹⁰⁷

9.5 This seems rather vague.

¹⁰⁴ *Making Legal Rights a Reality* (2005) Volume 1 para 7.24

¹⁰⁵ *Making Legal Rights a Reality: ASA’s response to the LSC consultation paper*, available at http://www.asauk.org.uk/fileLibrary/pdf/Making_Legal.pdf

¹⁰⁶ Janet Walker and others *The Family Advice and Information Service: A Changing role for family lawyers in England and Wales? Final Evaluation Report* p.251

¹⁰⁷ *LSC Questions and Answers: Community Legal Advice services*, December 2007, p.16

- 9.6 The evaluation will in our view have to cover a number of issues, including:
- Whether CLACs have increased access to services, both generally and in respect of groups of people that do not currently access mainstream services or are particularly vulnerable
 - Whether they can demonstrate that they have operated independently of the local authority
 - How successful they have been in combining the provision of generalist and specialist advice
 - Whether they have been subsidised by other resources available to the providers
 - Whether they have been able to meet their various targets, and if not why not
 - The extent to which the targets set have produced intended and unintended consequences
 - Whether there are any lessons to be learned from what happened in Gateshead
 - Whether CLACs are able to identify which cases need referral and to refer successfully
 - Whether they are able to identify multiple needs, or clusters of problems, and deal with them¹⁰⁸
 - Whether they provide a quality service
 - Whether they actually work better than other existing models and their alternatives (including CLANs)
 - If they, or some of them, do provide added value, what are the conditions (including financial conditions) in which they are most likely to do so?
 - Whether any gains or benefits are proportionate to the costs involved in the tender process for both funders and providers, the risks involved, and the impact on the wider advice sector in each area affected.
- 9.7 It seems to us that the mere co-location of a generalist service with a legal aid specialist practice is unlikely to justify the costs, the risks and the disruption of local services that will inevitably be caused by the establishment of a CLAC. There needs to be some significant gain, in terms of casework services to ineligible clients and the provision of services such as tribunal representation. With appropriate funding however such services can be provided in other ways, through a CAB, Law Centre, or other advice agency. What the evaluation needs to establish is whether CLACs really produce added value, whether the gains are proportionate, and whether CLACs are really worth it.

¹⁰⁸ See in particular the discussion of these issues in Moorhead et al *A trouble shared – legal problems clusters in solicitors and advice agencies*, DCA Research Series 8/06 (2006)

Annex 1: Clacs – The Basics

The concept

- 1.1 CLACs were first proposed in the LSC’s consultation paper *Making Legal Rights a Reality*, in July 2005.
- 1.2 This paper, and its successor, seems to assume that
 - The supply of services in social welfare law is fragmented and does not match the need for those services
 - Need for legal advice is basically the same everywhere
 - People, especially those with social welfare law problems, do not experience single problems as much as clusters of problems
 - Referrals do not work
 - A “one size fits all” solution needs to be imposed from above
 - The solution will take the form of a centrally directed model, with some local variations
 - Local consultation is generally not necessary
- 1.3 Only the first assumption is, in our view, uncontroversial. We have set out elsewhere our critique of the second, third and fourth assumptions (on which the remaining assumptions are based).¹
- 1.4 The consultation paper proposed piloting CLACs “where there is the greatest need for joined-up legal and advice services in social welfare law”.² It stated “we do not intend to replicate existing provision where this is serving communities well”.³
- 1.5 According to the consultation paper, CLACs would
 - Be a single legal entity
 - Be jointly funded
 - Work within a broad specification, focused on outputs and outcomes, which would be set nationally but would allow for flexibility and local variation
 - Provide face-to-face legal and advice services in social welfare law
 - Deliver a seamless service, from basic advice and assistance to specialist representation in the highest courts
 - Cover a broad range of categories of law, including, as a minimum, debt, housing, welfare benefits, community care and employment
 - Have effective links with suppliers in other specialist areas of law
 - Prioritise effectively, rather than ration through queuing or limited opening hours
 - Work closely with the Criminal Defence Service, so that clients subject to the criminal justice system have access to services that meet their civil advice needs.⁴

¹ Adam Griffith *The CLS Strategy – is this really evidence based policy making?* Available at <http://www.asauk.org.uk/fileLibrary/pdf/clsstrategy.pdf> . For a summary of the argument see “Causes of action and the CLS strategy: is this really evidence based policy making?” *Legal Action* December 2006, p.6

² *Making Legal Rights a Reality* (2005), Volume 1, p.38

³ *Ibid* p.40

⁴ *Ibid* pp.40-41

1.6 Key activities could include

- Targeting groups that do not access current services
- Helping to tackle institutional causes of problems through dialogue, negotiation, and, where this fails, litigation
- Helping to make clients aware of their rights, and providing information and self-help packs
- Developing effective links with suppliers of family legal services.⁵

1.7 Following consultation, a similar vision was set out in the LSC's follow up paper, also entitled *Making Legal Rights a Reality*, published in March 2006. According to this paper Centres (and Networks) would

- Be responsive to local needs
- Have an obligation to meet those needs within the resources available
- Take legal services to groups of people that currently do not access mainstream services (such as certain BME clients) and to clients that are particularly vulnerable (such as clients with mental health problems)
- Have an important role in taking strategic action to resolve the causes of problems.⁶

1.8 The paper states that

- CLACs will be used to test easier ways to deliver services together (e.g. through a combined 'Money Advice' debt and welfare benefits category)
- CLACs will also provide services in family law
- Over time it is intended that CLACs will expand their services to cover education, mental health and aspects of consumer and general contract such as discrimination in the provision of goods and services
- CLACs will not generally be expected to cover other categories but may do so if there is a specific need or expertise, which is particularly likely in relation to immigration and asylum
- CLACs are most likely to be suitable in England in local authority areas with more than 50,000 benefits claimants and a high population density. This would suggest a maximum of 75 Centres although in practice the number will be less.
- The LSC was currently in discussion with a number of local authorities
- Contracts would be awarded during 06/07 after a tendering process.⁷

The tender process

1.9 Each tender process has followed a similar pattern. The LSC and the relevant local authority issued an invitation to tender along with key documents including a Needs Analysis, Information for Applicants (setting out the service requirements and the tender process, and referred to below as the "specification" or "IFA") and an application form. In the earlier tenders the funders also issued standard Questions and Answers at the same time. In each case, potential applicants had the chance to submit questions and the Questions and Answers were subsequently published.

⁵ Ibid

⁶ *Making Legal Rights a Reality* (2006), p.8

⁷ Ibid pp.8-9

- 1.10 The Needs Analyses tended to follow a standard format,⁸ with conclusions as to
- The categories of law that should be covered
 - Client groups that should be targeted
 - Geographical areas (usually wards) that should be targeted.
- 1.11 The Information for Applicants has followed a standard format or template that has been developed from tender to tender.⁹ It has included an increasing amount of information as to the service requirements and the funding arrangements, and increasing details as to the tender process, including, in the most recent tenders, details of the system by which applications will be scored.

Requirements for bidders

- 1.12 The specifications set out requirements for bidders, in terms of essential and desirable criteria, which become increasingly detailed with each tender.
- 1.13 The essential criteria are generally concerned with
- Ability / experience / capacity to provide generalist advice
 - Ability / experience to provide specialist advice and representation
 - Capacity to deliver representation services
 - Having a quality management system
 - Evidence of sound financial management
 - Willingness and ability to work in partnership with the LSC and the local authority and to deliver service under the brand agreed
 - Compliance with the Solicitors Practice Rules and relevant charity law (if applicable)
 - Providing an appropriate service delivery plan and organisational plan
 - Having an acceptable provider history¹⁰
 - Having a peer review score of at least 3
- 1.14 There are some significant differences between the tenders however.
- 1.15 The requirement to demonstrate ability, experience or capacity to provide generalist advice does not appear in the Gateshead or first Leicester specifications. Subsequent specifications specify varying requirements:
- The second Leicester specification requires the ability to deliver a generalist legal advice service, with evidence of previous experience of delivering this type of service, service delivery methods used and range of subjects covered.
 - The Derby specification requires applicants to demonstrate at least 2 years experience of delivering a generalist advice service, seeing a minimum of 1200 clients each year
 - The Portsmouth specification requires applicants to demonstrate at least 3 years experience of delivering a generalist advice service, seeing a minimum of 2000 clients each year

⁸ With the exception of Hull

⁹ In Derby the specification was issued in two parts, before and after an expression of interest stage.

¹⁰ This is a desirable criterion in the Gateshead and Leicester specifications, but becomes an essential criterion in the Derby, Portsmouth and Hull specifications.

- The Hull specification states that applicants must be able to deliver a face-to-face generalist legal advice service, with bids being compared in terms of previous experience, including experience of giving advice in relation to education and discrimination.
- 1.16 The requirement to demonstrate ability or experience to provide specialist advice and representation also varies:
- The Gateshead and first Leicester specifications require a significant track record over at least three years in at least two categories
 - Subsequent tenders require the ability to deliver specialist legal advice and representation in a specified number of categories from the opening date, with specific additional requirements in relation to family work.
- 1.17 Other significant differences in the essential criteria are that
- The requirement to obtain a peer review score of 3 appears in all the specifications except for the latest one, Hull¹¹
 - The Hull specification requires applicants to be, or to have effective plans to become, a single legal entity
- 1.18 The desirable criteria cover similar ground to many of the essential criteria, but also cover matters such as
- Having an effective equalities scheme
 - Providing effective access to vulnerable client groups
 - Having an effective track record of providing legal services under contract
 - Providing value for money and/or the ability to bring in additional funding to complement the services to be provided in the Centre
- 1.19 The most recent specifications, in Portsmouth and Hull, ask applicants to demonstrate, in relation to specialist services, matters such as supervisor ratios, methods of service delivery, and experience of social policy work including public legal education and strategic action.
- 1.20 In Derby and Portsmouth, the specifications state that tenders will be appraised more favourably if they can demonstrate specific experience in relation to
- Employment
 - Family
 - Housing
 - Immigration (Derby only).
- 1.21 In Hull these matters are included in the desirable criteria.
- 1.22 The Hull specification states that they will favour bids from applicants who will also be able to deliver Family Mediation through the Centre, e.g. through an LSC contracted provider providing outreach within the centre.
- 1.23 In Derby, the specification states that immigration can be offered as an additional category and that this will be appraised favourably as part of the desirable criteria.

¹¹ In Hull, the CLAC is only required to obtain a peer review score of 3 once it is in operation, whereas the other CLACs are required to obtain a peer review score of 3 as part of the bidding process.

- 1.24 The actual tendering and selection procedure proposed in the various specifications is beyond the scope of this paper. It is noticeable however that the most recent tenders, in Derby, Portsmouth and Hull, contain increasingly complex scoring systems, the most recent of which, in Hull, runs to over seven pages.
- 1.25 Further details of the bidding process in each area, and who bid for each CLAC, are set out in Annex 2.

TUPE

- 1.26 One burning question has been whether TUPE applies in relation to staff presently providing social welfare law services that lose their jobs as a result of the CLAC tendering process.
- 1.27 The original specifications are silent on this issue. The first Leicester Q&A suggested that whether TUPE will apply would depend on which organisations are successful.¹² Later tenders were clearer on the position, though not unanimous.
- 1.28 The second Leicester specification is clear that the services in question are covered by TUPE, that staff affected will have an automatic right to transfer to the CLAC and that applicants need to incorporate such staff into their proposed staffing structure.¹³
- 1.29 The first Derby specification stated that TUPE may apply and that the funders were seeking advice on this point.¹⁴ The second specification states unequivocally that TUPE will apply, that it will be a condition of the contract that the relevant affected staff are taken on, and provides details of the employees concerned.¹⁵
- 1.30 The most recent tenders however, in Portsmouth and Hull, state that TUPE is “likely” to apply, that some employees “may” transfer, that applicants should obtain their own advice, but that they should also demonstrate how transferred staff are included in their staffing plans.¹⁶
- 1.31 The generic specification that we have received from the LSC states as follows:

“ [TUPE [following text to be agreed with Council depending on Council position]

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) will apply to the successful applicants taking on work under the contract if there is a transfer of an undertaking or a service provision change in accordance with Section 3 (1) of TUPE. If there is a transfer to which TUPE applies then the contracts of employment of all the employees who are assigned to the service will transfer to the successful applicant(s).

If TUPE applies to a bidder winning the Centre contract then the successful applicant will need to consider whether it has positions available for all of the employees who transfer to it or whether it will be necessary to make redundancies from within its workforce. The applicants will need to take legal advice if appropriate as to whether any employees transfer and with regard to the redundancy rights of any such employees. If it is the case that any employees transfer to the employment of a

¹² Leicester, first tender, Q&A 45

¹³ Leicester second IFA p.11. The funders also issued a TUPE questionnaire to existing providers seeking details of the staff potentially affected.

¹⁴ Derby first IFA p.17. Q&A 14 says that the funders are seeking Counsel's advice.

¹⁵ Derby second IFA p.6 and p.19

¹⁶ Portsmouth IFA pp.18, 42-3; Hull IFA p.15, 52. The Portsmouth IFA states (p.31) that the funders have no power to obtain information on employees who may be affected. The Hull Q&A 1 states that details of relevant suppliers can be provided if bidders sign a confidentiality undertaking.

successful applicant then we will reimburse the successful applicants for any costs they incur in relation to making redundancy payments to such employees. However, we will not reimburse the applicants for any other costs which they incur as a result of TUPE applying, nor for any costs which result from any claims of unfair dismissal or any other employment related claims which arise in relation to such employees.

We wish to facilitate a smooth transfer of services from current providers to the appointed applicants and will work with all successful applicants to achieve a smooth transfer of the services.]¹⁷

¹⁷ Generic Information for Applicants, received from the LSC on 20.2.08, p.12

Annex 2 – Details Of The Bidding Process

The following information has been **provided to us by the LSC**

Gateshead			
Bidder	Bid details	Stage Reached	Reason
Gateshead CAB & Gateshead Law Centre	Joint bid with Gateshead CAB as the lead bidder. The bid involves using three subcontractors: - Ben Hoare Bell - David Gray and Co. - Swinburne and Jackson	Won bid	Showed a clear commitment to delivering quality advice in Gateshead
A4E	Sole bid involving one subcontractor: - Swinburne and Jackson	Failed at essential criteria	No employee who met the supervisor standard in two or more of the required categories Service Delivery Plan and organisational plan not detailed enough
Leicester 2006			
Bidder	Bid Details	Stage Reached	Reason
Leicester Law Centre	Sole bid involving three subcontractors: Leicester Money Advice; Leicester SHARP, Thaliwal Bridge solicitors.	Bid failed to meet the Essential Criteria and unable to make these up when invited to submit additional information.	Service Delivery Plan initially insufficiently detailed, and on receipt of additional information deemed unrealistic in requesting full contract payment whilst acknowledging that it would not meet all of first year's targets. Other financial unknowns, including in relation to premises. Inadequate proposals for meeting local need and outreach services, and for provision in specialist areas of family and mental health.
Derby			
Bidder	Bid details	Stage Reached	Reason
A4E	Sole bid involving one subcontractor, Howells	Failed at essential criteria	Did not demonstrate significant track record or capacity to deliver services at the level required
Access to Law	Sole bid involving 4 subcontractors:	Won bid	Bid best met the essential and desirable criteria

	Citizens Advice & Law Centre Derbyshire Housing Aid Moody & Woolley Smith Partnership		
Leicester 2007			
Bidder	Bid details	Stage Reached	Reason
A4E	Sole bid involving one subcontractor, Howells	Won bid	Bid best met the essential and desirable criteria
Law For All and Leicester Law Centre	Joint bid with Law For All as the lead bidder. The bid involves using 2 sub-contractors: - Citizens Advice Leicester - SHARP	Failed at presentation stage	Delivery plan not as good as others – concerns about ability to deliver across the range of categories and a lack of evidence to support claims. Proposed structure did not match as well with the vision set out in the IFA as others. It was closer to a network than a centre and it was not made clear how you would bring together the providers into one coherent service
Shelter	Sole bid involving 2 sub-contractors: - Citizens Advice Leicester - Smith Partnership	Failed at presentation stage	There were minor concerns about ability to deliver in all of the categories concerned and, at interview, many of the answers focussed on Housing advice provision rather than more generally. The proposed Organisational plan was effective but not as effective as that presented by the preferred bidder. The vision for the CLAC was clearly set out in the Information for Applicants document and the bid and supporting organisational structure offered more a network of providers. This structured network compared poorly to the structure and management systems proposed by the preferred bidder.
Leicester Money Advice	Sole bid involving 3 sub-contractors: - Leicester Law Centre - emeryjohnson	Failed at desirable criteria stage	Delivery plan fell short on: <ul style="list-style-type: none"> • Commitment to perform to higher standards

	- SHARP		<ul style="list-style-type: none"> • Links with other services; and • Proposals to stop recurring legal problems <p>Organisational plan was closer to a network, which did not match with the vision for the CLAC as set out in the IFA</p> <p>The bid offered less value for money than the other bids</p>
--	---------	--	---

Portsmouth

Bidder	Bid details	Stage Reached	Reason
Southern Focus Trust (SFT)	Sole Bid with one sub-contractor (Portsmouth CAB) delivering Generalist Advice	Won Bid	<p>Comfortably met essential criteria and performed well against desirable criteria.</p> <p>SFT demonstrated the ability to successfully deliver the new service for Portsmouth. They were able to bring a proven track record of delivering specialist advice services and satisfied the evaluation panel that they would be able to effectively deliver all aspects of the service as set out in the IFA.</p>

ANNEX 3	Gateshead	Leicester 1	Leicester draft	Leicester 2	Derby	Portsmouth	Hull
Population	190,000	280,000	280,000	280,000	221,704	190,000	248,500
IFA issued	<i>May 06</i>	<i>May 06</i>	<i>April 07</i>	<i>July 07</i>	<i>June 07</i>	<i>Sept 07</i>	<i>Nov 07</i>
Spend							
- Total – 3 years ¹	£2,433,122 ²	£3,000,700 inc Vat ³	£2,729,550 inc Vat ⁴	£2,729,550 inc Vat ⁵	£2,690,765 ⁶ , inc Vat (LSC only)	£2,123,780 ⁷ , ex Vat	£3,473,628 ex Vat ⁸
- Council	£998,975	£1,287,000	£1,334,550 ex Vat	£1,334,550 ex Vat	£930,000 –no Vat applicable	£900,681	£1,881,000
- LSC	£1,434,147	£1,720,000	£1,395,000 inc Vat	£1,395,000 inc Vat	£1,760,765, inc Vat	£1,255,563	£1,592,628
- Annual Council	£332,992	£429,000	£444,850	£444,850	£310,000	£300,227	£620,000
- Annual LSC	£478,049	£573,333	£465,000	£465,000	£586,922	£405,809	£486,100
Indicative spend ⁹	£267,119	£417,864	£417,864	£417,864	£321,949	£436,266 ¹⁰	£394,049
Total spend per head of pop'n	£13.62	£10.72	£9.75	£9.75	£12.14	£11.35	£13.98

¹ The Leicester 1 figures are exclusive of disbursements, which can be claimed separately. The other figures are either silent on this issue or are expressed to be inclusive of disbursements.

² The IFA gives a total of £2,587,000. The figures quoted here are from the Gateshead contract, but are understood not to include a trainee solicitor grant, which is also payable.

³ Plus the salary of one trainee solicitor. Additional payments may also be possible for educative/preventive work and/or by way of bonus payments, if stretch targets are met

⁴ Plus £42,000 for a trainee solicitor and £70,000 start up costs

⁵ Plus £32,164 for a trainee solicitor plus £70,000 start up costs

⁶ The Derby figures include payment for a training contract and start up costs and assume immigration services are delivered, costed at £125,000 p.a. for three years.

⁷ The Portsmouth figures include payment for a training contract and start up costs. The IFA quotes a total figure of £2.19m [p.19] but seems to assume that the LSC will pay £32,164 p.a. for three years for a training contract, rather than that being the total cost of the training contract.

⁸ The Hull figures include payment for a trainee contract and start up costs

⁹ LSC indicative spend figures for social welfare law in 2006/07. The figures for the period Oct 06-Sept 07 are 6-7% lower

¹⁰ The Portsmouth figure includes the Isle of Wight

	Gateshead	Leicester 1	Leicester draft	Leicester 2	Derby	Portsmouth	Hull
Advice targets							
General advice	3,675	9,400	4,450	6,000	6,000	2,000 minimum	7,338
Specialist advice cases to be started in first year ¹¹	2,450	3,030	1,414 LSC plus family, plus LA funded cases	2,375 (plus HPCDS)	1,710 (revised from 1,800)	1725 (plus HPCDS)	2,984 (plus HPCDS)
- Debt	730 (30%)	1,465 (48%)	329	840 (35%)	430 (25%)	516 (30%)	760 (26%)
- Family	500 (20%)	500 (16%)	TBC	171 (7%)	140 (revised from 230) (8%)	75 (4%)	179 (6%)
- Housing	530 (22%)	530 (17%)	447	538 (23%)	580 (34%)	542 (31%)	947 (32%)
- Benefits	470 (19%)	315 (10%)	382	547 (23%)	350 (20%)	461 (27%)	198 (7%)
- Employment	100 (4%)	100 (3%)	60	101 (4%)	140 (8%)	60 (3%)	357 (12%)
- Com care	60 (2%)	35 (1%)	144	122 (5%)	20 (1%)	71 (4%)	186 (6%)
- Mental health	60 (2%)	85 (3%)					
- Immigration					£125,000 of work if provided		340 [289 LH 51 CLR] (11%)
- Tolerance			52	56 (2%)	50 (3%)	20 (1%)	17 (1%)
Housing Possession Court Duty Scheme (HPCDS)	N/A	Required to run scheme	Council wishes to retain court desk	Additional 214 possession cases.	350 clients to be seen p.a.	Target of 840, 950 or 960 cases p.a. ¹²	Target of 420, 425 or 430 clients

¹¹ The Gateshead contract requires 2,550 cases. The main difference is a redistribution of cases between debt and welfare benefits, with 550 debt cases (22%) and 470 welfare benefits cases (27%). In addition there are 50 tolerance cases (2%).

¹² The Portsmouth documentation gives 840 and 950 cases. The LSC has told us that the correct figure is 960.

	Gateshead	Leicester 1	Leicester draft	Leicester 2	Derby	Portsmouth	Hull
Tribunal representation	Benefits and employment [max 50% of one FTE caseworker's time for each]	Benefits and employment, if eligible. Possible referral to Council in-house services if demand exceeds capacity	Keen to see representation in benefits and employment cases	Some representation in benefits and employment for eligible clients. Possible referral to Council in-house services if demand exceeds capacity	Debt, employment, housing. Immigration desirable. Work must be counted as part of % of work for non-eligible clients.	Benefits and employment. Work must be counted as part of % of work for non-eligible clients.	Debt, employment, benefits, ¹³ housing, immigration. Work to be counted as part of % of work for non-eligible clients. ¹⁴
Financial eligibility test for specialist advice							
Benefits	Not applicable	Not applicable		97%	100%	90%	100%
Com care	100%	100%		100%	100%	100%	50%
Debt	50%	75%		70%	70%	50%	60%
Employment	25%	100%		86%	30%	30%	40%
Family	100%	100%		100%	100%	100%	100%
Housing	N/A for homelessness 75% for other cases	N/A for homelessness 100% for other cases		98%	85%	85%	60%
Immigration					100%		50%
Mental health	100%	100%					

¹³ Benefits representation apparently to be provided by Council's Welfare Rights Service

¹⁴ Except immigration

	Gateshead	Leicester 1	Leicester draft	Leicester 2	Derby	Portsmouth	Hull
Priority clients							
Low income	Unemployed and low income	People on low incomes	Unemployed and low income	Unemployed and low income	Unemployed and low income	Unemployed and low income	Families on low income
Disability	People with disabilities	Disabled and those with mental health problems	Long term illness or disability inc mental health	Long term illness or disability inc mental health	Long term illness or disability	Long term illness or disability	Illness or disability inc mental health
Learning difficulties			Learning difficulties			Learning disabilities	
BME and/or faith communities	BME and faith communities	BME groups, esp. newly arrived	BME communities and faith groups	BME and faith communities	BME residents and faith communities	BME communities and faith groups	BME people
Geographically isolated	Geographically isolated people			Geographically isolated people			
Young people	Young offenders	Disadvantaged under 25s Young parents	Children and young people inc care leavers	Young people inc care leavers	Young people inc care leavers	Children and young people	Children and young people inc care leavers
Older people	Older people	Older people, esp long term health problems	Older people	Older people (over 65)	Older people (over 65)	Older people	Older people (over 60)
Lone parents			Lone parents	Lone parents	Lone parents	Lone parents	
Carers			Carers			Carers	Carers
Asylum seekers etc	Asylum seekers		Asylum seekers, refugees, new arrivals to city	Asylum seekers	Asylum seekers, refugees, new arrivals to city		
Ex-offenders			Ex-offenders and families			Ex-offenders and families	

	Gateshead	Leicester 1	Leicester draft	Leicester 2	Derby	Portsmouth	Hull
Victims of violence	Victims of violence inc DV		Victims of violence inc DV	Victims of violence inc DV	Victims of violence inc DV	Victims of DV	Victims of violence inc DV
Housing problems	Accommodation problems		Accommodation problems Homeless or at risk	Accommodation problems	Accommodation problems	Accommodation problems Homeless or at risk	
Defined geographically	Zones of disadvantage and advice need. 7 named wards. Outlying areas in 5 wards.	People in deprived neighbourhoods, esp most deprived LSOAs	Most deprived wards and LSOAs		People in priority areas – 7 wards specifically	People in priority areas – 4 wards specifically	People in priority areas = 10 wards
Targets							
General advice target	50% from most deprived neighbourhoods	80% of clients from priority groups	80% of clients from priority groups	80% of clients from priority groups	50% of clients in at least one priority group	80% of clients in at least one priority group	60% of clients in at least one priority group
Specialist advice target	50% from most deprived neighbourhoods	85% of clients from priority groups	85% of clients from priority groups	85% of clients from priority groups	50% of clients in at least one priority group	85% of clients in at least one priority group	80% of clients in at least one priority group
Success target - specialist work	60%	60%	60%	60%	60%	60%, rising to 80% in year 2	60%
Quality target	Rating of 2 on peer review in first year	Rating of 2 on peer review in first year	Rating of 2 where peer review undertaken in first year	Rating of 2 where peer review undertaken in first 18 months	Rating of 2 where peer review undertaken in first year	Rating of 2 where peer review undertaken in first year	Rating of 3 where peer review undertaken in first year

	Gateshead	Leicester 1	Leicester draft	Leicester 2	Derby	Portsmouth	Hull
Client satisfaction	80% good or excellent	80% good or excellent	80% good or excellent	80% good or excellent	80% good or excellent	80% good or excellent, rising to 95% in year 2	80% good or excellent
Money target		£3 million for clients	£1.2 million p.a. for clients				
Referral target	95% effective	95% effective	95% effective	95% effective	95% effective	95% effective, rising to 100% in year 2	95% effective
Opening hours	Min 9-5 five days a week	Mon-Fri 9-5	Mon-Fri 9-5 and one evening 5-9	Mon-Fri 9-5 and one evening 5-9	Mon-Fri 9-5, plus additional 4 hours	At least 8 hours a day 5 days a week and one evening session	Mon-Fri 9-5, Sat 10-1 plus open from 8 a.m. one day and until 6p.m. one day

Annex 4: Advice Funding In CLACs

Annual Spend

Category	Leicester 2			Derby			Ports mouth			Hull		
	LA	LSC	Cases	LA	LSC	Cases	LA	LSC	Cases	LA	LSC	Cases
General service	250,000		6,000	210,000		6,000	200,227		2,000	244,000		7,338
Specialist services												
Debt	119,850	100,000	840	40,000	79,701	430	60,000	54,137	516	74,500	93,617	760
Benefits	25,000	110,000	547	0	103,775	350	10,000	87,809	461	0	42,553	198
Housing	15,000	110,000	538	20,000	129,123	580	15,000	94,600	542	81,000	110,638	947
Employment	15,000	25,000	101	40,000	20,859	140	15,000	6,370	60	64,500	45,957	357
Com care		50,000	122	0	7,497	20		24,862	71	35,000	29,787	186
Family		60,000	171	0	49,000	140		26,346	75		62,553	179
HPCDS	20,000		214		28,222 ¹	350		76,000	950		34,185	430
Immigration										75,000	63,830	340
Tolerance		10,000	56	0	9,690	50		3,521			2,979	17
Total specialist	194,850	465,000		100,000	399,645		100,000	373,645		330,000	486,100	
Total spend	444,850	465,000		310,000	399,645		300,227	373,645		574,000	486,100	

¹ We have been told by the LSC that their funding for the HPCDS in Derby will actually be £33,161 (inc. of VAT).