

# The Independent Review of The Community Legal Service

The Advice Services Alliance's response to the  
Department of Constitutional Affairs's  
consultation on the recommendations made by  
Matrix Research and Consultancy

## Contents

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
	<b>About ASA .....</b>	<b>1</b>
	<b>Introductory comments .....</b>	<b>1</b>
<b>2</b>	<b>Our response to the questions raised in the consultation paper .....</b>	<b>3</b>
	<b>1. Clarifying the aims and functions of the CLS.....</b>	<b>3</b>
	<b>2. Establishing the evidence base for the CLS.....</b>	<b>5</b>
	<b>3. Developing funding streams and procedures .....</b>	<b>6</b>

# 1 Introduction

## About ASA

1. ASA is the umbrella organisation for independent advice networks in the U.K. Full membership of ASA is open to national networks of independent advice services in the U.K. Currently, our full members are:

- adviceUK
- Age Concern England
- Citizens Advice
- Citizens Advice Scotland
- DIAL UK (the disability information and advice service)
- Law Centres Federation
- Scottish Association of Law Centres
- Shelter
- Shelter Cymru
- Youth Access

2. Our members represent over 2,000 organisations that provide a range of advice, legal and other services to members of the public. Most of these organisations offer services within a local area, but some of them are regional or national. They are largely funded through public sector grants and contracts, and charitable fundraising. With some limited exceptions, services are offered to users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care (now commonly referred to as 'social welfare law').

3. This response has been drafted following discussion and consultation with our full members. However, it may not reflect our members' views in their entirety and we are aware that some members will submit their own response. On some issues, our members have differing views.

## Introductory comments

1. We agree with Matrix that the aims and functions of the CLS need to be clarified and made more transparent. However, we believe that there is a more fundamental question: what **is** the CLS?

2. In our view, there is considerable confusion as to the nature and membership of the CLS, quite apart from the issue of its aims and functions.

3. Matrix refer to the CLS as a "virtual organisation" or a "network", and suggest that, partly because of this, there is a lack of clarity about where national leadership for the CLS lies.<sup>1</sup>

4. In an interesting interchange at the Constitutional Affairs Committee, Keith Vaz M.P suggested to Clare Dodgson that, without a focal point to your local CLS, what you have is a

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<sup>1</sup> 'The Independent Review of the Community Legal Service' p.21

“virtual reality CLS”. Clare Dodgson did not accept that, and suggested that such a focal point was provided by Community Legal Service Partnerships, although they had been variable in terms of the success they had achieved.<sup>2</sup>

5. A more practical issue concerns the membership of the CLS. In our view, it is necessary to be clear about who is in and who is out, and the basis for distinguishing the two. This will help clarify what the CLS is, and will help determine what its aims are, and how it can be better managed and improved.

6. In the original consultation paper on the CLS issued by the then Lord Chancellor’s Department in 1999, the membership of the CLS was clearly stated as comprising three elements:

- Lawyers in private practice – who were in the CLS in relation to work funded by the LSC
- Not for profit agencies providing legal/advisory services, funded by both the LSC and other funders
- Not for profit agencies, which were not funded by the LSC, in respect of that part of their work that involved providing legal/advisory services.

7. Clearly outside the CLS, in this description were the LSC itself, local authorities, charities and other funders eg Central Government and CLSPs.<sup>3</sup>

8. The clarity of this original vision has however largely been lost over the last five years. This has been partly due to confusion about the nature and role of CLSPs, which are often described as being the “heart” of the CLS, and as performing a co-ordinating, or even commissioning role, which they do not actually have. It has also been partly due to the development of the Quality Mark, particularly at the General Help and Information level, which has been seen as a badge of membership of the CLS. It has also been partly due to efforts by the LSC to make links with other government departments, such as the Department for Work and Pensions, by drawing agencies such as JobCentre Plus into the remit of the CLS.

9. This issue is particularly relevant in relation to

- Local authority services, some of which have been given a Quality Mark, even though there are serious issues of independence involved, as has been demonstrated recently by events in Leicester<sup>4</sup>
- Central government services – such as Jobcentre Plus, as in the Eastern region pilot,<sup>5</sup> and the Pension Service within Third Age Service Joint Teams
- Information Points generally – whether in libraries, Post Offices, or elsewhere
- Organisations which are granted the Quality Mark, at whatever level – are they all part of the CLS, or can a distinction be made between the CLS as a network of legal service providers and the QM as an accreditation system?
- Agencies that are not mainstream advice providers and may not have the Quality Mark (eg many Youth Access members, self help community groups, black, minority ethnic and refugee groups etc)

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<sup>2</sup> Constitutional Affairs Committee: ‘Civil Legal Aid: adequacy of provision’: Volume II, Ev12

<sup>3</sup> ‘The Community Legal Service – A Consultation Paper’, May 1999, figure 2, p.12

<sup>4</sup> Glenda Terry ‘Advice Services in Leicester – a cautionary tale’, Legal Action May 2004, p.6

<sup>5</sup> LSC ‘Annual Report 2003/04’ p.14

- Mediation services – should family mediation providers [which have the Mediation Quality Mark ('MQM') and a franchise] and/or community mediation services [which have the MQM but no franchise] be included in the CLS?

10. It seems logical to assume that the wider the membership of the CLS is, the less coherent it can be, and the harder it will be to manage it and make any case for it within government.

11. A particular problem for the advice sector is that, as presently understood, there is a disjuncture between it and the CLS. Because the Quality Mark is inappropriate for some parts of the sector [especially agencies that are not mainstream advice providers], but is presently the only “badge” of membership of the CLS, the CLS does not reflect the complexity or the full extent of the advice sector.

12. It is our view that

- Independence of advice is crucial and must be a distinguishing feature of the CLS. Advice is not advice unless it is independent, and given without fear or favour.
- Central government services should not be a part of the CLS.
- Local authority advice services can be part of the CLS provided they have no conflicts of interest and can genuinely act independently of the local authority. This might apply in relation to trading standards and possibly some welfare rights services. We have concerns about local authority housing advice services. Joint Teams<sup>6</sup> raise particular issues as they are a local government service (exercising a statutory duty to give benefits advice) that includes central government services.
- Information points should not be seen as part of the CLS. They do not provide legal advice, although they can act as referring agents. They cannot be controlled by any central CLS mechanism or body. They can be allowed and indeed encouraged to provide information about CLS services, but they should be seen as doing so from the outside, not from inside the CLS.
- Mediation providers [as described above] should be included within the CLS.
- The CLS should primarily be seen as consisting of independent NfP organisations and solicitors in private practice providing publicly funded legal services at General Help level and above.

## **2 Our response to the questions raised in the consultation paper**

### **1. Clarifying the aims and functions of the CLS**

#### **Question 1.**

*Do you consider that the aims and functions of the CLS need to be clarified and made more transparent? Do you believe that the measures proposed would increase clarity and transparency? Please provide supporting reasons with your answer and explain which of the specific recommendations you agree/disagree with.*

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<sup>6</sup> Joint Teams are being increasingly developed, with encouragement from the Department of Work and Pensions, to carry out financial assessments and benefits checks in relation to “Fairer Charging” for local authority non-residential care and support services. They are usually made up of the Fairer Charging team from the local authority and staff from the local Pension Service. See Age Concern England ‘Information and Advice Briefing’, Number 4/2004.

*What benefits might be generated for CLS stakeholders by adopting this proposal? Also what impacts or disadvantages do you consider might result from its implementation? Do you have any other comments on this proposal that you would like this department to take into consideration?*

1. We do consider that the aims and functions of the CLS need to be clarified and made more transparent. A distinction may also have to be made between the “aims” and the “functions”. The aims should perhaps be seen in terms of the basic principles underlying the CLS. The functions could perhaps be seen in terms of the overall effects of the CLS on issues such as social cohesion. The basic principles, in our view, are about access to justice, particularly for those who are more disadvantaged within our society, and involve issues to do with rights, and their enforcement, fairness and equality of arms. These must of course be considered with reference to Section 4(2) of the Access to Justice Act 1999.

2. We consider that the Matrix report, in common with much recent commentary about the CLS, overstates the connection between the CLS and combating social exclusion. The problem with “social exclusion” is that it is a very nebulous concept, which can mean different things to different people. The phrase does of course appear in the Lord Chancellor’s Priorities Direction for legal aid, which refers to “[help with social welfare to tackle social exclusion, including help with housing proceedings, debt, employment rights and social security benefits](#)”, but this is only one of six priorities set out in the Direction.

3. Legal advice has an important role to play in combating social exclusion. In our opinion, however, dealing with social exclusion is **not** the primary purpose of the CLS. The primary purpose is about ensuring that people are able to enforce their legal rights, including through representation if this is needed.

4. We think that there is a need for funding priorities to be set nationally as well as locally, especially in relation to legal aid. In our response to the original CLS consultation paper, we argued the case for a “national strategic framework”.<sup>7</sup> This is necessary to ensure at least some level of coverage across the country and is most likely to guarantee funding in areas like housing, education and public law.

5. Providing that agreement can be reached as to the membership, aims and functions of the CLS, we believe that the first four measures proposed [the Executive Director; Programme Board; three –year strategy and “mission statement”] would increase clarity and transparency. The mere creation of a Programme Board and the Executive Director post will not in themselves ensure greater clarity and transparency however.

6. We are not convinced that the methodology used in the review can provide a basis for improved performance management. The “balanced scorecard” outlined at page 18 of the Matrix report is not explained in sufficient detail to enable us to form a view as to its value. We are not clear what some of the “critical success factors” mean, nor are any performance indicators suggested, as far as we can see. The scorecard may provide a basis for assessing the CLS in the round, but it would need to be developed considerably further before this would be clearly apparent.

7. We do not consider that the establishment of clear linkages between national outcome targets (such as PSA 6) and the provision of local services will clarify the aims and functions of the CLS. Indeed, the reverse may be the case. There is already a danger that the CLS may be skewed in favour of achieving such targets, by emphasising services that can reach the most people, i.e. by emphasising quantity over quality. There is likely to be a tension between the desire to reach the most people and the desire to reach people who are most socially excluded [since cases for such people are likely to take longer].

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<sup>7</sup> ‘The Community Legal Service: Response of the Advice Services Alliance to the Lord Chancellor’s Department Consultation Paper’ p.17

8. National outcome targets such as PSA6 should be considered as a separate issue. If they can be achieved as a result of developments within the CLS, that is of course to be welcomed. It may in fact be national services [such as CLS Direct] rather than local services that are critical here. If national outcome targets are not achievable, then an attempt should be made to renegotiate or redefine them with the Treasury.

9. The creation of an Executive Director post is problematic. We understand that the LSC has already advertised a post of Head of the CLS, somewhat pre-empting the consultation on this point. In our view, such a post would need to be sited within the LSC, since the LSC has statutory authority for the CLS. To have sufficient weight, the post holder would also need to be a member of the LSC Executive Board, as Matrix recommend.<sup>8</sup> However, we do not understand this to be part of LSC plans. In any event, the duties and responsibilities of the post would have to be thought through very carefully. It is unclear whether the post holder would have any real 'executive' powers. It does not seem to be suggested that s/he would have overall responsibility for LSC funded CLS services. Matrix suggest that the main responsibility would be "the provision of policy advice and policy development".<sup>9</sup> We doubt however if this would give the post holder sufficient "clout" to really act as a "champion" for the CLS.

10. The CLS Programme Board is also somewhat problematic. Its function and powers would need to be specified very carefully. It needs to be clear whether it is essentially an advisory body [perhaps a national equivalent of the regional legal service committees] or a body with executive powers and responsibilities. It might be more appropriate for organisations such as ASA to be members of an advisory body, rather than one with executive powers.

## **2. Establishing the evidence base for the CLS**

### **Question 2.**

*Do you consider that the adoption of this proposal will add value to the management and effectiveness of the CLS? Please provide supporting reasons with your answer and explain which of the specific recommendations you agree/disagree with.*

*What benefits or disadvantages might arise from having a clearer evidence base in respect of the CLS (this should be considered with particular reference to the role of the CLS in helping to reduce social exclusion)? Do you have any other comments on this proposal which you would like the department to take into consideration?*

1. As we understand it, the purpose of the first proposal [the demonstration projects] is to clarify the impact and cost effectiveness of different types of general and specialist provision. Some work along these lines has already been done – for example the expanded National Debtline was evaluated in some detail<sup>10</sup> – and note should be taken of this. The purpose of the second proposal [the research programme] is essentially to help make the case for advice and the case for better funding for advice. We are consistently told that the Treasury will not increase the funding for advice unless such a case is made out to its satisfaction. If this is correct, then it is essential that this proposal is implemented, in the hope that further funding for advice will become available in the future, thus ultimately increasing the effectiveness of the CLS and the role and provision of advice more widely.

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<sup>8</sup> 'The Independent Review of the Community Legal Service' p.56

<sup>9</sup> Ibid

<sup>10</sup> 'Evaluation of Money Advice Debtline pilot and business case for development of 'National Debtline' – C. Gardner and J. Wells, Deloitte & Touche: available at [www.dti.gov.uk/ccp/topics1/pdf1/buscase.pdf](http://www.dti.gov.uk/ccp/topics1/pdf1/buscase.pdf)

### 3. Developing funding streams and procedures

#### Question 3.

*What is your view of the proposal to develop more flexible funding streams and procedures? Do you agree or disagree with any of the specific recommendations? Please provide supporting reasons for your response. What benefits might be generated for stakeholders through the adoption of measures which support this proposal? Are there any possible disadvantages that we should consider?*

*Do you foresee any possible impacts on the stakeholders, providers and partners of the CLS that would result from the DCA adopting this proposal and any/all of the recommendations? Please specify the type of impact in your response. Do you have any other comments on this proposal which you would like this department to take into consideration?*

1. We do not see within the Matrix recommendations any specific proposal to develop more flexible funding streams and procedures, although we agree with the need for this in principle.

2. We agree entirely that the CLS budget needs to be separated from the criminal budget. The argument for this is in our view overwhelming.

3. We agree in principle with the proposal that the LSC should undertake a regular and comprehensive supply and modelling exercise to inform the provision of services. We agree with Matrix that there are considerable problems with needs analyses as they have been conducted to date at both local [CLSP] and regional level. This is borne out by our own research of the work of CLSPs and our analysis of the regional reports and contracting strategies produced by the regions. We are interested in Matrix's suggestion that such an exercise can be based on similar modelling within the health field. We are not sure that the need for legal advice is as predictable as the need for health services. There are various factors which affect the need for legal advice which are not predictable, such as economic changes, events in other countries causing population flows, changes in legislation or case law, managerial decisions, and administrative practice or malpractice within major organisations, especially central and local government departments.

4. We believe that an exercise such as this could possibly help to establish some minimum requirements for services in relation to the population of an area, with appropriate adjustments in relation to its ethnic composition or other demographic factors. The approach proposed is however significantly different from that taken to date in the analysis of legal need by the LSC. The methodology involved would need serious consideration by all those likely to be affected. There may need to be a proper debate first before this proposal can be taken forward.

5. We agree entirely on the need to undertake more robust legislative impact analysis and obtain appropriate funding from the Treasury or other government departments. It has long been ASA's view that all new legislation should be costed for its impact on the need for legal advice, and that increased funding should be provided when necessary. It may be that there is a role here also for the Constitutional Affairs Select Committee.

6. We do not disagree with the recommendation that LSC contracts should be based on a better balance between outputs and outcomes, or that this can best be achieved via service level agreements. The problem with this proposal is its lack of specificity. The interpretation of "outcomes" adopted by Matrix is quite different to that currently used by the LSC. It is important that any change does not increase the administrative burden on providers. We will be happy to discuss with the LSC any proposals to change the basis of the Nfp contract, and we have already initiated discussions with them to discuss possible changes. In this context we would also draw attention to the voluntary sector compact, which provides guidance and

establishes best practice principles for the most effective models of commissioning services from the NfP sector.

7. We do not support the proposal to pilot the commissioning of consortia of local providers to provide a “one stop shop” for the provision of all legal advice and representation in a sub regional area.

- We find the use of the phrase “one stop shop” rather confusing in this context. While the consortium would be the “only show in town”, it would not be able to provide all the necessary services in one place. If it could do so, there would be serious access issues in terms of the distances that clients would have to travel to reach the “shop”. There would also be difficulties in advising the different parties to a dispute.
- If properly funded, a consortium could make initial entry to the “shop” more straightforward, and it may be that the initial diagnosis and referral procedures within the “shop” would be an improvement on current arrangements in most parts of the country. However, in our view, these advantages are likely to be outweighed by several disadvantages.
- We believe that the interests of the stronger and larger members of the consortium would generally outweigh those of the smaller and weaker members, and that it will not in fact be possible to protect the role of smaller providers, within both the not for profit and the for profit sectors. This could clearly have equal opportunities implications. We believe also that the lead body in any consortium would have an unwelcome amount of power and leverage.
- The report highlights the risk that a monopoly would arise after the first round of bidding, and suggests that this might be a disadvantage of a competitive process. We cannot see why it would not also be a disadvantage of a non-competitive process.

#### **Question 4.**

*Do you consider that there is a need to simplify the CLS Quality Mark and to develop quality assurance processes that place greater emphasis on the standard of advice provided? Do you agree with any or all of the recommendations made? Please specify in your response.*

*What do you consider might be the advantages or disadvantages for CLS stakeholders of adopting this proposal and any or all of the recommendations? Do you consider there to be benefits to CLS stakeholders if any or all of the recommendations are implemented? Do you have any other comments on this proposal which you would like the department to take into consideration?*

1. We agree with the recommendation to simplify the Quality Mark. It is our view that the two information levels should be merged into one level, as should the two General Help levels. This would leave three levels of Quality Mark: Information, General Help and Specialist.

2. We understand that the LSC has plans to produce a single Quality Mark containing all the requirements relating to organisation and management. This will cover agencies working at General Help and Specialist levels. We are in favour of this plan. Furthermore, we suggest that the supplementary elements of the Quality Mark such as those relating to telephone or outreach advice should be incorporated into this generic Quality Mark.

3. We agree that the existing auditing regimes for the Quality Mark and the contract are over-burdensome, although in some instances, such as the Quality Mark, it may be the unnecessary frequency of audit that is the problem, rather than the process itself. It must be recognised also that these audits do not assess the quality of advice. The LSC is already

working towards a slimmed-down auditing process with the development of its preferred supplier model and we support this new approach.

4. We understand that the LSC is considering the possibility of accrediting some advice networks to award the Quality Mark to their members. They will do this once they have established that the networks' own quality processes are equivalent to or more rigorous than the Quality Mark. We are in favour of accrediting networks to award the General Help Quality Mark. We do not however think that the power to award the Specialist Quality Mark should be devolved to anyone, although some of our network members may have different views on this point. In any event, we think that it is essential that the LSC [or another suitably reputable accreditation organisation] continue to audit a sample of agencies to ensure the Quality Mark is being correctly awarded.

5. We are in favour of the wider use of peer review, as we believe it is the only way of assessing the quality of advice. However, we are aware that extending its application will require the employment of larger numbers of reviewers. It is imperative that, despite facing pressure to carry out more reviews, the LSC continue to ensure that its recruitment process is rigorous enough to select only experts in their field. It is important also that the peer review process is transparent and that detailed feedback is provided on the results of a peer review

6. Other methods of monitoring quality such as mystery shopping have been useful when carrying out research into quality of advice.<sup>11</sup> However, in many cases where the mystery shopper found the advice provider helpful, the peer reviewer found poor advice. We therefore do not recommend the use of mystery shopping on its own to assess quality of advice. However, it can usefully be used in conjunction with peer review.

#### **Question 5.**

*Do you agree that there is a need to better translate the aims of the CLS into local provision? Do the recommendations address this issue? Do you agree or disagree with the proposed measures? Please provide supporting reasons for your answer.*

*What are the possible impacts on CLS stakeholders of adopting this proposal? Would it provide positive benefits or effect potential disadvantages?*

*What impact will any or all of the recommendations have on CLS providers in the profit and not-for-profit sectors? Do you have any other comments on this proposal which you would like this department to take into consideration?*

1. We believe that there is a need to clarify more clearly how the aims of the CLS can and should be translated into provision at a local, sub regional, regional and national level.

2. At the moment there is some confusion as to the roles of

- The LSC nationally
- The LSC regionally
- The RLSCs
- CLSPs
- Other actual or potential national funders [central government departments]
- Other local funders, particularly local authorities
- Other funders, such as the Big Lottery Fund.

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<sup>11</sup> See for example R. Moorhead and A. Sherr 'An Anatomy of Access', December 2002

3. There is clearly a need to better translate the aims of the CLS into local provision. In our view this will involve the commitment of significant additional resources. The “development fund” suggested could play a role in this. There needs however to be a proper discussion of the amounts that are needed and the way in which such a fund would operate.<sup>12</sup>

4. We agree that CLSPs need to be refocused, if they are to continue. In a recent report we suggested that CLSPs could have two main functions: co-ordinating local service delivery and social policy:

*“The first function could include:*

- *monitoring need, supply and capacity issues, and possibly commissioning local research*
- *identifying priorities for service development and the deployment of resources*
- *identifying training needs*
- *developing and supporting good practice, e.g. in referral/signposting between agencies*
- *placing a greater emphasis on securing the core provision of existing services*
- *publicising the services which are available.*

*The second function could include:*

- *identifying social policy issues, usually on a local level, and responding to them*
- *initiating campaigns or projects that would raise awareness of what needs are on the ground*
- *attempting to influence policies on local issues such as debt collection*
- *campaigning for new services*
- *promoting and developing advice and legal services through representation on the LSP.*

*This could all be done by networks of providers only, or possibly involving other willing partners. Issues of “ownership” would have to be clarified. It might be possible to have an “inner” membership consisting of providers only and an “outer” membership, which would include other interested parties. If local authorities did not wish to be involved, efforts would have to be made to establish links with them.*

*Clarity of role is essential, and is more important than a name, but it may be best not to call them “partnerships” unless that really means something to the participants. It needs to be very clear that they are local groups doing what they want, rather than being part of an official apparatus.”<sup>13</sup>*

5. We believe that it is necessary to clarify the future role of CLSPs, before considering whether any sticks or carrots are necessary to encourage participation in them.

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<sup>12</sup> Although the LSC has mentioned such a fund recently, the amounts involved seem quite insufficient and the distribution mechanism seems inappropriate.

<sup>13</sup> A. Griffith ‘What Are They Good For? – Advice Agencies’ Experiences of Community Legal Service Partnerships’, ASA March 2004, pp. 54-55

6. However, if local authorities have no duty to fund advice services [other than those which they are already required to provide] then we do not see that forcing them to participate in CLSPs, when they do not wish to do so, will be beneficial.

7. We agree with the recommendation that the LSC should pilot the introduction of a salaried element into the CLS, particularly as a means of filling gaps in existing supply. We do not consider that the proposed immigration service in Birmingham comes within this category, since it appears to have been set up for quite different reasons, and raises a series of other problems. We are not generally in favour of direct LSC provision. We would prefer to see LSC funding of salaried workers within existing independent organisations, or the establishment of law centre type organisations.

8. We agree in principle with the proposed “development fund”, as discussed above.

9. We agree in principle with the development of more ‘front-line’ triage-style services. We hope that the new CLS Direct services will be able to fulfil this role, and can be expanded to cover other areas of law as soon as possible. However this should be as an addition to existing casework services rather than a replacement. Referrals should then be made to existing providers.<sup>14</sup>

10. We agree with the recommendation to pilot a case management system along the lines of FAInS within social welfare areas of law. We think that this needs to be provided by a multi-disciplinary specialist service. We believe that such a pilot will be extremely useful in highlighting the complexity of many problems [and problem clusters] within social welfare law, and the need for proper referrals to appropriate services of different kinds [and possibly at different levels]. A pilot could also raise issues as to how advice and other services can best be provided and linked, and the advantages and disadvantages of the current mode of provision [including the emphasis on specialists who in practice tend to concentrate in only one area of law]. A pilot might even suggest a need for a wider expertise across subject areas than exists at present.

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<sup>14</sup> We do not however see a need for specialist advisers working from home, as suggested by Matrix.