

Making Legal Rights a Reality

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



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1 About ASA

- 1.1 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
- 1.2 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').
- 1.3 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 several of our members will submit their own response. On some issues, our members have differing views.

2 General Comments

- 2.1 ASA welcomes the publication of the CLS Strategy, and the opportunity to contribute to the debate on the future of the CLS, which in our opinion is long overdue. If the CLS is to mean anything, and survive, it is vital that there is clarity as to what it means, what it stands for, and what its priorities are.
- 2.2 ASA agrees with many of the principles and analyses set out in the consultation paper, such as
- The three priority areas for developing CLS services
 - The primary focus on protecting and promoting individual rights
 - The failure of CLSPs to live up to expectations
 - The need to simplify the process of needs assessment as much as possible
- 2.3 Nevertheless, we do find it somewhat difficult to respond to the consultation paper, due to the
- lack of detail about many of the proposals
 - lack of costing of the proposals – or any clear indication as to where the money will come from

- lack of clarity about how the proposals will be implemented
 - lack of clarity as to the effects on existing services of implementing the proposals.
- 2.4 We are concerned at the extent to which the detail of the proposals has been left to policy papers, which have not yet been released. We are concerned also at suggestions that several of the policy papers will set out the Commission's "plans" and "intentions" rather than be genuine consultation papers. As the recognised NfP negotiating body in relation to contracting and the Quality Mark, we would expect to be consulted in detail about the new initiatives proposed in the paper.
- 2.5 We are concerned that we are being asked to agree to the proposals in principle, without knowing how they will be implemented in practice or what their effects will be.
- 2.6 At the same time, however, we have a number of concerns about the proposals, which are not covered in the consultation questions.

Resources

- 2.7 Although the consultation paper concentrates on social welfare law, it must be recognised that the total amount spent by the LSC on social welfare law represents only a small proportion of total legal aid expenditure. The paper indicates that the total amount spent on controlled work claims in community care, debt, education, employment, housing, mental health, public law and welfare benefits in 2003/04 amounted to approximately £82 million.¹ This represents just 4% of the total legal aid spend that year of just over £2 billion.² It also represents just £1.57 per head of the population of England and Wales.³
- 2.8 What the proposals could mean in practice will be largely determined by the resources available. The paper identifies resources as one of the two key risks in the Initial Impact Assessment, but we are not convinced by the proposals to minimise the risk that are set out in the assessment.
- 2.9 We understand that the Commission is already under pressure in relation to its budget for this year. The ongoing threat to civil legal aid posed by increased expenditure on criminal legal aid has been clearly identified and examined recently.⁴
- 2.10 It is not possible to have a meaningful strategy without a proper budget that is protected from encroachment from other parts of the legal aid budget. At the very least, the civil legal aid fund needs to be ring fenced.
- 2.11 It is our firm view that achieving any significant improvement in the CLS requires additional resources.
- 2.12 The paper proposes to expand telephone advice and to set up CLACs. The only additional funding source suggested appears to be local authorities. There is little if any evidence however to suggest that this is realistic. In the absence of additional resources, these proposals can only be implemented by cutting existing services.
- 2.13 The greatest danger is that the strategy is implemented within a reduced budget. It would then be a more of a recipe for making cuts than a strategy to improve services. If the budget is reduced there is a serious risk that resources will be

¹ *Making Legal Rights a Reality*, Volume 2, p.27

² *LSC Annual Report 2003/4* p.4

³ The 2001 census suggests a population figure of 52.2m

⁴ See the DCA paper *A Fairer Deal for Legal Aid*, and the analysis by Cape and Moorhead in *Demand Induced Supply?*

concentrated on the telephone service at the expense of face-to-face services, and that the CLS will be increasingly reduced to a telephone service supplemented by a limited amount of certificated work in a few categories of law.

- 2.14 We believe that the telephone service should be funded separately out of central government funds, in order to reduce the risk of this occurring.

Local authorities and the CLS

- 2.15 The paper seems to be pinning its hopes on local authorities as an uncontroversial source of additional funding for the CLS, and for CLACs in particular. A number of aspects of this seem to us to be problematic.
- 2.16 It is essential that any services funded under the CLS are truly independent and are able at all times to act in the best interest of their clients, without any interference from their funders.
- 2.17 The paper suggests that local authorities in neighbourhood renewal areas [NRAs] may be particularly willing to provide additional resources for the CLS. It must be recognised however that local authorities in such areas have particular targets to meet as a condition of their NRA funding.
- 2.18 Local authorities are also subject to other targets set by the ODPM. Local authority housing officers, for example, feel under pressure to reduce the number of homelessness applications made as well as the number of people accepted as homeless.⁵
- 2.19 These are just examples of the fundamental fact that local authorities have interests which may conflict with the provision of independent specialist advice to members of their local communities.
- 2.20 It must also be recognised that many local authorities are providers as well as funders of advice services. This also has the potential to create conflicts of interest.
- 2.21 It is hardly surprising that local authorities have been most willing to fund debt and welfare benefits advice, rather than advice that might challenge the decisions which they make (in areas such as housing, education or community care for example). It is surely for this reason that the number of law centres has historically failed to rise significantly above 50. Many local authorities do not consider that it is in their interests to fund agencies that are likely to challenge their decisions.
- 2.22 The LSC seems to believe that it can persuade local authorities to accept the LSC's agenda. The danger is that the opposite may in fact occur. The paper's vision of funders "jointly prioritising their expenditure" is problematic. If services such as CLACs are to be jointly commissioned, there is a risk that this may be on terms set by the local authorities, which may not be in the best interests of CLS clients.
- 2.23 It is possible that some co-operation between local authorities and the LSC may be achievable. The LSC and local authorities need to be aware of each others' interests and take account of them. In some cases this may lead to fruitful co-operation and possibly additional funding.
- 2.24 It would be extremely beneficial to the future of the CLS if the position of local authorities could be clarified once and for all. One option would be the introduction of a statutory duty on local authorities to fund advice services. Another suggestion, made by the Law Centres Federation, is that local authorities should include in their

⁵ See Mark Robinson 'Prevention or cure?' *Adviser 111* p.18

local strategic partnership plans their objectives for the provision of legal and advice services. A third option is that there should be a clear division of responsibilities between local authorities and central government.

Co-ordination between government departments

- 2.25 The LSC and DCA should seek to ensure better co-ordination between government departments. At the moment funding is patchy, which almost certainly leads to some duplication of effort. The Financial Inclusion Fund debt advice programme is an important example of co-operation between the Treasury, the DTI and the LSC.
- 2.26 The LSC and DCA also have a vital role in raising awareness of the advice implications of legislation and policy initiatives, and the need for these to be reflected in the legal aid budget. We welcome the recent DCA initiative in developing a legal aid impact test.

Quality versus quantity

- 2.27 We agree that the services presently provided within the CLS are not meeting the needs of large numbers of people. This is borne out by the experiences of our members, and by research that they have conducted,⁶ as well as the LSRC survey reported in *Causes of Action*.
- 2.28 There is however a conflict between quantity and quality which needs to be considered, particularly in relation to the proposed expansion of telephone services. While we appreciate that the LSC is subject to PSA targets in relation to the number of people helped by the CLS, we do not support an expansion of services that is geared primarily to increasing the numbers of people helped, at the expense of the depth and quality of the service provided. There is a danger here of dumbing down services, which must be confronted. There are also issues in terms of access. A shift of resources towards telephone services carries the danger that resources will be directed more towards the easier cases and the more able clients. This contradicts the paper's emphasis on providing services to people who are poor and socially excluded.
- 2.29 We consider that there are more specific dangers that quality will be compromised, particularly in relation to
- The expansion of the telephone service, and the possible use of generalist advisers as the initial filter in the process
 - The proposal for a generic social welfare law [SWL] category.

Redrawing the boundaries of the CLS

- 2.30 The strategy suggests that the boundaries of the CLS are to be drawn in, and that services which presently operate at the information, general help and general help with casework levels will fall outside the boundary, unless they are able to find a role within the proposed CLACs and CLANs. The strategy seems to downplay considerably the importance of generalist advisers within the CLS. We believe this to be a fundamental mistake.
- 2.31 While we would favour the abolition of the Quality Mark at information level, we consider that the Quality Mark at general help level has been of significant value, and has provided a link between many agencies providing generalist services (often targeted to particular client groups) and other services within the CLS.

⁶ See for example the MORI report *Unmet Demand for Citizens Advice Bureaux 2003/2004*

- 2.32 The proposal to devolve to umbrella organisations, such as our members, the power to accredit agencies to such a standard is only a partial solution to this problem, since
- Few of our members have the resources to do this properly
 - Any such accreditation would no longer be seen as accreditation to membership of the CLS.
- 2.33 There are two overlapping dangers here
- That the one defining feature of the CLS is removed
 - That the benefits to agencies of the Quality Mark will be lost.
- 2.34 The paper recognises the widespread view that membership of the CLS is conferred by the grant of the Quality Mark. It appears to us that this view is one that should be accepted. If the CLS is to mean anything in concrete terms it must surely be a network of services consisting of
- CLS Direct
 - Specialist services funded by the LSC
 - Services that have achieved the Quality Mark at General Help level or above⁷ which are funded by others.
- 2.35 We do believe that the LSC needs to be clear on this issue. There would appear to be a clear choice between:
- Retaining the Quality Mark at General Help level, which means continuing to audit it and to check the auditing processes of networks to which this function may also be delegated; or
 - Abandoning the General Help Quality Mark, and those agencies that have managed to achieve it.
- 2.36 It is our view that the first option is the correct one.

Where do decisions get made?

- 2.37 There appears to us to be a strong tension within the strategy on the issue of where decisions will be made in relation to needs assessment and commissioning services as between the centre, the regions and the local areas. The paper implies that the centre will be responsible for providing an enhanced telephone service and for deciding where CLACs and CLANs will be established. However it also talks about the importance of a planning or commissioning role at local level, when discussing the need to replace CLSPs with other bodies. It appears to us that the strategy is unclear on this point, and may be at risk of creating further problems as a result. It is even less clear to us what the regional role, presently carried out by the Regional Legal Services Committees, is expected to be.
- 2.38 There needs to be clarity about this. Other funders, in particular, need to know whom they are dealing with, and the level of authority held by the people they are talking to.

The future of contracting

- 2.39 The strategy envisages a harmonisation of the existing NfP and solicitor contracts, with specifications of the services to be delivered to clients, in terms of minimum standards of access, the numbers of cases taken on, quality and outcomes. It refers to investigations presently being conducted with the DCA and several local

⁷ Including services that have been granted other particular Quality Marks, such as the Mediation Quality Mark.

authorities about the possibility of establishing common management information systems, which will establish an evidence base for the CLS in relation to case outcomes, improve planning and commissioning decisions and achieve other changes.⁸

- 2.40 We do not object to such ideas in principle, as long as the confidentiality and independence of advice is respected (particularly in relation to local authorities). The devil however will be in the detail. Both we and our members have considerable experience in relation to such issues and have done some important work around them. We are concerned that discussions are taking place between the LSC, the DCA and local authorities, without any input from the advice sector. We would be extremely concerned if we end up being presented with a set of proposals that have been thrashed out and agreed between the parties presently involved, before we have had a chance to provide input to the discussion and analysis.
- 2.41 We are also unclear how the proposed new system will fit with the proposal to roll out the preferred suppliers pilot.
- 2.42 In return for a high level of performance, preferred suppliers benefit from less intrusive monitoring by the LSC and a more mature and trusting relationship. If the LSC succeeds in attracting funding from other organisations including local authorities, we do not see how that new type of relationship will continue.
- 2.43 The strategy states that the LSC and its partners will have to develop common performance measurements and service specifications. Given that other funders have their own requirements, it is unlikely that they will accept the auditing regime of the LSC wholesale. It is much more likely that they will add their own requirements or that they will impose a completely separate auditing regime for the elements of service that they fund. This will mean that the advantages of the preferred supplier light touch approach will be lost.
- 2.44 The paper proposes that services should be commissioned against agreed targets on access and range of services. While we can agree with this in principle, it is not clear to us what is really being proposed here. Accessibility has very clear cost implications. Many services are constrained as to the degree of access and range of services they can provide by a lack of resources. Services also need the ability to be flexible. There are dangers of micromanagement here, which could lead to a stultification of services and a waste of resources. Funders should not try to second-guess trusted providers in relation to such matters. This issue is recognised to some extent in the discussion of CLACs, which accepts the need for flexibility and local variation in relation to the location of services, the balance between different categories of law and responses to specific local factors.⁹ Elsewhere in the strategy, however, the emphasis seems to be more on the importance of specifying strict targets on such issues, as if providers cannot be trusted.
- 2.45 There is a further issue here in relation to choice. If services have agreed targets on access, will they also be accessible to clients from outside their normal catchment area? It seems to us that this will be necessary in order to preserve a degree of choice for clients in terms of the services that they are able to access.

Reducing the number of face-to-face services

- 2.46 The strategy clearly envisages a reduction in the number of contracts overall, a reduction in the number of contracts covering only a limited number of SWL

⁸ *Making Legal Rights a Reality* Volume 2, paras 11.5, 5.16

⁹ *Making Legal Rights a Reality* Volume 1, para 7.25

categories, and larger contracts between (fewer) suppliers and the LSC. This has direct implications for the advice sector, since many NfP agencies only have contracts in one or two categories at the moment. We are extremely concerned at the effect that this will have on advice agencies and the communities that they serve. Many agencies may become unviable if they lose their LSC contracts, or may face a severe reduction in the services that they are able to offer to their local communities. Care needs to be taken to ensure that the baby is not thrown out with the bath water, and that the implementation of such proposals does not produce a significant reduction in access to face-to-face services. Such services will still be needed, even if telephone advice is made more widely available, and the demand for them may well increase if telephone services are expanded. Where small contracts are being delivered properly, and are clearly meeting need, we cannot see any case for cutting them. There are many examples of demand for services outstripping supply in less densely populated areas. The problem in the CLS at the moment is a shortage, not a glut, of quality services.

The recategorisation of civil legal aid services

- 2.47 The strategy envisages civil legal aid as comprising different types of categories of law, which need to be provided for in different ways, i.e.
- Social welfare law [SWL]: debt, benefits, housing, employment, community care and education
 - Family
 - Immigration and asylum
 - Mental health
 - Personal injury and clinical negligence.
- 2.48 We are concerned about a number of aspects of this thinking.
- 2.49 There is a clear overlap between family and SWL problems. There is strong evidence to suggest that clients facing family problems experience an equal number of SWL problems.¹⁰ The strategy does not seem to us to recognise this sufficiently or to plan for it accordingly. Family and SWL services need to be integrated as closely as possible.
- 2.50 We are extremely concerned that SWL is being redefined to exclude immigration and asylum. Obviously the demand for immigration advice will vary between areas depending on their demographic composition. Where however there are significant numbers of people with immigration problems in an area, we consider that the provision of immigration advice should be included within the SWL provision in that area. The demand for immigration advice appears to have expanded recently as a result of the expansion of the European Union. Immigration and asylum services need to be planned together with SWL services.¹¹ Someone who has been granted refugee status is likely to need help in other SWL categories. Their asylum case may also involve related immigration issues, such as family reunion. It would clearly be much better for these clusters of problems to be dealt with under the same roof. Any steps that can be taken to reintegrate asylum seekers and refugees with mainstream services are surely to be welcomed, given the extent to which they are presently stigmatised and treated separately as people with very few rights.

¹⁰ See Moorhead et al *The Advice Needs of Lone Parents* (2004)

¹¹ The paper does state in an appendix that “immigration advice must be part of a package of social welfare issues, which should also be joined up with other services.” *Making Legal Rights a Reality* Volume 1 p.53

- 2.51 We are concerned that the Commission is proposing to treat mental health separately from SWL. We accept that this is the way in which the system has operated so far. We appreciate that the Commission will be putting forward its proposals in a separate paper. The problem at the moment seems to be that mental health law services have consisted overwhelmingly of advice and representation for people detained under the Mental Health Act, with very little consideration of the problems affecting clients with mental health problems who are living in the community. The paper highlights the connection between mental health and community care issues, and the small number of existing suppliers with contracts in both categories.¹² The Commission's review of several Mental Health Projects piloted under the Partnership Initiative Budget has highlighted the extent to which people with mental health problems also experience SWL problems, and a number of problematic issues concerning the delivery of an appropriate service to such clients.¹³
- 2.52 The strategy is silent about consumer advice, and the consumer category generally, which it presumably sees as being of low priority. There are however specific issues that fall within the consumer category which deserve proper consideration, such as issues of professional negligence and discrimination, specifically in relation to goods, facilities and services.
- 2.53 The strategy is generally silent about the importance of advice in discrimination cases. Discrimination law is highly complex, and to a large extent represents a distinct body of law, even though it is not classed as a separate category within the LSC's categories of specialist work. The LSC needs to give further consideration to how discrimination advice can be included within social welfare law.
- 2.54 We are concerned also about the Commission's proposal to introduce a generic social welfare law category. We appreciate that this will be the subject of a separate paper. We are not clear whether the proposed category refers to the content of a provider's contract or the skill and experience required of individuals acting as supervisors.
- 2.55 We accept that there is a need for services to be more wide-ranging wherever possible, that there are overlaps between the different categories within SWL, that people experience clusters of problems, and that they do not define their problems in terms of the category definitions contained in the SQM. Nevertheless, there is a serious quality issue here and a need to ensure that specialist support services are available.
- 2.56 A generic SWL category may be sufficient to enable a supplier to deal competently with the most common problems experienced by most clients. The danger is that the supplier will fail to diagnose, or to deal properly with, the less common problems, which are more likely to be identified by an agency, and a supervisor, with a category specific contract. Recent research has shown that the quality of advice given by advisers on subjects outside their specialism is frequently appalling.¹⁴
- 2.57 We believe that there should be no watering down of the "specialist" standard or the supervisor requirements. Where the latter cannot be met by a provider, which is providing a proper service, quality can still be confirmed or supported by the use of peer review or an external supervisor.

¹² Ibid Volume 2, para 3.34

¹³ See *Innovation in the Community Legal Service* Chapter 2

¹⁴ See Moorhead and Sherr *An Anatomy of Access*, Moorhead et al *Quality and Access*

- 2.58 It may be better to aim for a situation in which all services are able to identify a problem, and have access to specialists in certain subjects (such as community care or education) who are available on a sub-regional basis.

Wales

- 2.59 We are unclear about how the strategy applies to Wales. Various organisations in Wales, including some of our member networks, have produced an advice strategy for Wales, which was recently out for consultation. The neighbourhood renewal area system does not apply to Wales. We note that the Commission is proposing a separate paper on Wales, and look forward to further clarification on this issue.

3 Consultation questions

Q.1. Do you agree with the flexible definition of the CLS as we have outlined in paragraphs 1.5 - 1.16?

- 3.1 We are opposed to the flexible definition of the CLS outlined in the paper.
- 3.2 The paper correctly identifies a number of problems inherent in such an approach, notably that the LSC has no direct power over services within the CLS funded by others, that the CLS is not visible as a brand, and that the lack of definition provides scope for each participant to attach their own definition and objectives to the CLS.¹⁵
- 3.3 If a flexible definition is adopted then the strength of the CLS in any particular area will depend on the services that the LSC is able to fund and the level of commitment of other funders to the provision of independent legal advice services in the area. It will crucially depend on the willingness of local authorities to fund such services. The result will surely be that the CLS will vary considerably from one place to another and that it will not exist as a national service in any meaningful sense.
- 3.4 We do not agree that it is futile to seek to define the CLS more specifically or with the suggested risks involved in doing this.¹⁶ The paper suggests that a flexible approach will allow the CLS “to meet the differing needs of individuals in ways most appropriate to their circumstances”.¹⁷ The problem with this suggestion is that it will be the funders or potential funders involved who will decide what is “most appropriate”. In practice, what is “most appropriate” will be decided largely in terms of where clients live, and will be determined by the level of commitment of local authorities and other funders in the area and how the area falls within the terms of the LSC’s strategic approach. If clients live in the most deprived urban areas they may have access to good face-to-face services (and possibly even a CLAC). If they live in rural areas they will probably have to rely on telephone services, with possible access to face-to-face services organised on a sub-regional or regional basis (and possibly within a CLAN).
- 3.5 We accept that specialist services in all relevant categories cannot be provided within easy reach of everyone. We accept that there will always be an element of a postcode lottery in the provision of CLS services, and that there will always be some “advice deserts”. It does not follow however that we should “embrace” such a situation.
- 3.6 Our view is that the CLS should be defined according to three principles.

¹⁵ *Making Legal Rights a Reality* Volume 1 para 1.13

¹⁶ *Ibid* para 1.14

¹⁷ *Ibid* para 1.15

- 3.7 Firstly, as we have argued above, we think that the CLS should be defined in terms of the services that fall within it, and the quality assurance mechanisms that underpin those services.
- 3.8 Secondly, we think that the CLS should be defined in terms of the standards of accessibility of services that it aims to achieve. This approach is set out elsewhere in the strategy in terms of targets, which may be set to cover:
- the proximity of all the population to legal and advice services;
 - the proximity of the eligible population to social welfare law services;
 - the availability of initial telephone or internet advice and information;
 - the proximity of eligible clients to non social welfare law services.¹⁸
- 3.9 We welcome this approach. An alternative, and complementary, approach would be to establish the minimum level of services that should be available in all areas, or possibly in different types of areas.¹⁹
- 3.10 We appreciate that such approaches will involve setting standards that will be met to varying degrees in different geographical areas. If they have however been agreed by the major stakeholders involved in the CLS they can perform an important role as benchmarks, against which the level of local services can be assessed. With the appropriate degree of political will, pressure can be brought on poor performing areas through a combination of positive and negative incentives in order to improve the level of services provided.
- 3.11 Thirdly, we believe that the CLS should be defined in terms of the original purpose of civil legal aid: “to provide legal advice for those of slender means and resources so that no-one will be financially unable to prosecute a just and reasonable claim or defend a legal right.”²⁰

Q.2. Do you agree that our primary focus for the CLS should remain as defined in paragraphs 1.17 - 1.23?

- 3.12 We agree with this proposition.
- 3.13 We are somewhat concerned however at the apparent limitation of “action by public authorities” to “proceedings such as those relating to mental health and public law children cases”.²¹ We prefer the formulation at paragraph 2.2 of the paper, which includes actions against the police and asylum within the “first priority” of protecting rights related to state actions.

Q.3. Do you agree that the vision set out in paragraphs 2.1 - 2.16 is the right one for the CLS? If not, what would you change or add?

- 3.14 We do not disagree with the “vision” as a set of principles.
- 3.15 We agree that the CLS should focus on the rights of individuals, and that the first priority is the protection of rights related to state actions. It is somewhat strange however that the four types of state actions specified fall outside the main thrust of the strategy. Public law Children Act proceedings are family matters, and the

¹⁸ Ibid para 7.11

¹⁹ See the discussion of this issue in our recent publication *Regional Planning and its Limitations* at p.65

²⁰ Lord Chancellor *Summary of the Proposed New Service* Cmnd 7563 (HMSO, 1948) quoted in R. Smith *Justice: redressing the balance* [1997] p.13

²¹ *Making Legal Rights a Reality* Volume 1, para 1.18

strategy states that further papers will be published in relation to mental health, actions against the police and asylum.

- 3.16 We do not understand why other immigration cases are not included within the rubric of “state actions”. We have set out above our concerns at the separation between social welfare law, family, mental health and immigration and asylum cases within the strategy.
- 3.17 We believe that immigration and asylum cases should be included within the provision of social welfare law services.
- 3.18 The strategy notes that actions against the police have “particular constitutional importance”, and states that this category will be the subject of a further paper.²² We do not wish to comment at this stage on the particular proposals that have been flagged up, but we are concerned at the suggestion that “improving police complaints procedures” may diminish the need for legal assistance in this category.
- 3.19 We do not accept the bald proposition that people do not face “legal problems” but problems to which the law may offer a solution. The “legal problems” people face are generally problems of “everyday life” which are expressed within a legal format.²³ The legal format exists because of the extensive range of rights and obligations established by law, and by the extent to which people relate to others through contracts. It is often the enforcement or attempted enforcement of such rights, obligations and contracts by others which causes legal problems. People are much more likely to be subject to legal action than to take action themselves. People get taken to court by their landlords, their creditors and others. These are surely “legal problems”.
- 3.20 The paper highlights three types of services or clients, which constitute its priorities. We do not disagree with these in principle. Within a limited budget however, there will effectively be a competition for funds between these three priorities. The more funds that go to providing a legal advice and information service available to everyone, the less funds will be available to provide services to the two groups of clients described as the “core groups” to whom services should be directed.²⁴
- 3.21 While the paper emphasises the need for services to be “client-focused and accessible”, it fails to consider the extent to which different client groups may have particular needs for advice or problems accessing CLS services.²⁵ The paper does note that “the most vulnerable and disadvantaged clients do not easily access services which follow traditional models, for example high street solicitors and general advice centres.”²⁶ It suggests also that CLACs could target groups that do not access current services.²⁷ We consider however that these issues deserve further consideration.
- 3.22 We agree wholeheartedly with the need for the CLS to be independent. We agree also that this may lead to a tension between the CLS and its funders. We have highlighted above our concerns about the role of local authorities within the CLS, and the need to take account of their particular priorities and concerns. There is a danger that the independence of CLS services could be compromised by the demands of

²² Ibid p.52

²³ See Pleasence et al *Causes of Action* p.1

²⁴ This problem is highlighted in the quote from the Social Exclusion Unit cited in the strategy at para 7.42

²⁵ See the discussion of this issue in our recent report *Regional Planning and its Limitations*

²⁶ *Making Legal Rights a Reality* Volume 1 para 3.9

²⁷ Ibid para 7.26

local authorities. We need greater clarity from the LSC as to how it believes that this issue can be “approached appropriately” in order to achieve “a creative tension that retains a resolute focus on the rights and needs of clients.”²⁸

Q.4. Do you agree that these are the main challenges that the CLS faces? Are there others? (See paragraphs 3.1 - 3.13)

- 3.23 We agree that the challenges identified are critical.
- 3.24 A further challenge concerns the recruitment and retention of committed lawyers and advice workers, and the retention within the CLS of committed suppliers.
- 3.25 There needs also to be better co-ordination between government departments, and better co-ordination of central government funding of advice.

Q.5. Do you support the proposal to establish a national stakeholders group? Do you have any comments on the initial remit and proposed membership as outlined in paragraphs 5.3 and 5.4?

- 3.26 We consider that a national stakeholders group could be useful.
- 3.27 We are not sure about the initial remit proposed, since the proposal is phrased so vaguely. We agree on the need to achieve a common understanding of relevant agendas, as we have indicated above in our comments on local authorities. We disagree about the need to “agree the way in which we define client need”. We do not think that the definition of client need is a matter for political negotiation between various stakeholders. In our view it is more of a research issue. Various views have already been expressed as to the extent to which various types of need are “really” needs for generalist as distinct from specialist advice.²⁹ We do not think that it would be appropriate for a national stakeholder group to get involved in such issues.
- 3.28 We are concerned also at the suggestion that such a group should “prioritise the challenges we face”. A group on which other funders or potential funders of legal advice services (such as local authorities) are represented may, for example, be more inclined to prioritise the need to provide general services accessible to all, such as telephone services, at the expense of face-to-face services.
- 3.29 It seems to us that the group should start by trying to establish common ground on what the CLS means, what it stands for, and who it includes.
- 3.30 As far as the membership of such a group is concerned we feel strongly that it must include representatives of providers, from both the solicitors and the not for profit sectors. The need to work with providers is recognised in paragraph 5.1, but they seem to be omitted from the proposed members set out in paragraph 5.3 of the paper. It is providers, and not funders, that have the greatest understanding of the pressures on the system and the weaknesses within it. It is providers who have the expertise in the law and the greatest understanding of the impact of changing law on the legal services world. While providers do of course have vested interests, these are, in our opinion, significantly less than those of local authorities, which have interests that can conflict with the needs of clients.
- 3.31 We are unclear what the paper means by “client representatives”, and how they might be chosen. There is a potentially wide range of interests that could fall within this rubric.

²⁸ Ibid para 2.10

²⁹ See the discussion of this issue in *Regional Planning and its Limitations*, pp.60-61

- 3.32 Clarification is also needed as to the extent to which such a national group will be representative of the regions, and of Wales.

Q.6. Do you agree that the planning function of CLSPs should be undertaken by a different body? Do you agree the appropriate body should be agreed between the LSC and local authorities? (See paragraph 5.6)

- 3.33 We do not agree with this proposal.

- 3.34 We agree with much of the analysis in the paper about the failure of CLSPs to meet the expectations placed upon them. This is partly due to the fact that those expectations were unrealistic. It is partly due to the failures of CLSPs themselves. We have argued elsewhere that CLSPs have a continuing role in relation to co-ordinating service delivery and social policy, and that this role could be performed by networks of providers, possibly involving other willing partners.³⁰ Similarly, where CLSPs are successfully performing a planning (or even commissioning) role, they should be allowed and encouraged to continue to do this.

- 3.35 It is not clear to us what is proposed in terms of a planning and commissioning role at local level. As we have indicated, we believe that the paper is unclear and ambiguous on this issue. We accept that commissioning has to be done by funders, and that funders need to talk to each other. We are not convinced however that a planning body is needed at local level. We agree entirely with the paper that “there must be no partnership or bureaucracy that does not add value.”³¹ We do not see that a formal structure is necessary in order to enable funders to talk to each other. We doubt if the existence of such a structure will make local authorities any more willing to fund advice services than they proved to be within the CLSP structure.

- 3.36 Where funders do engage in such discussions, this must be in “an open and transparent manner” as the paper suggests.³² Funders must also consult other stakeholders involved at a local level, including providers, for the reasons set out above. Where CLSPs survive as provider forums, they must also be consulted and involved in the process. It is vital to avoid any suggestion that “deals” are being “stitched up” behind closed doors by the LSC and local authorities in particular.

Q.7. Paragraph 6.3 outlines steps to ensure that appropriate resourcing is available for the CLS. Are there other steps that the Commission should take?

- 3.37 Of the steps outlined, we would oppose the suggestion that the LSC should pool budgets with local authorities. We believe that LSC and local authority funding streams should be kept separate, in order to preserve accountability, transparency and the independence of the services provided.
- 3.38 In addition to the other steps mentioned, the Commission needs to take all possible steps to persuade the government to separate or ring fence the civil legal aid budget, in order to prevent its continual erosion as a result of pressures from the criminal legal aid budget.
- 3.39 The Commission should conduct or commission further research into the impact and benefit of advice.

³⁰ See *What are they good for?: Advice agencies' experience of Community Legal Service Partnerships* pp.54-55

³¹ *Making Legal Rights a Reality* Volume 1 para 5.6

³² *Ibid*, para 5.8

- 3.40 The Commission needs to continue and expand its efforts to persuade government that access to justice is an essential part of a modern democracy, and that it cannot be achieved without access to quality face-to-face legal advice services.

Q.8. Do you agree with the three priority work areas for the CLS as outlined in paragraph 7.1? If not, what should the priority work areas be?

- 3.41 We agree with these priority work areas.

Q.9. Do you agree with our proposal to expand our telephone service? Is it right to make a basic level of service (such as information on legal rights and self-help packs) available to everyone regardless of means? (see paragraphs 7.12 - 7.17)

- 3.42 We agree in principle with the proposal to expand telephone services, and that it is right to make a basic level of service available to everyone regardless of means. Our agreement is however subject to the following qualifications.

- 3.43 Firstly, we consider that telephone advice services of the kind proposed should be seen as a new service (and not just an extension of CLS Direct), and that they should be funded separately out of central government funds. This will reduce the risk that the CLS will have to continually make decisions on funding priorities as between telephone and face-to-face services.

- 3.44 Secondly, it is vital to recognise the limitations of telephone services. They must not be seen as an alternative to face-to-face services.

- 3.45 It is unfortunate that the evaluation of the telephone pilot in the UK was conducted by the LSC, rather than by independent researchers, and that several crucial questions were not considered in the evaluation.

- 3.46 We do however have the benefit of a proper evaluation of telephone advice services in the USA, which interviewed over 2,000 users and was able to draw firm conclusions about the value and limitations of such services. Given the importance of this study, we have summarised the key findings as an Appendix to this paper. Some important lessons can also be drawn from the evaluation in the UK of the money advice Debtline pilot.

Accessibility and use

- 3.47 The first issue concerns the accessibility and use of such services. There is a clear danger that they will be used by more articulate and confident clients and will be under-used by those who need services most.

- 3.48 The Debtline evaluation found, for example, that users had an age profile that is skewed more towards the younger age groups than the population as a whole and those identified as “vulnerable”.³³ It found also that the average household income of users was slightly higher than those identified as “vulnerable” and considerably higher than the target group identified as “strugglers”.³⁴ The evaluation revealed that the pilot had failed to reach the “strugglers” to a significant extent.

- 3.49 The LSC evaluation also expressed disappointment that only 23% of users were from the target groups (identified as rural, disabled and carers/parents).³⁵ The LSC

³³ C. Gardner and J. Wells *Evaluation of Money Advice Debtline pilot and business case for development of 'National Debtline'* p.19

³⁴ *Ibid* p.20

³⁵ LSC *Telephone Advice Pilot Evaluation Report* para 1.8

evaluation also suggests that BME clients were under-represented in the users of the service.³⁶

- 3.50 The paper states that “many people prefer to access services over the telephone”³⁷, which is no doubt true. It is also confirmed in the Debtline survey.³⁸ However, this should not be used as an argument for replacing face-to-face services with telephone services. Many people also prefer using face-to-face services. The National Audit Office conducted a survey to determine the public’s willingness to use call centres to access services and found that:

*“Sixty per cent of people responding to our survey said that they were content to receive advice and services from departments over the telephone, though younger people were more likely than older people to be willing to receive goods and services in this way. For the remaining 40 per cent, the main reasons why they were unwilling to do so were because they preferred to deal with someone in person (17 per cent); had either tried telephoning and could not get through or found the service they had received to be unacceptable (8 per cent); or wanted to receive information in writing (6 per cent).”*³⁹

The effectiveness of telephone services

- 3.51 A second issue concerns the effectiveness of telephone advice services. The Hotlines study in the USA raised considerable concerns as to the extent to which clients understood and/or followed the advice they had received. The survey concluded that 21% of clients had not taken the action advised.⁴⁰ About a quarter of these did not understand what they were supposed to do. Another quarter were too afraid to try or lacked the time or initiative.⁴¹
- 3.52 The survey found that Hotline clients with the best and worst results had distinct demographic characteristics. Clients with the least favourable outcomes were Spanish-speaking, Hispanic, individuals with the lowest education levels, those who reported no income and those who were separated from their spouse. Substantial proportions of such clients failed to understand the advice they were given.
- 3.53 The survey found also that those who reported serious transportation problems, scheduling difficulties and other problems frequently failed to follow the advice they received.
- 3.54 The survey questions in particular whether Hotlines are appropriate for non-English speakers, even though they received advice in their own language.
- 3.55 The survey considered the types of service provided, and compared these with the outcomes achieved. It found that
- Where the Hotline provided a “brief service” (typically, writing a letter, completing a form, or making phone calls on behalf of the client) 69% of cases were successful
 - Where the Hotline gave advice about dealing with a private party, 59% of cases were successful

³⁶ Ibid para 1.23

³⁷ *Making Legal Rights a Reality* Volume 1 para 7.12

³⁸ Gardner and Wells, op cit pp.24-25

³⁹ National Audit Office *Using call centres to deliver public services* [2002] Executive summary para 5.

⁴⁰ *The Hotline Outcomes Assessment Study Final Report Phase III* p.32

⁴¹ Ibid p.66

- Where written information was provided in addition to telephone advice, 48% of cases were successful
 - Where clients were advised how to represent themselves in court, 46% of cases were successful
 - Where clients were advised how to deal with a government agency only 33% of cases were successful
 - Referrals of all kinds resulted in generally lower levels of success.
- 3.56 The survey recommends that Hotlines should increase their capacity to provide “brief services”.
- 3.57 These findings are particularly relevant to the development of telephone services within the CLS. The evaluation of the UK pilot reveals that a high proportion of advices given were classed as “level 1”. The CLS Direct monthly statistics reveal that the average length of answered advice calls is currently less than five minutes.

Quality

- 3.58 A third issue concerns the actual quality of the advice given. There is no indication in the evaluation of the UK pilot that the advice given was peer reviewed, although we understand that some services were in fact reviewed. In our view it is essential that telephone advice services are subject to peer review. We believe that the peer review needs to go beyond the supplier’s file, in order to ascertain the appropriateness of the advice to the particular caller, and whether the caller appeared to understand the advice given. This will presumably require taping calls, which is not unusual for monitoring purposes.

Staffing

- 3.59 A fourth issue concerns the actual staffing of telephone services. We understand that the LSC is intending to introduce a system in which all calls will be answered by first tier advisers of some kind, who will perform a diagnosis and triage function, before deciding which services are most appropriate for the client. There is in our view a crucial issue here about the level of knowledge and skill required by someone performing this function. In our opinion, this is a highly skilled task, which needs to be performed by skilled advisers or lawyers. It cannot be left to generalist advisers, who may miss important aspects of the client’s problem and/or fail to ask the right questions. There are dangers that people performing this role will see themselves as gatekeepers to CLS services. We believe that skilled advisers and lawyers, who are committed to providing the best possible services to clients, are less likely to fall into this trap.
- 3.60 As far as specialist advice is concerned, we believe that such services need to be provided by current practitioners, who provide telephone advice only part of the time. This is necessary in order to ensure that they are up to date with the latest developments in the relevant category of law. It will also be helpful in terms of their motivation and retention within the system.

The need for evaluation

- 3.61 Before there is a significant expansion of telephone advice services, there needs to be a proper evaluation of CLS Direct. This must include tracking and interviewing clients in order to assess the outcome of their cases. It must also include peer review as argued above. The evaluation needs to consider the experience of existing services such as National Debtline, the Shelter advice line and Consumer Direct. It needs to consider in particular whether the findings of the Hotlines study apply

equally to the UK, and evaluate the types of services that produce the most favourable outcomes.

Q.10. Do you agree that over time we should develop the greatest concentration of face-to-face services in the most deprived communities? (see paragraphs 7.18 - 7.21)

- 3.62 We consider that there is a danger in this approach. It is already the case that face-to-face services are concentrated in the most deprived communities to a considerable extent. This is true of advice and law centres, as well as solicitors firms. A legal aid practice of any kind requires a concentration of eligible clients, who are most likely to be found in deprived communities. We are therefore not clear what “the greatest concentration” actually means in this context.
- 3.63 We are concerned in particular at the emphasis on the 88 Neighbourhood Renewal Areas.
- 3.64 It is our view that the ODPM index of deprivation cannot be used as a proxy for legal need. Whilst we accept that there is some relationship between levels of deprivation and legal need, it is clear that the drivers of legal need are more complex than this. The LRSC research indicates that some types of people have significantly greater need for legal advice than others. Further, there is evidence from RLSC reports and elsewhere that legal need can be influenced by many factors, including
- the performance of local authorities and other bodies responsible for the delivery of social welfare services
 - changes in local economic circumstances
 - pressures on social, education and health services in a local area.

Q.11. Do you agree with the proposals to pilot Community Legal and Advice Centres and Community Legal and Advice Networks, as outlined in paragraphs 7.22 - 7.32? Do you agree with their proposed remits and the broad descriptions of the services they will provide?

- 3.65 We broadly welcome these proposals.
- 3.66 We agree in particular with the idea of piloting some services such as benefits or homelessness advice on a non means-tested basis.
- 3.67 We do however have some particular reservations.

CLACs

- 3.68 The paper states that the LSC “does not intend to replicate existing provision where this is serving communities well.”⁴² It also notes however the risk that the new approaches might prove disruptive to effective existing services.⁴³
- 3.69 It is not at all clear what the effect on other providers and their funding will be in areas where CLACs are set up. We consider that it is vital that the strategy does not lead to the substitution of new-fangled organisations for existing and effective ones. It is equally vital that effective existing services are not disrupted and that existing practitioners are not driven out.
- 3.70 This issue is linked to the suggestion that CLACs will be jointly funded with local authorities (and possibly other funders). There is something of a catch 22 situation

⁴² *Making Legal Rights a Reality* Volume 1 para 7.24

⁴³ *Ibid* p.71

here. Where local authorities are already funding organisations covering several categories of social welfare law there will be the least need or justification for a CLAC. CLACs will be most needed in areas where local authorities have not funded independent legal advice services to date. It is not clear what incentives there are to persuade them to fund such services now.

- 3.71 There appears to be a tension between the desire for joint funding and the desire not to replace existing provision. The danger zone lies perhaps in local authority areas that are seeking to reduce their funding of independent advice services. They may be most interested in talking to the LSC about setting up a CLAC. The danger is that it will largely be on their terms, which may involve the disruption and reduction of existing services, and of services that are likely to challenge the local authority.
- 3.72 This issue in turn links into the range of services that will be provided by a CLAC. The paper talks about “a seamless service, from basic advice and assistance to specialist representation in the highest courts.”⁴⁴ Although such a service is desirable in principle, it raises both funding and other issues. We assume that the LSC does not intend to fund the provision of “basic advice”, or the provision of the reception and intake services, which will be necessary to enable a CLAC to function. It would appear that substantial funding from other sources would be necessary to establish a CLAC, unless the LSC is to take a wider interpretation of its funding role. The alternative scenario is presumably a CLAC with minimal other funding which operates only as a specialist service funded by the LSC.
- 3.73 The paper seems to assume that the provision of a seamless service is unproblematic. We are not sure about this. There are many NfP agencies that combine a generalist advice role with a specialist LSC-funded role. This has caused considerable heart searching for agencies, which feel that they are providing a two-tier service. Some attempts in the past to combine generalist and specialist services were unsuccessful. If such seamless services are to be piloted, the LSC needs to take a proper look at existing agencies that operate in this way, and identify the problems that arise and the best practice that could be followed.
- 3.74 A further issue concerns the governance and independence of CLACs. The paper says very little about this, save that CLACs will be a single legal entity, which could be run by any sector. We think that there are very important issues here. CLACs will need to be linked into their local communities if they are to be successful and seen to be accountable. If CLACs are to tackle institutional causes of problems they will need to be seen to be locally accountable, and independent. We consider that large commercial organisations, in particular, would have difficulty in performing this role successfully. It would seem to us that CLACs would need to be established by NfP solicitor organisations, or by private practice solicitors firms, and be regulated by the Law Society.
- 3.75 A few practical issues also arise in relation to CLACs.
- 3.76 There is a danger that CLACs will effectively be local monopolies in relation to the provision of social welfare law services within defined catchment areas. This would cause problems in relation to clients’ choice of services, which will be particularly acute where there are conflicts of interest. Provision will have to be made to ensure that alternative services are available to clients who cannot or do not wish to avail themselves of a CLAC’s services.
- 3.77 It must be recognised also that a diversity of provision is necessary in order to enable the CLS to reach excluded communities.

⁴⁴ Ibid para 7.22

- 3.78 As far as categories of law are concerned, we have indicated already our concerns that immigration and asylum cases are not included within the paper's consideration of social welfare law. The same applies to the CLACs. We believe that, where there is an appropriate level of demand in the local area, CLACs should give advice and representation in immigration and asylum matters. We consider that education advice services should also be provided by the CLAC, wherever possible.
- 3.79 We have already indicated our concerns about the separation of social welfare law from family law services. We agree with the need for CLACs to link very closely with family legal services and with the proposals set out later in the paper.⁴⁵
- 3.80 We are less convinced about the links to the CDS suggested. It is vital that prisoners who are in prison on remand, or are serving short services, have access to services that meet their civil advice needs. Prisoners serving longer sentences will also have civil advice needs, particularly in relation to their release from prison. Our concern is that the CDS is unlikely to have much contact with prisoners who are serving sentences (whether short or long) unless they are appealing their conviction or sentence, or are pursuing civil matters that are linked to their arrest and imprisonment. We think that the link to the CDS needs to be considered in greater detail.
- 3.81 It is vital that the pilot CLACs are properly and independently evaluated before CLACs are rolled out more widely.

CLANs

- 3.82 We welcome the proposal to pilot CLANs, which are in some respects less problematic than CLACs, and represent more closely the original vision of the CLS. We are in favour of generalist agencies being in CLANs.
- 3.83 There are some practical issues here:
- Where would the leadership and drive come from?
 - Who will pay for all of the work involved?
 - How inclusive will they be?
 - Would there be sufficient incentives for non-contracted agencies to join in?
 - Would there be sufficient incentives for solicitors to join in?
 - Is there a danger that they could effectively become local cartels, and freeze other suppliers out of the picture?
 - Would there be opportunities for new players to join in?
- 3.84 There is also an issue as to the extent of their geographical coverage. It seems to us that CLANs are most likely to work at CLSP area level, where there are already good links between suppliers. The paper says however that the LSC will consider whether such a network would be practicable on a regional basis. It may be that a regional CLAN should be piloted to test this.
- 3.85 What remains unclear to us is precisely where CLANs fit within the overall strategy. The paper suggests that the future CLS will consist of
- The new telephone service
 - A concentration of face-to-face services in the most deprived areas
 - A regional network of legal advisers

⁴⁵ Ibid para 8.8

- Supported by general advice agencies.⁴⁶
- 3.86 Elsewhere it refers to a concentration of face-to-face services in areas such as Neighbourhood Renewal Areas and “a more regionalised approach to face to face services outside these areas.”⁴⁷
- 3.87 We are not clear what is meant by “a regional network of legal advisers” or “a more regionalised approach”, or whether these are the same thing. The regional “network” is suggestive of CLANs, but this may be a coincidence of wording. We do think that it is necessary to be clear about how services will or will not be organised or networked in areas that are not covered by CLACs or equivalent services.
- Q.12. Do you agree that there should be an increasing presumption in favour of services that work across several areas of social welfare law? (see paragraphs 7.33 and 7.34)*
- 3.88 We do not object to a “presumption” of this nature, or the message that it is intending to send to providers. Such a presumption should however only come into play when other things are equal, for example when the LSC is considering awarding a specialist contract to one provider rather than another, where there would be no significant adverse effects if the contract is awarded to the provider that covers more areas of social welfare law.
- 3.89 In general, we consider that that the emphasis should be on “services” rather than individual suppliers. Many suppliers already work closely together in order to provide linked and integrated services to clients. The emphasis should be on encouraging greater collaboration of this kind.
- 3.90 We believe that single subject contracts will continue to have a role, for example in rural areas, which are unlikely to be covered by services offering several categories of social welfare law.
- 3.91 It is important that providers have the capacity to represent clients in court when necessary. In certain subject categories it will be important for suppliers to have legally qualified staff.
- 3.92 The LSC also needs to recognise the special position of various niche specialist providers, particularly in the smaller subjects such as community care, public law, and education. It is vital to preserve the expertise of such providers within the system, and to link them with any CLANs, CLACs, or other networks of regional providers that are established. The same principles apply in relation to high quality single subject suppliers in other categories such as housing.
- Q.13. Do you agree that the CLS should put more resources into taking strategic action? What other approaches could be taken beyond those outlined in paragraphs 7.37 - 7.47?*
- 3.93 We agree with this proposal and the approaches suggested.
- 3.94 We agree that such work should be included within the remit of the CLACs and the CLANs.
- 3.95 We are concerned however at the suggestion that the lead could be taken by the LSC itself or by cross-funder groups.⁴⁸ This work must be carried out by providers. They are the only group that can be seen to be independent and acting clearly in the

⁴⁶ Ibid para 6.6

⁴⁷ Ibid para 7.21

⁴⁸ Ibid para 7.42

interests of clients. They are the only group that can threaten and pursue litigation when other approaches fail.

- 3.96 This work does of course need to be properly funded, and piloted. This can presumably best be done through the pilot CLACs and CLANs.

Q. 14. What other ways can the Legal Services Commission promote information about legal rights and responsibilities? (see paragraphs 7.48 - 7.52)

- 3.97 We broadly support the thrust of the analysis in the consultation paper, including that of the Commission's own role in relation to information provision. However, we disagree with the view implied in paragraph 7.52 that information should be promoted as a substitute for legal advice and assistance. Whilst some people may be able to resolve their legal problems using appropriate information, it is essential to promote legal information as an integral part of the delivery of legal services, with a strong emphasis on signposting to further sources of help. CLS Direct has taken this approach since its inception and should continue to do so.

- 3.98 We are also concerned that legal information tends to be viewed as peripheral in comparison with other legal services. In developing the CLS therefore, the Commission should continue to provide adequate resources for producing, commissioning and promulgating high quality legal information. This should encompass the development of the CLS Direct website and continued partnership with other providers, including our own Advicenow and ADRnow projects.

- 3.99 In our view there is a continuing need to improve the range and quality of available information; to actively promote it to the public, particularly via intermediaries; and to evaluate its use in a variety of contexts.

- 3.100 We agree that the Commission should work with the DCA to develop the latter's Education, Information and Advice Strategy. This should include an active commitment to developing public legal education. Over the last year, ASA, Legal Action Group and The Citizenship Foundation have promoted the need for a national strategy for public legal education, and we are currently in discussions with the DCA on possible ways to take this forward.

Q. 15. Have we identified the key issues in developing the appropriate links between the social welfare areas of the CLS, Children and Family services and the Criminal Defence Service? (see paragraphs 8.1 - 8.11) What other steps could be taken to facilitate these links?

- 3.101 As we have indicated previously, we are concerned at the separation between social welfare law and family law in the Commission's thinking. The paper states that children and family services are "within the CLS", and that "family law services are a core part of the CLS and form, in monetary terms, the greatest part of LSC-funded civil services."⁴⁹

- 3.102 Nevertheless there appears to a big division in the Commission's thinking on these issues, which appears to mirror different lines of authority within the Commission itself.

- 3.103 We consider that it is vital that social welfare and family law services are linked as closely as possible, in order to avoid the risk of increasing the separation of the two,

⁴⁹ Ibid para 8.1

to the detriment of clients, which the paper recognises.⁵⁰ We agree that the LSC should explore the options outlined.

- 3.104 The paper states that the LSC “will continue to work to ensure that the appropriate links are made between the CDS and the CLS”⁵¹, but does not explain this any further. We believe that the Commission should give further attention to this issue, and that it merits a policy paper of its own. We have commented above on the lack of connection between the CDS and its clients, once they have been convicted and sentenced to prison. There have been significant developments in the provision of advice services to prisoners, many of which have been funded by the Commission. Lessons need to be drawn from these developments, in the same way that lessons have been drawn by the Commission in relation to various projects funded under the Partnership Initiative Budget.
- 3.105 Behind this however is the more fundamental question as to the extent to which it is desirable to maintain the current division between CDS and CLS services. Where CDS services are supplied by providers who do nothing else, there must be a risk that the needs of their clients for social welfare advice will be overlooked. The Commission is suggesting a presumption in favour of suppliers who cover a wider range of social welfare law services but appears to be happy with CDS suppliers who provide only CDS services. Its proposal to introduce competitive tendering for lower criminal work in London carries the danger of accentuating this division, and may also have the effect of reducing the social welfare law services that are currently provided by CDS suppliers. We believe that the Commission needs to reconsider this whole issue, and, at the very least, issue a policy paper on the subject.

⁵⁰ Ibid para 8.7

⁵¹ Ibid para 8.11

4 Appendix: The Hotline Outcomes Assessment Study

Background

- 4.1 The Center for Policy Research worked with the Project for the Future of Equal Justice to conduct an independent assessment of the effectiveness of using Hotlines to provide legal services to low-income populations in the USA.
- 4.2 Hotlines are programs that allow eligible callers to speak directly to a legal worker who can analyse the caller's problem and provide legal advice, information, referral, and, in some cases, brief services (such as writing a letter, completing a form or making phone calls on behalf of the client).
- 4.3 Pioneered by legal services programs providing legal services to the elderly, Hotlines have been adopted for use by a growing number of legal services programs that serve a general low-income population. Historically, more than two-thirds of the cases handled by Legal Services Corporation - funded legal services programs are for advice and counsel, referral, or brief service. The theory behind Hotlines is that these tasks can be performed effectively through a telephone-based system, supported by appropriate computer software and staffed by advocates specially trained in the provision of advice and referral services.⁵²
- 4.4 The study assessed the work of five Hotline programs. In four of these, calls were answered primarily by staff attorneys (with some use of paralegals). In the fifth program, callers spoke to paralegals, who consulted attorneys before advising the client.
- 4.5 The study was based on interviews with 2,034 callers, who represented 40% of potential respondents. The interviewees generally resembled the general profile of clients.⁵³

The effectiveness of telephone advice services

- 4.6 The Hotlines study raised considerable concerns as to the extent to which clients understood and/or followed the advice they had received. The survey concluded that 21% of clients had not taken the action advised.⁵⁴ About a quarter of these did not understand what they were supposed to do. Another quarter were too afraid to try or lacked the time or initiative.⁵⁵
- 4.7 The survey found that

“Hotline clients with the best and worst case results had distinct demographic characteristics. Clients with outcomes that were rated most favorably were significantly more likely to be white, English-speaking, educated at least to the eighth-grade level, and have a marital status other than being separated from a spouse. Clients who received the least favorable outcomes were Spanish-speaking, Hispanic, individuals with the lowest education levels, those who reported no income from any source, and those who were separated and lived apart from their spouse. Substantial proportions of Spanish speakers, individuals with the lowest education

⁵² *The Hotline Outcomes Assessment Study Final Report Phase III*, [2002] p.1

⁵³ *Ibid* p.20

⁵⁴ *Ibid* p.32

⁵⁵ *Ibid* p.66

levels and those with no income source appeared to experience unfavorable outcomes because of a failure to understand the advice they were given.”⁵⁶

- 4.8 The survey considered the barriers that clients face and the effects that this had on them. It found that:

“Many clients face barriers that may affect their ability to follow through on Hotline advice. Many Hotline callers disclosed that they or a member of their households had a disability or a serious health problem (42%). About a third (33%) reported serious transportation problems. Smaller proportions reported having work, school, or daycare schedules that might make it hard for them to handle their legal problems (16%). Reading or speaking English well enough to complete forms and other legal paperwork was noted to be a problem for about 12 percent of Hotline callers. And 44 percent disclosed other problems, such as depression or fear of an ex-partner or current household member. While clients with disabilities fared no worse than their counterparts without disabilities, the other barriers listed above were associated with outcomes that were significantly worse. Those with problems using English appeared not to have understood the advice they were given, while those with transportation, scheduling difficulties, or “other” problems frequently failed to follow through.”⁵⁷

- 4.9 The survey considers in particular the position of non-English speaking clients. It argues that

“ Policymakers should take further steps to evaluate whether Hotlines are an appropriate method of delivering service to non-English speakers. The non-English speaking clients in this study were Spanish speakers who were provided services by the Hotline in Spanish. They had a particularly high rate of failure to act due to inability to understand the Hotline advice. This suggests that the lower level of favorable outcomes they obtained may have had to do with factors other than language per se. Policymakers should conduct more in-depth evaluations of outcomes obtained by non-English speaking Hotline clients to determine whether this method of delivering services is suited to this demographic group.”⁵⁸

- 4.10 The survey considers the types of services provided. It found that

“Certain types of Hotline services are more apt to result in favorable outcomes. Brief services yielded the highest proportion of cases that were classified as favorable. Coaching clients on how to deal with a landlord, creditor, or other private party was next, followed by providing written legal information and coaching clients on how to proceed pro se in court. Favorable assessments were still lower in cases where clients were instructed on how to deal with a government agency or were referred to another legal services program or social service agency.”⁵⁹

- 4.11 More specifically:

“Cases in which the Hotline performed a brief service (typically, writing a letter, completing a form, or making phone calls on behalf of the client) were most likely to result in a positive outcome, with 69 percent of these cases classified as favorable.

Cases in which the Hotline gave the client advice about dealing with a private party, as compared to self-representation in court or dealing with a government agency, were the next most effective with 59 percent winding up with favorable ratings. Favorable assessments were much lower in cases where clients were coached on

⁵⁶ Ibid pp.66-67

⁵⁷ Ibid p.67

⁵⁸ Ibid p.69

⁵⁹ Ibid p.66

how to deal with a government agency (33%) or told how to represent themselves in court (46%). Cases in which written information was provided in addition to information over the telephone were more likely to have a favorable outcome (48%).”⁶⁰

“Referrals of all kinds resulted in a generally lower level of successful outcome; lowest of all were those cases in which the Hotline told the client that she or he needed a private attorney.”⁶¹

“Cases in which clients were rated by [the survey’s] lawyers as least likely to act on the advice of the Hotline were those in which clients were advised to represent themselves in court or with government agencies and/or were referred to either social service agencies or other legal resources.”⁶²

4.12 The survey recommends that:

“Hotlines should develop or increase their capacity to provide brief services or institute a brief services unit. Brief services are more likely to result in successful outcomes than advice or referral services. In cases where it may be possible to resolve the client’s problem with a letter, telephone call, completion of a form, or completion of a referral, it is likely to be a more effective use of resources for the Hotline or a related unit to perform the action than for the Hotline to advise the client how to do so. The Hotline will already have invested time in developing the facts and legal issues in response to the client’s call; investment of the additional time required for the brief service will substantially increase the likelihood of a successful outcome for the client’s problem.”⁶³

⁶⁰ Ibid p.41

⁶¹ Ibid p.42

⁶² Ibid

⁶³ Ibid p.70