

Performance Indicators for Community Legal Service Partnerships

The Advice Services Alliance's Response to the Lord
Chancellor's Department's Consultation Paper

Introduction and Overview

1. ASA is the umbrella organisation for independent national advice networks in the UK. Our response to the Department's consultation paper is based on discussions between network members operating in England and Wales, and should be considered in conjunction with individual responses submitted by those networks. The response seeks where possible to represent the consensus of opinion amongst network members, but its comments on specific proposals should not be taken in every case as necessarily representing the views of all networks.
2. ASA broadly agrees with the Department's aim in establishing performance indicators for Community Legal Service Partnerships (CLSPs), as set out in paragraph 6 of the consultation paper.
3. It is not entirely clear what is meant by the statement in paragraph 8 of the consultation paper that the ultimate test of how well CLSPs have performed should be an outcome indicator relating to unmet need. If however, the aim here is to measure the progress of CLSPs in ensuring, as far as is possible within resource constraints, that locally and nationally identified needs for advice and legal services are being met by quality assured suppliers providing a range of services at the appropriate level (from basic information and advice through to representation), then ASA would concur with the statement. Using this definition, the ultimate measure of success will be the minimisation of unmet need.
4. We have considerable doubts as to whether such a measure (or more accurately, range of measures) can be developed by April 2001. Firstly, it assumes the existence of robust models for assessing both need and supply, which are applied by all CLSPs in order to ensure consistency of measurement. At the time of writing, more work needs to be undertaken on needs assessment and (as far as we are aware) virtually no work has been undertaken at a national level on supply mapping. Secondly, the development of measures such as performance indicators for individual suppliers (as discussed in paragraph 7 of the consultation paper) and caseload measurements weighted according to the complexity of the problem (as suggested in paragraph 9), though possible in principle, is an extremely complex task, and will need to be both grounded in rigorous research and subject to detailed consultation and piloting.
5. We would therefore urge the Department, in conjunction with the Legal Services Commission, to establish a more detailed programme of research and development, based on a realistic timetable, before seeking to implement the kind of indicators discussed in paragraphs 7 to 9 of the consultation paper. Such a programme should draw on:
 - i. the experience of the CLSPs;
 - ii. the Guidance for CLSPs being developed by the Commission (ASA is responding separately to the Commission's draft Guidance, but our view is broadly that the draft is a useful first step which nevertheless requires considerable refinement and development);
 - iii. the findings and recommendations set out in "Pioneers in Practice" (Richard Moorhead), which contains a wealth of material relevant to the development of performance indicators;
 - iv. the research into needs assessment currently being undertaken by the Legal Services Research Centre;

- v. the forthcoming research report from the Institute of Advanced Legal Studies on the operation of the recent legal aid contracting pilots, the findings of which are likely to be relevant to the development of caseload measurements and performance indicators for individual providers of legal services;
 - vi. the views of national organisations, including the advice networks, the Law Society, relevant consumer organisations and the Local Government Organisation.
6. An essential task for such a research and development programme should be the establishment of performance indicators for providers. It is inevitable that in the absence of nationally agreed indicators, CLSPs (or individual funders within CLSPs, especially local authorities) will set their own indicators, resulting in a level of inconsistency that will render comparison between CLSPs impossible. Moreover, experience suggests that the indicators adopted by many local authorities are simply not up to the job of measuring what they set out to measure. We consider this in more detail in relation to the menu of indicators set out in paragraph 35 of the consultation paper, over which we have major concerns.
7. Before turning to the performance indicators proposed for the year 2000/01, we would emphasise that the Department and the Commission need to be very mindful of the twin risks of firstly, increasing the administrative burden on suppliers through the introduction of additional monitoring procedures, and secondly, of introducing by the back door a panoply of additional substantive requirements, in addition to those set out in the Quality Mark, the General Civil Contract and conditions set by other individual funders. The aim must be to achieve a consensus amongst both funders and providers as to what is required to ensure effective monitoring of CLSPs and to work towards common systems which minimise duplication and recognise the needs of different suppliers. This will in some instances require formal renegotiation of existing terms and conditions of funding.

Performance Indicators for 2000/01

8. We broadly agree with the proposal that performance indicators for 2000/01 should focus on the issues of:
- the quality of legal services;
 - the effectiveness of referral networks;
 - tackling unmet need.
9. However, these should be supplemented by some simple indicators designed to measure at least some of the “baseline requirements” proposed by the Commission in Annex A of its draft Guidance for CLSPs. We do not entirely agree with these requirements as currently drafted, but in general terms see them as a useful starting point for assessing the success of CLSPs, especially in their early stage of development. We would therefore propose the following performance indicators derived from or related to the baseline requirements:
- i. is there a CLSP covering a particular geographical area (and if not, have the Commission and the relevant local authority(s) reached an agreement to establish one in 2000/01)?

- ii. has the CLSP established agreed objectives and terms of reference?
 - iii. has the CLSP established a Steering Group in accordance with best practice guidance?
 - iv. has the CLSP established arrangements for wider provider and user involvement in its work, in accordance with best practice guidance?
 - v. has the CLSP undertaken needs assessment and supply mapping in accordance with best practice guidance (and if not, has it a plan to undertake such an exercise within one year of its establishment)?
 - vi. has the CLSP published for consultation an outline strategic plan based on needs assessment, supply mapping and gap analysis (and if not, are arrangements in place to publish such a plan within one year of its establishment)?
 - vii. has the CLSP agreed a Referral Protocol and draft referral documentation (and if not, has it a plan to produce such a Protocol and documentation within one year of its establishment)?
 - viii. has the CLSP agreed a Concordat, in line with best practice guidance (and if not, has it a plan to agree such a Concordat within one year of its establishment)?
10. Turning to the suggested indicators concerning quality, we have some concerns at the proposed inclusion of user satisfaction surveys (as suggested in paragraph 15 of the consultation paper), especially if the detail of such surveys is left to individual CLSPs. Even when conducted by experts (see for example Professor Hazel Genn's work in "Paths to Justice"), such surveys throw up conflicting findings requiring careful interpretation. Moreover, they are subject to certain limitations, for example relating to the technical quality of advice. ASA's view is that they should be seen as one of a myriad of quality measures, to be considered alongside Quality Mark audits and other developing approaches, including peer review, individual accreditation and possibly mystery shopping. If user surveys are to be considered, it is essential that these be developed centrally and that detailed guidance is given concerning sampling and interpretation.
11. We agree that the percentage of suppliers who have achieved the Quality Mark is a useful indicator. The indicator should distinguish the level of Quality Mark obtained, and where relevant, the categories of law or (in relation to the General Help with Casework level) client group covered. The indicator should be supplemented by two further indicators, which are key to the current stage of development of the Community Legal Service:
- the percentage of suppliers who have applied for the Quality Mark, with reference to the appropriate levels, categories of law and client group;
 - the steps taken by the CLSP to assist providers seeking the Quality Mark.

12. The Department is right to propose fairly simple performance indicators for referral at this stage (paragraph 21 of the consultation paper). Our view is that there should be two indicators, measured by reference to the referring provider (as opposed to the provider receiving the referral):
 - the percentage of successful referrals, ie where another provider agreed to accept the referral;
 - the percentage of unsuccessful referrals, ie where the referring provider was unable to find another provider willing or able to accept the referral.
13. In time, these indicators should be refined to include reference to referrals to providers holding an appropriate Quality Mark.
14. The Department should bear in mind that only Quality Marked providers are presently under a national requirement to record referrals, and that the Commission has agreed that organisations holding the Quality Mark at the Specialist Help level will not be audited against the requirement until April 2001 (on the grounds that it represents a change in LAFQAS). These factors will constrain the operation of the proposed performance indicators for referral in the current financial year, unless providers willingly sign up to recording arrangements within the context of Referral Protocols agreed by individual CLSPs.
15. We do not believe that resident surveys of people's needs in priority categories of law should be the principal indicator of need, as seems to be suggested in paragraph 24 of the consultation paper. Such surveys may have an important role to play in supplementing needs assessment, and might be suggested as a possible indicator, but as with user satisfaction surveys, it is essential that resident surveys of need be developed nationally and carefully piloted, in view of the complexity involved.
16. We are strongly of the view that the principal indicator relating to need should be whether a CLSP has undertaken a needs assessment and supply mapping exercise in accordance with best practice guidance (see paragraph 9 of this response). As far as needs assessment is concerned, this should build on - and substantially improve upon - the approach developed by Regional Legal Services Committees, drawing upon objective data (including the Commission's needs assessment models and local authority data) and involving a robust consultation exercise, which seeks to identify priority areas, both in terms of categories of law and the needs of particular client groups.
17. In the current year, it may not prove possible to go beyond the simple indicator described above. The Department should seek to refine it in the light of the research currently being undertaken by the Legal Services Research Centre.
18. We believe that the indicators of the kind suggested for local authorities (paragraph 29 of the consultation paper) should apply to all funders within CLSPs. We would suggest the following:
 - the amount and percentage of local authority and Legal Services Commission funding for advice and legal services during the year 2000/01;
 - the amount and percentage of such funding paid to Quality Marked providers, with reference to the appropriate levels, categories of law and client groups;

- the amount of funding for advice and legal services provided by other funders within the CLSP in the year 2000/01;
 - where a Strategic Plan for the CLSP has been agreed, the amount (and in the case of the Commission and local authorities the percentage) of funding allocated to the Plan.
19. ASA is unclear as to the purpose of suggesting just four indicators for all CLSPs, as appears to be proposed in paragraph 31 of the consultation paper. We agree with the importance of minimising the burden on CLSPs, but do not consider that such a burden will be created by the adoption of the indicators suggested in our response. In any event, we do not agree with the prioritisation of resident surveys of need and user satisfaction surveys, for the reasons given above.
 20. The consultation paper rightly argues against the setting of national efficiency targets for providers at this stage, although as stated earlier in this response, these will be required. However, paragraph 35 of the consultation paper proposes a menu of indicators from which individual CLSPs may choose. In the absence of properly researched and piloted indicators (as called for in paragraphs 5 and 6 of our response), we would argue against the introduction of such a menu.
 21. As presented, virtually all of the indicators set out in paragraph 35 are fatally ill defined and fail to set any kind of rational benchmark against which performance can be assessed. In our view they are a recipe for misinterpretation and subsequent ill judgement by funders. We will attempt to illustrate this below, in relation to just some of the suggested indicators.
 22. Indicator (a) fails to appreciate the widely different ways in which “enquiry” (or “case”) is defined by different funders and providers. Within the advice sector alone, there are agencies which define “enquiries” by each individual contact (which may or may not include telephone contacts), by person (in the sense that a “case” represents an individual client who may have a number of quite separate problems or “enquiries”) or by “matter start” (as defined under General Civil Contracts). Some agencies use a combination of definitions, depending on who is funding the work, while others have no systematic recording systems at all.
 23. This is of course entirely unsatisfactory, but until it is addressed, the introduction of a performance indicator for unit costs is pointless (the probable exception being for CLS Fund supported work under General Civil Contracts, although it would be entirely premature and inappropriate to consider unit cost indicators for such work in advance of the findings of the forthcoming IALS research and outside the context of the normal consultation procedures between the Commission and the advice sector/legal profession). At this stage the task should be to investigate how unit costs should be measured for different types and levels of service (linked to Quality Mark levels, categories of law and other factors such as the special needs of particular client groups). This should take account of existing enquiry and case recording systems (for example those operated by NACAB, Shelter, the Commission and some individual local authorities). Only when there are common systems in place, and agreement as to what constitutes an acceptable unit cost for various types of service (bearing in mind the need to balance value for money and quality of service) will it be appropriate to set relevant performance indicators.

24. Similar considerations apply to proposed indicators (d) and (h). Without agreed definitions of what constitutes an “enquiry” or “case”, together with agreement on optimum caseloads and length of time required to handle cases - all of which will vary according to level of service and category of law - such indicators will be meaningless.
25. Quite apart from the fact that “administration” is not defined for the purpose of proposed indicator (b), there is at present no agreement as to the level of administration required to provide a particular service at an acceptable level of quality. We are concerned that funders will interpret minimal levels of administration as evidence of efficiency when in fact they may be evidence of an inadequate service. It is worth noting in this context that the Quality Mark is likely to require many providers to increase their current administrative and management resources.
26. ASA agrees with the overall aim of the Community Legal Service to ensure that problems are dealt with at the appropriate level and that unnecessary litigation should be avoided. However, as we stated in our response to last year’s consultation paper, access to expert assistance, including representation, is often essential if clients are to enforce their rights. We are therefore very concerned at the possible implications of proposed indicator (g).
27. To assume that a lower incidence of representation (a term which is not in fact defined) is an indicator of effective performance is woefully simplistic. Account must firstly be taken of the need for representation in differing areas of law - it seems probable for example that formal representation is more likely to be required in asylum cases than in debt cases, as the other side may be more willing negotiate in the latter. The conduct of the other side is also an important variant in determining the need for representation. A particular local authority may for example be willing to negotiate the carrying out of repairs and compensation for affected tenants, while its neighbour has a policy of refusing to comply with its obligations unless ordered to do so by a court. Finally, it is not possible to compare providers merely on their respective records of “resolving” problems with or without representation. More important is the outcome of the case, both objectively and in the eyes of the client. A provider may achieve a “resolution” of sorts which is in fact inferior to a “resolution” which might have been achieved through the provision of representation.
28. In making the above criticisms of the proposed indicators - and these are illustrative only - we should emphasise that we are not opposed to introducing performance measures of the kind envisaged by the Department. Our point is that they should be developed and implemented properly and that this requires a substantial programme of work, including more detailed research and consultation. Sensitivity will also be required concerning the timing of implementation, especially in the context of the major changes heralded by the introduction of the Quality Mark, which ASA welcomes. For example, the Commission agreed in the light of last year’s consultation exercise that it would not for the time being place a requirement on providers seeking the Quality Mark at the General Help level to time record their work. Clearly all aspects of the Quality Mark will need to be reviewed as the CLS develops, but for the above reason alone it would be entirely inappropriate at the current time to introduce proposed indicator (h) for providers operating at the General Help level.