



## **Access to justice review**

The Advice Services Alliance's response  
to the Law Society's interim report

June 2010

## **About ASA**

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 UK
- Citizens Advice
- DIAL UK, a division of SCOPE
- Law Centres Federation
- Shelter
- Shelter Cymru
- Youth Access

Our members represent some 1,750 organisations in England and Wales which provide a range of advice and other services to members of the public. About 200 of these organisations currently employ a solicitor.

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.

A draft of this response has been seen by those of our members who are directly concerned with legal aid, but they may not necessarily agree with all that we say. We are aware that some of our members are providing their own response.

## **Introduction**

We welcome the opportunity to respond to this consultation on access to justice.

The interim report raises a number of issues that are beyond our areas of expertise. We have decided that it would be best to concentrate on what we know about our sector and its role in providing advice, assistance and representation in social welfare law [SWL].

In summary, we would like to make six key points:

1. Legal aid services must respond to need
2. Advice agencies are different from private practice solicitors firms
3. Access to justice must include preventative work and public legal education
4. Funding sources need to be protected
5. Constant change is an obstacle to delivering services
6. ADR is not a panacea

## **Legal aid services must respond to need**

The NfP sector provides approximately two thirds of the advice, assistance and limited representation in SWL [as defined by the LSC] that is funded by the LSC via Legal Help. The Law Society's interim report acknowledges that the advice sector has "significant expertise in their areas of work, which often include those not covered by solicitors" [p.42]. We therefore have a vital role to play.

Social welfare law involves giving advice to clients who are vulnerable and facing problems that directly affect their quality of life. They often have no-one else to turn to. The problems they experience are often linked to change, rather than merely the poverty of their circumstances.

As the LSRC have pointed out, in relation to unemployment:

*"In particular, unemployment has been shown to be associated with problems concerning employment, welfare benefits, money, housing, neighbours and domestic violence. However, of more consequence to increasing demand for public funded legal services than simple unemployment is job loss. Being and becoming unemployed are different. Becoming unemployed is a life event that has immediate and often profound consequences. Job loss is likely to bring about a negative change in income, which may then lead to debt problems, loss of a home and, even, homelessness. Job loss will also frequently bring people into contact with the welfare benefits system. . . . ."*

*Statistical analysis of data relating to more than 10,000 CSJS respondents (interviewed between 2006 and 2008), reveals that those who had become unemployed during the survey's three-year 'reference period' were much more likely than others, including those who were simply unemployed, to report having experienced justiciable problems. The same was true of those who had experienced a problematic redundancy/sacking. In fact, those who had become unemployed reported 1.3 problems on average, compared with 0.6 problems for others (and 1.0 problems for those who were simply unemployed)." <sup>1</sup>*

With public spending cuts on the horizon, unemployment is certain to rise, possibly to three million people. The number of households struggling to make ends meet is bound to rise and the need for advice about housing, debt, welfare benefits and employment will increase significantly.

## **Advice agencies are different from private practice solicitors firms**

ASA's members represent some 1,750 NfP agencies in England and Wales. In addition to the advantages mentioned in the interim report, it is important to emphasise that advice agencies are also seen as approachable. At their best, NfP agencies are well linked into other services - both statutory and voluntary. They are often the way that people get to private practice solicitors.

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<sup>1</sup> Pascoe Pleasence and Nigel Balmer "Recession and demand for civil legal services", Focus 60, June 2009, LSC

As we pointed out in our response to the Law Society's consultation paper on "The Future of Publicly Funded Legal Services" in 2003:

"Voluntary advice agencies differ from traditional private practice firms in important ways:

- Voluntary organisations often have broader organisational objectives or mission which, together with the ability to secure additional resources (through charitable and other funding, and the recruitment of volunteers), can lead to a more integrated approach to solving individual client problems. These approaches can involve creating links with and, where appropriate, working with statutory services and other voluntary organisations.
- They have a governance structure which allows for the possibility of community involvement in the running of services. This may contribute to ensuring that services are appropriate to the local community and that wider policy aims in relation to regeneration and promoting active communities are met.
- Public accountability through funding requirements, company and charity law can mean that voluntary organisations are seen as more transparent than most private practice firms.

As a result of the above, voluntary advice agencies have an important role in the delivery of social welfare law advice and in making such services accessible to more marginalised communities."

### **Access to justice must include preventative work and public legal education**

In addition to providing advice, NfPs see themselves as having an important role in preventing problems. This can involve policy work with local and central government about the needs of their clients. It can also involve public legal education.

At a macro level, a good example of this work is the "systems thinking" approach being developed and piloted in Nottingham under the aegis of Advice UK, which is mentioned in the interim report. This work has suggested that

*"Demand for legal advice is often caused by the failure of other organisations, services and systems. Thirty-one per cent of advice demand in Nottingham results from failings in public services – key ones being Job Centre Plus, housing benefit, council tax collections and social housing providers. A further eleven per cent of demand stems from advice services in the city not getting it right for clients."*<sup>2</sup>

Public Legal Education has an important role in providing access to justice. Recent research from the Legal Services Research Centre<sup>3</sup> shows low levels of knowledge of the law. 65% of those surveyed said that at the time of their problem they did not know their rights. Nearly 70% said that they had no knowledge of legal processes.

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<sup>2</sup> Phil Jew, "Know the value to unlock costs and waste", Law Society Gazette 13 May 2010

<sup>3</sup> Knowledge, capability and experience of rights problems - Legal Services Research Centre. March 2010. <http://www.plenet.org.uk/research-and-theory/key-reading/knowledge-capability-and-experience-of-rights-problems,10185,FP.html>.

This lack of knowledge is linked to a failure to get advice, reduced likelihood of meeting objectives and more likelihood of experiencing adverse consequences such as ill health.

Effective PLE can help people avoid law-related problems, equip them to act quickly when problems do occur and provide the knowledge and skills needed to manage problems better including knowing when and where to get expert help.

### **Funding sources need to be protected**

NfP agencies receive funding from many sources. This funding often reflects agencies' diverse communities and roles. It can enable agencies to target services at particular sections of their local communities, or to develop new services, or to provide specialist services to clients who are not eligible for legal aid. The interim report describes as a disadvantage the fact that advice agencies rely on funding from third parties which may fluctuate. [p.42] While this is obviously true, fluctuations in funding streams are a fact of life, affecting all sectors engaged in delivering publicly funded legal services.

We hope that in the future the Law Society will be able to join with us in our efforts to protect these sources of funding that are so vital to many of the services that NfP agencies can provide.

### **Constant change is an obstacle to delivering services**

One factor we would like to emphasise is the constant changes that legal aid providers have had to deal with over the last few years. As far as social welfare law providers are concerned, these changes seem to be particularly disproportionate, given the small share of the legal aid budget, approximately five per cent, that is concerned with social welfare law.

These changes have been compounded by the introduction of procurement processes in the latest bid round that have raised serious questions about

- The hoops that providers have to jump through to obtain contracts
- Providers' ability to plan
- Whether there is any connection between the right to perform such work by holding a contract and the actual quality of the service that is being delivered.

### **ADR is not a panacea**

Finally, we would like to add a word of warning about ADR. The interim report asks whether just outcomes can be achieved more cheaply than at present. [Para 2.43] This is obviously a proper question. The fact that some disputes have traditionally been dealt with through the courts does not mean that this must always be the case. We believe that ADR is very important in some circumstances. There is a belief in many circles, including parts of the government, that mediation is a better way to resolve certain types of disputes and that it is cheaper. There is now a body of evidence however to suggest that this is not necessarily

true. In many circumstances mediation is not only expensive but is more expensive than the alternatives.<sup>4</sup>



6th Floor, 63 St Mary Axe, London EC3A 8AA

☎ 020 7398 1470    [www.asauk.org.uk](http://www.asauk.org.uk)    [info@asauk.org.uk](mailto:info@asauk.org.uk)

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<sup>4</sup> Full details of the available research can be found on the ADRNow website run by ASA at [http://www.adrnow.org.uk/go/SubSection\\_38.html](http://www.adrnow.org.uk/go/SubSection_38.html)