

***ON THE RIGHT TRACK?***  
***DEBATING THE FUTURE OF THE CLS***

**A conference held by Legal Action Group  
and Advice Services Alliance**

**Thursday 4 December 2003**

**REPORT**

Around 220 people attended the joint LAG/Advice Services Alliance (ASA) conference, ***On the right track? Debating the future of the CLS*** held on 4 December 2003 in central London. The event brought together delegates from private practice and the not for profit (NfP) sectors, together with representatives from professional organisations, local and national government and from academic backgrounds. The event was supported by **Allen & Overy**, who made it possible for a number of organisations with limited resources to attend the conference at a reduced price. This report summarises contributions from the speakers at the morning plenary session, together with questions and comments from the floor. It also includes notes from all ten of the break-out groups that took place during the two afternoon sessions of the conference.

## Session 1 – welcome, introductions and keynote speech

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**Lord Phillips of Sudbury**, a founding member of LAG and the organisation's first chair, welcomed delegates to the conference and congratulated ASA and LAG for organising such a timely event. He recalled that in the early days of his lengthy career in the law, there was an attitude that 'if you are in the business of justice, you have to contribute to justice,' but he now detected a worrying reduction in levels of altruism within the profession.

He also expressed concern about the rate at which practitioners were leaving legal aid work and the resulting 'advice deserts'; he regretted the government's 'casual' approach to this problem. Recognition should be given to the important work of voluntary organisations such as law centres and citizens' advice bureaux, but the idea that this sector could replace private practice was, in his view, an illusion.

Lord Phillips thanked Allen & Overy, whose support had made it possible to offer conference places at reduced prices to organisations with limited resources. He then handed over to **Alison Hannah**, LAG's director, to take the chair for the morning plenary session.

**Clare Dodgson**, chief executive of the Legal Services Commission (LSC), was the keynote speaker at the conference. She stated the CLS vision was to provide quality legal services that were accessible, and to challenge social exclusion – not just through legal aid, but by joining up with other services. Since the CLS was set up in April 2000, over one million people had benefited from it, there were around 10,000 organisations with the Quality Mark, and 4,400 law firms and 400 not-for-profit (NfP) agencies had CLS contracts. The current annual expenditure on legal aid was about £1.8 billion – which represented one fifth of the income stream for the legal profession.

Clare Dodgson went on to outline how the CLS vision would be developed. There needs to be greater public awareness of the CLS and recognition of its work. The contracting system would be improved by introducing lighter touch audits for 'category 1' suppliers. A 'GP-style' model could be explored as one option for payment. She accepted that remuneration levels were a problem; however, before talking to the Treasury, the LSC had to be able to explain the increase in average case costs. On the question of quality, she agreed there was a need to move from measuring process to outcome. The Quality Mark should measure the 'real' quality of advice, as well as tracking the 'ripple effect' of advice on the lives of those who are socially excluded.

On the subject of cost controls, she said that the money saved from taking contracts away from 'category 3' suppliers would be re-invested in 'category 1' agencies. Suppliers who controlled costs would be rewarded with more case starts. Case cost thresholds would be introduced for immigration and asylum work, there would be more controls over very high cost criminal cases, and fixed fees were being considered for certain types of Legal Help work.

Turning to the future of the CLS, Clare Dodgson was optimistic. There were young law students who were enthusiastic about the idea of working in legal aid. So far, the LSC

had put £3 million into training grants, and was also supporting the training of NfP sector managers.

### Questions and comments

From the floor, a private practitioner argued that contracting had disaggregated an holistic service and abandoned low paid work to avoid insolvency. Could the LSC intervene fast enough to protect services before it was too late? Clare Dodgson accepted there was need to motivate private practice firms to continue in legal aid work. Challenged about the reductions in funding in real terms that many NfP agencies were facing, she acknowledged that this was a problem. The relationship between need and demand differed between sectors and different categories of law. The LSC need to work with suppliers to identify problems, and might decide to use its resources differently.

A delegate from the NfP sector made the point that local authorities should be under a statutory requirement to support advice. In response, Clare Dodgson agreed that local authorities needed to be involved in the CLS, but they should not – in her view – be placed under a statutory obligation to fund advice. Asked about the common perception that the LSC was ‘another arm of the Home Office’ in relation to asylum seekers and on whether she saw the need to protect the independence of the LSC, Clare Dodgson said that the LSC had sometimes benefited from collaborating with other governmental departments. However, as a non-departmental public body, it could take a stand and would not compromise its commitment to the CLS.

There were two questions on the Quality Mark (QM). One related to the long-term plans for the QM, particularly at General Help level; and the second made a suggestion that the QM was simply forcing small advice groups to ‘jump through hoops’ unnecessarily. Clare Dodgson admitted that the LSC was under pressure, with scarce audit resources, and said that they had to consider where the greatest risks were, and be alive to the qualitative as well as quantitative aspects of quality assurance.

### Session 2 – panel discussion: ‘The CLS jigsaw: making it fit’

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**Janet Paraskeva**, chief executive of the Law Society, commented that the CLS presented a series of hurdles to the user. Finding a local solicitor could be a real challenge; suppliers were leaving legal aid work and young lawyers, saddled with debts, were not joining. The LSC’s agenda appeared to be ration suppliers in order to contain demand.

She argued that the government should take pride in the legal aid system, and place the needs of consumers at the heart of it. The Criminal Defence Service (CDS) should not be funded at the expense of the CLS, but should have a separate budget. The Law Society was in favour of a salaried service to plug gaps, and believed that non-profit models of practice should be encouraged. Contracting should be flexible, to accommodate cases that do not fall into neat categories. Block funding, GP-style contracts and standard fees should all be explored, and imaginative approaches to delivery should be developed.

**Richard Miller**, director of the Legal Aid Practitioners Group, argued that the system of matter starts was equivalent to rationing, rather than considered prioritisation of expenditure. It prevented firms from planning effectively, and clients from accessing the help they need. The problem is not directly caused by under-funding – but under-funding has exposed the structural flaws in the system.

Moving to the question of contract compliance audits, he described claims for repayment as being ‘based on the amount of work that the auditor has misunderstood’. These audits can only be carried out at disproportionate expense and often lead to flawed results – not a suitable basis for deciding the current bid round for contracts.

In conclusion, Richard Miller accepted that NfP agencies should have a greater role in the CLS. The introduction of ‘Tesco law’ and the Clementi review would both have a significant impact on high street legal aid firms. A legal aid lawyer was entitled to expect a salary similar to a doctor – as opposed to that of a nurse. Slashing remuneration in response to a limited budget was not the answer.

**Richard Jenner**, director of ASA, was the third – and final – panel speaker. On the question of CLS partnerships (CLSPs), he said that research carried out by ASA had raised a number of concerns. Many advice agencies reported a low and decreasing involvement of private practitioners in CLSPs, and very limited participation by smaller community groups. The general view was that CLSPs had done little to tackle unmet need or generate more local authority funding. Respondents also saw local authority involvement as essential for CLSP effectiveness, but feared there would be problems with objectivity and conflicts of interest if funding decisions were to be devolved to CLSPs.

Richard Jenner went on to say that within the NfP sector there was a widespread view of the CLS Quality Mark as a costly burden that does not measure the quality of advice given to clients. He argued that the structure of the Quality Mark should be simplified, and that some of its requirements should be radically streamlined or abandoned. Peer review – in his view the only method of accurately measuring the output of legal services – remains the most promising way forward.

### **Questions and comments**

In the debate that followed, delegates made a number of comments about cost compliance audits, describing them as hugely time-consuming and often wildly inaccurate. Asked about peer review, the panel members disagreed about the extent to which this approach would lead to the recovery of money that had been inappropriately claimed from the LSC – although the point was made from the floor that by using peer review the LSC had recovered £5 million from London immigration firms. There was also a discussion about whether peer review should be used as a method of quality assurance or merely as a developmental tool.

**The Lord Chancellor, Lord Falconer of Thoroton QC**, as guest speaker, **concluded** the morning session. While affirming his belief in the founding principles of the legal aid scheme when it was set up in the late 1940s, he acknowledged that there were ‘real problems’ with the current system and argued that the government had a duty to re-examine the way in which it functions in the modern world. The spiralling average case

costs needed to be understood, but the knock-on effect on the legal aid budget of changes in the law and policy across government also needed to be rigorously costed.

On the question of legal aid for asylum, he confirmed the government's decision to limit Legal Help to five hours, with extensions for 'genuine and complex' cases; legal aid would only be granted for an appeal judged by the LSC to have merit. These measures would 'reduce the opportunity for abusing the legal aid system'.

Lord Falconer confirmed that his department, together with the LSC, had enlisted the help of consultants to carry out a major review of supply, demand and purchasing arrangements for legal aid. The aim of this exercise was to establish the costs, fees and conditions necessary to attract and maintain a pool of high quality legal aid lawyers.

The Lord Chancellor went on to discuss the future of the CLS, which he described as a 'big success story', but accepted that its profile needed to be raised across government. In particular, the Department for Constitutional Affairs needed to work hard to place legal and advice services at the heart of social inclusion strategies. A national picture of legal need, including evidence of the link between problem clusters and social exclusion, would be emerging from the first National Periodic Survey of Legal Need.

The independent review of the CLS would assess the impact of the service and provide a roadmap for the next few years. The Clementi review of the regulatory framework for legal services would also have an important impact, and Lord Falconer urged as many people as possible to respond to the Review's consultation document. In the longer term, he wanted to develop further the role of legal aid in tackling social exclusion and was determined to put it back under the 'justice for all' banner, with a careful balance between obligations to criminal defendants and the needs of the socially excluded. In conclusion, he undertook 'that any change should be well founded and robustly supported by the evidence.

### **Questions and comments**

Time permitted only two questions from the floor. Asked to justify the need to cut legal aid for asylum seekers given the reduction in the number of asylum applications, Lord Falconer argued that legal aid should be targeted on longer cases with merit. Challenged on the adequacy of funding for legal aid, he responded that his department had pitched 'hard, hard, hard' for as much money as possible – but the pot was not infinite. The criminal defence budget was reducing expenditure on civil work, but it was essential that the money available be targeted on fighting social exclusion.

Overall, the mood of the morning was one of grim resignation. There was felt to be little overlap between the optimistic – and mainly predictable – views of the government speakers about the future of the CLS, and the more pessimistic views from the floor.

## Breakout session 1: Taking the lid off CLSPs

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**Speakers:** George Lafazanides – solicitor, Fahri Jacob Solicitors  
Teresa Perchard – director of policy, Citizens Advice  
Mark Sefton – researcher, Cardiff Law School

**Chair:** Bob Nightingale – Wandsworth and Merton Law Centre

**George Lafazanides** outlined his experience as a member of the housing subcommittee of the Islington CLSP. The CLSP had identified housing as a priority area, and difficulties with referrals as a particular problem. The subcommittee surveyed suppliers and identified the common causes of housing need. A common theme identified was that most organisations used a tried and trusted referral list, which was not updated, leaving clients running around trying to find help.

It was agreed to prioritise emergency cases. The subcommittee recommended a clearinghouse system in the form of a rota, contacts with the local county court and a more detailed directory of suppliers. Progress had been made on the first two points. The clearinghouse system was established in the form of an email group, based on a rota co-ordinated by Islington Law Centre, whereby the person 'on duty' emailed their availability for appointments during the week to all participating referring organisations.

There had been a surge of interest and involvement as the scheme was being established. There had also been considerable benefits in terms of networking. Nevertheless, there was a high level of dissatisfaction with the LSC amongst solicitors in private practice. He would describe it as a 'bureaucratic stranglehold'. Notwithstanding his firm's commitment to legal aid work, it was reconsidering its position.

**Teresa Perchard** outlined the findings of the Citizens Advice survey of CAB views of the CLS [*Partnership potential?* – October 2003]. Over 200 CABx responded, of whom about half had LSC contracts.

- 21% agreed that the purpose of their CLSP was clear and understood by all
- 14% agreed that the CLSP had achieved the successful co-ordination of advice
- Very few solicitors were involved, but respondents were not surprised
- 17% said that third party funding had been levered in, which was mainly through the Partnership Initiative Budget (PIB).
- 7% agreed that their CLSP had been effective at meeting the needs of clients of disadvantaged groups
- 8% agreed that their CLSP had been effective in preventative work in relation to the public sector, and 1% in relation to the private sector
- 16% thought that it was worth the time and effort they had put in
- People were more positive about other things, including the Quality Mark.
- A third said that referrals had improved.
- 71% agreed that more funding was needed for CLSPs' activities
- 66% agreed that CLSPs needed to have greater influence on local authority funding policy
- People are suspicious about rationalisation into fewer and larger CLSPs.

**Mark Sefton** outlined the findings of the qualitative research project conducted by the Advice Services Alliance. At their inception, many people, and not just in the NfP sector, were very taken with the idea of CLSPs. They were optimistic about what might be achieved, and consequently have invested a lot of time and effort in attempting to make them work.

Two or three years down the line, many CLSPs appear to be at a crossroads. A lot has been achieved by some partnerships, not least through successful bids to the PIB. There were also examples of successful social policy work. Most people felt that their CLSPs had been good for improving relationships between providers.

Active involvement in CLSPs however seems to be declining. There is evidence of stagnation. Some CLSPs are not meeting. The main tasks have been done, often with a lot of pain, and people are looking for the gain.

There appear to be several factors at play here. Probably the most important is resources, both in terms of keeping CLSPs going, and funding for advice and legal services generally. In most cases either the LSC, local authorities or both have been providing resources for CLSPs, and doing the 'donkey work' necessary to produce needs assessments, strategic plans and referral protocols.

The research however found several situations where local authorities were said to play very little part in CLSPs. A few people have also detected moves by the LSC to reduce the level of support they have been giving. There is evidence of LSC pulling back from CLSPs. There is also evidence of LSC pushing for countywide CLSPs to replace smaller ones.

Most people seemed quite disillusioned by the inability of their CLSP to lever in new funds for advice and legal services. The research also found examples of CLSPs being unable to defend existing funding for advice agencies. Sometimes cuts were made at the time of CLSPs being set up. At other times this was done in spite of vociferous opposition from the CLSP.

Generally speaking, CLSPs were reported to have little influence on local authority funding. Nevertheless, people generally remained optimistic that partnerships have a worthwhile role to play within the CLS. The challenge is to identify that role.

[Note: the ASA research will be published in early 2004, and will be posted on the ASA website: [www.asauk.org.uk](http://www.asauk.org.uk)]

### **Comments and debate**

- The role of local authorities (LAs) was seen as crucial in some CLSPs. One local authority, which did not fund services, nevertheless played a leading role in the CLSP concerned. In another CLSP council officers dropped out after the plan was completed, and they now had to 'drag people to meetings'.
- It was also suggested however that LAs are not structured to deal with advice issues. They have no department dealing with advice. This is partly because they fund things in different ways.

- Local government is nevertheless the biggest funder of social welfare law advice. We need to look at the structure of CLSPs in order to find better ways to involve LAs. We also need to accept that there are conflicting interests within LAs.
- A survey by Advice UK had similar findings about involvement in CLSPs. Other organisations, including disability organisations, are not able to get involved. There is a need to expand CLSPs to include community groups.
- How can new services be funded? Should there be a statutory duty on local authorities? Can better links be made to Local Strategic Partnerships (where these exist), or the Community Fund? There are problems however where funders, such as the Community Fund, operate regionally.
- If CLSPs analyse the gaps, where is the commissioning process? If reallocation is necessary, how will that be done? The problem was that CLSPs have been told to go out and get things. This has lost CLSPs their 'clean hands' approach.
- One person reported that their CLSP had been very successful in getting the city and LSP to put money into a new interpreting service.
- Doubts were expressed about the needs assessments done by CLSPs, the different ways these had been done and whether they are equipped to do it, given the extent of self-interest of the major parties involved. Could existing measures of supply and demand (matter starts and NfP hours) be used to assess need, or would they hide 'advice deserts'?
- In their final comments, George said that if CLSPs were to chase funds this would make their role different. Teresa commented that the system is dominated by providers and the question is how to involve users. Mark emphasised the need to involve community groups, and the need for CLSPs to be doing things, and be seen to be making progress, otherwise people will drop out.

## **Breakout session 2: Getting to the heart of quality**

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**Speakers:** John Seargeant – independent researcher  
 Peter Watson – director of Supplier Development Group, LSC  
 Alison Stanley – solicitor, Bindman & Partners

**Chair:** Shanta Bhavnani – policy officer, Advice Services Alliance (ASA)

**John Seargeant** was commissioned by ASA to research and write a report on peer review. His research involved talking to both peer reviewers and those whose work had been reviewed. The report offers an overview of current developments in peer review within the legal and advice sectors. It sets out the components of peer review and seeks to understand the different ways of carrying it out. It highlights the similarities and the differences but does not attempt to evaluate different systems.

Current examples of peer review include the following:

- Money Advice Trust, which used peer review to demonstrate publicly the quality of advice and learn about the use of peer review as a quality tool.
- Citizens Advice and Citizens Advice Scotland, which call peer review a 'quality of advice assessment' and have incorporated it into their membership scheme.

- Shelter, which has embedded peer review into its quality system.
- Office of the Immigration Services Commissioner (OISC), which is still at the beginning of the process and uses it where after an audit there is still some doubt about whether the quality is acceptable or not.
- LSC uses peer review on contracted solicitor firms. The *Quality and Cost* report was based on this. They compared this quality audit tool with the use of quality assurance. In the London region they use expert immigration solicitors as part of the audit and costs process.
- Age Concern England is on the threshold of a pilot.

Key issues discussed in the report are: 'Who is a peer reviewer and what makes them legitimate and competent?' There is the specialist expert model – but John personally believed in 'horses for courses' – eg, generalist for generalists. He queries whether a highly skilled specialist would recognise what is good work by a generalist.

It was also noted that although CA Scotland uses unpaid volunteer advisers as peer reviewers, it verifies their work with a second stage.

John also asked whether a specialist advice worker could review a private contracted solicitor. One LSC researcher thought not. The underlying issue is that in all likelihood solicitors would not want to be reviewed by advice workers - although in many areas solicitors would be following good practice that actually came from the advice sector.

A second key issue is that the aims of the peer review will shape how you do it and whom you use. The LSC uses peer review both to control costs and to improve quality. The two aims require different approaches. If quality is the issue it needs to be more of a joint venture with the advisers. If it is to control costs you can undertake the process at arms length, eg by computer/post.

Another issue is feedback. At present, although a lot of money is spent, you do not get a real conversation with proper feedback. A particular problem is confidentiality, which is needed where livelihoods and quality are at stake.

In general, John found peer reviewers to be very dedicated. They often had concerns about how to use the peer review guidance frameworks. In practice the reviewers often get together to work out how to do the reviews and do not tell the researchers.

Where there is double marking of files (eg, Scotland) it is unusual to get the same result on any given file but over a sample there would be a consistent result.

**Peter Watson** gave an overview of LSC's past and future work on quality. He stated that the Quality Mark aimed to establish three things:

- A well run organisation
- Client care
- Quality of advice

He was concerned about myths and perceptions about the QM.

That it did not measure quality of advice: in fact, in recent independent research, 60% said the Quality Mark improved their service and 24% said it was a lot better.

Bureaucracy : his view was that it is much easier to maintain the QM systems once they have been set up. A level of bureaucracy is necessary in all quality standards. There was no particular demand to drop any given requirement and having a well-run organisation is important, including for funders.

Proxies: he argued that there is a correlation between a good audit result and good advice. In particular where a firm did not properly carry out supervision and file review, this was a factor in allowing poor quality of advice.

Widespread dissatisfaction: he will gather people back together to see how to simplify General Help and General Help with casework.

LSC now wants to look at measuring quality of advice directly. If the organisation is judged to be threshold competent through peer review, there is no need to review proxies because the proxies are clearly working.

The LSC used to use Transaction Criteria but there were very few failures and so they do not do many of them anymore. File assessors now only look at those questions that are of value.

Peer review is the most developed quality audit tool because of previous research the LSC has carried out. The Institute of Advanced Legal Studies independently managed the process; they did the advert, trained people and ensured consistency. There is now a panel in virtually every area of law that will give the LSC a picture of the quality of advice and possibly lead to the development of national benchmarks. There are eight family peer reviewers and eleven immigration peer reviewers. Thirty to forty peer reviews have been conducted so far in these two categories of law. For welfare benefits there is only a small pilot.

The LSC takes peer review as the definitive statement on an organisation; ie, it overrides any other audit finding. It uses peer review in a targeted way. For example, if the profile of a firm's results look strange they may get a file assessment. If the LSC is still unsure they will do a peer review to see whether or not there is a problem. If the firm receives the lowest rating ('poor'), this amounts to a fundamental breach of the contract.

Shelter and CA have their internal peer review systems so the LSC is questioning the need to audit such organisations at all. The key thing is that these organisations must find the problems and rectify them. The LSC accredits CA at General Help and General Help with casework level. This could be extended to specialist level.

Peer review was also used for a focused piece of research in Wales, where certain organisations wanting an LSC contract had problems meeting the supervisor requirements. The LSC used solicitors with experience of the NfP sector to peer review files and as a result was able to give a contract to two thirds of these providers.

**Alison Stanley** gave an overview of her work as an LSC immigration peer reviewer in London. She acknowledged that many of her experiences were probably specific to immigration work.

The LSC has 4 internal peer reviewers - 3 immigration and 1 crime. It has 14 external peer reviewers – 10 immigration and 4 crime.

There is a particular problem with firms advising on asylum. Category 3 firms are those that have overclaimed by 20 % or more. Of the 303 live immigration contracts, there are 39 outside London in category 3, and 43 inside London. The LSC assessed one firm as overclaiming by 98%. However there were also some excellent immigration advisers.

A number of the category 3 firms have withdrawn from their contracts. The clawback was £5 million in the last year. Category 3 agencies can accept the decision and get a 5% discount – but all of them appeal. The peer reviewers look at the files once the firm has appealed.

Different reviewers look at a selection of the 20 files to judge quality and decide whether there is any added value. Often there is very little added value. However, auditors do get it wrong both ways because they are essentially accountants. They count the numbers of letters without knowing if the adviser should have sent the letter and without understanding the complexity of the law. Sometimes the problem is poor file keeping; ie, the work has been done but is not evidenced on the file. The firm should get the benefit of the doubt even if it is not evidenced on the file.

A particular problem area is the application of the merits test for Controlled Legal Representation (CLR). Alison has hardly ever seen it applied (which is why the LSC will bring this in house) but often the appeal is won even though the test is not applied.

It is very important that this information is fed back to the firm. Peer review should not be just about getting rid of cowboys but should be seen as a chance to improve the quality of those that can improve.

Alison has only ever seen category 3 work (whose files have almost no added value) and accepted that her view is jaundiced. She hopes the LSC will help firms to improve and congratulate the good ones.

### **Comments and debate**

- Independent research says that peer review might transcend the QM. If it comes in and weeds out poor suppliers, will the LSC then stop using it in three or four years? Peter replied that the vision is that all suppliers should meet the standard. It is a process of continuous improvement. The LSC does not want to lose what they have gained in terms of creating well run organisations and client care, but the fundamental issue is quality of advice. As yet, there is nowhere else to go beyond peer review (although National Occupational Standards will make it clear what advisers need to know).
- John commented that in terms of peer review the LSC is a minority user. CA has carried out hundreds. Peer review at present is undertaken by looking at files (rather than the reviewer observing casework in progress), which is economical but only tells you if the file has been done well. Many advisers said the reviews do not assess quality of advice in the round. Some argue the review is a snapshot and this does not take into account what is going on at that time in the client's life. However, John feels confident that the reviewers have sufficient experience to understand this.

- There are lessons to be learned about peer review from the evaluation of the Public Defender Service. In order to develop peer review as a benchmark, it has to be carried out on the generality of suppliers and not just the bad end.
- It is very important to have feedback: in particular, examples of excellence are very useful.
- In criminal work, it is very important not just to review files but to look at other work such as court advocacy to get the full picture.
- What is the comparative cost of peer review as opposed to other approaches?
- If national benchmarks are developed, do you not still have to accommodate individual judgement? How do you do this? Are there really any basic, general principles that can be drawn?
- Frameworks for peer review are essential. The criteria have to be defined, otherwise reviewers will use their personal judgement too much.

### Breakout session 3: Private practice – a new direction?

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**Chair:** Sadiq Khan – solicitor, Christian Khan solicitors

**Speakers:** Steve Hynes – director, Law Centres Federation  
 Vicky Ling – management consultant  
 John Peake – solicitor, South West Law

**John Peake** described the work of South West Law. At the end of 2001, Bobbetts Mackan, a Bristol firm, decided to give up social welfare law (housing, immigration, community care, mental health and welfare benefits). The view was that the work did not pay.

As a consequence, John, a partner in the firm, and other Bobbetts Mackan staff set up South West Law, which was launched in July 2002. SWL is a limited company, with 4 directors and 5 shareholders (all solicitors, to comply with Law Society rules). It is presently a for-profit company, but plans to convert to not-for-profit status. The firm concentrates on social welfare law.

John saw the company structure as better suited than partnership to the type of service SWL provides, and SWL has generally sought to challenge stereotypes of private practice firms, for example by having a shopfront service.

The 5 shareholders each put in £5,000 capital, and also borrowed against their homes. Directors earn £35,000 a year, newly qualified solicitors earn £19,500 and paralegals earn between £14,000 and £16,000.

Cashflow was an initial problem, but the Legal Services Commission agreed to give the firm a contract worth £50,000 a month. 90-95% of SWL's work is legal aid - the firm currently earns about £750,000 per year from legal aid (controlled and certificated work). The firm's break even point is about £46,000 a month - over the last year SWL has billed more than £50,000 in every month but one. The company is therefore making a small profit, although it is less profitable than Bobbetts Mackan.

The firm's aims are to pay off the company's debts, raise salary levels and develop new services. The latter two are probably not feasible on current turnover.

**Steve Hynes** talked about the role of Law Centres and raised some issues about private practice. Six new Law Centres have opened since 2000, funded largely by the Legal Services Commission. Steve supported a further expansion of Law Centres, but did not see them as a threat to private practice. They are not a substitute for the private sector and in any event, there are simply not enough of them.

Steve pointed out that most solicitors in private practice are in fact salaried - only one in four to five are becoming partners. This raises the issue of whether there would be strong resistance within the profession to a greater focus on salaried services.

Law Centres differ from private practice in that they are set up to provide services over and above the traditional *judicare* approach. Their aim is to combine individual casework, including litigation, with other services, including group work, test cases, legal education and campaigning.

Law Centres cannot exist on legal aid funding alone, partly because it is not financially viable and partly because so much of Law Centres' work - from tribunal representation to work with community groups - is outside the scope of the legal aid scheme.

Steve felt that the Legal Services Commission wants to concentrate resources on fewer, larger firms, in order to benefit from economies of scale. This raises general issues of access to legal aid services. It also raises issues around race, as many black and ethnic minority solicitors work for small practices. In practice, the Commission is likely to get its way as it is in a position to determine the market.

Steve believed that two key issues need resolving. First, we need to get to the bottom of the issue of cross-subsidisation of legal aid by other funding, to determine the real cost of providing services. Second, there needs to be an open debate on partner's earnings, as this influences policy makers' perceptions of the value of legal aid as a public service.

**Vicky Ling** has in recent years worked with over 100 solicitors firms and many not-for-profits organisations, advising them on management, contracting and quality issues. She saw the two sectors as getting closer together. The new contract bidding round for private practice for example resembles the traditional grant application process for not-for-profit organisations.

Especially in a climate of financial uncertainty, partners are very conservative in relation to investment in their firms, due to personal liability. There is also a culture of secrecy within the profession over partners' drawings. This is in contrast to the not-for-profit sector, where staff salaries are generally linked to transparent pay scales.

Vicky saw the partnership model as pre Dickensian. The company structure not only offers the advantage of limited liability. Its attendant obligations to publish accounts and declare profits, provides greater transparency to government and the public, and this might improve perceptions of legal aid solicitors. Moreover, such transparency will probably demonstrate that salaried staff within firms are often paid less than their not-for-profit counterparts. Vicky hoped that the issue of the structure of firms would be covered by the Clementi Review.

Vicky also saw real advantages in moving to a GP type contract for legal aid practice. The GP contract provides funding for premises, management, training and personal development. It offers financial incentives for developing “quality aspirations” and for achieving them, as well as incorporating peer review as a means of assessing quality. GPs are paid £82,000 a year on average.

### **Comments and debate**

- Two practitioners described their work in firms concentrating on legal aid work in social welfare law categories - one firm had been recently set up in circumstances similar to the founding of SWL. Their experience in relation to costs and profitability was similar to SWL, although both firms currently operated as partnerships.
- The point was made that it was impossible to rely on legal aid work alone. Private work was both an important source of income and necessary for clients given current eligibility levels. It was suggested that firms should look at a suitable fee structure for clients who are just above eligibility levels.
- Some practitioners questioned the approach being taken by SWL, arguing that this was implicitly defeatist. It was essential that the case continued to be made for adequate remuneration for publicly funded work.
- Recruiting suitably able staff was an increasing issue, and young solicitors in particular are deterred from joining legal aid firms given the limited prospects for salary advancement. Practitioners should be arguing for a salary structure and salary levels commensurate with similar professionals; for example GPs, teachers.
- There was some debate as to whether adopting more transparent structures would enhance the case for adequate funding for legal aid - it was not clear whether the Commission was concerned at the level of partners' drawings provided it could purchase legal aid services at a price of its choosing.
- Vicky Ling re-iterated that the relatively poor image of solicitors was a real factor in the debate and that greater transparency would be of benefit.
- A practitioner raised the issue of moving to a fully salaried legal aid service, with private practice firms converting to a Law Centre type model. This would entail a complete separation of private and publicly funded work, as paying work required the partnership model. Such a separation might however be highly problematical for the profession/for clients, reinforcing perceptions of a two-tier service.

### **Breakout session 4: Spotlight on rural provision**

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**Speakers:** Tony Brown – strategic development manager Carlisle Law Centre  
Professor Kim Economides – School of Law Exeter University  
Martin South – head of strategy, Community Legal Service

**Chair:** Alison Hannah – director, Legal Action Group

**Tony Brown** opened by describing how services are delivered in NW Cumbria, an area with a mixture of large populations in urban areas and small rural communities. Transport in the area is very poor. The problem for rural communities is access to

services generally, not just legal services. Funding tends to be local to specific areas, so people from outside that area are turned away. A mobile advice service was developed to diffuse political tensions.

A mobile service is more expensive to deliver but it is what the communities actually want. The mobile office was initially funded by the Community Fund but this funding ended after six years and as a result the mobile service now goes to fewer places. There is no problem of take-up of the service but there is a problem with only 30% of the clients being eligible for CLS funding.

He felt that CLS partnerships did not work well in practice. There were problems matching the funding, with too many agencies having different agendas. The mobile service in Cumbria tries to link up with the Citizens Advice Bureau. They did submit a Partnership Initiative Budget (PIB) bid with CABx and solicitors, but the PIB for that region was taken up by an Age Concern project.

**Kim Economides** argued for an experimental law centre in Devon, which would be similar to the mobile service in Cumbria. The Devon Law Bus is the proposed project but has not yet materialised as funding is not available. Local authorities showed interest but not commitment. There was a lot of rhetoric about commitment to rural legal services but not much action.

- There are gaps in provision in rural areas. There are lawyers in some rural areas but they tend to cover traditional areas of work, not social welfare or housing law.
- Rural areas have different problems, but these problems are not fully understood. Serious deprivation exists in rural areas but the needs are not being met.
- No one has researched the nature of the services offered in rural areas and how they are received and there is only anecdotal evidence about how these services are best delivered.
- Help is needed from the LSC to set up the Devon Law Bus project and he asked for suggestions as to how to take the project forward.

**Martin South** outlined the different initiatives to address the issues:

There is an overall lack of funding available to meet the need for legal services and because of budget restraints, there is a need to work smarter. LSC Regional Offices can contract for outreach services – advisers/solicitors can work remotely.

- A specialist support service pilot (telephone advice for advisers) has just finished and the LSC will continue to fund it.
- There could be nationally available phone services for benefits, debt and education. This is as good as working face to face with clients in many cases, although not appropriate for everyone, and a service delivered by phone can be accessed anywhere.
- The PIB scheme would probably continue. The normal eligibility rules don't apply under this scheme, and it draws in funding from partners as well as from the LSC.
- Internet take up is increasing rapidly, although least rapidly for the most socially excluded groups.

Rural services need to pull together different sources of funding. The East Region LSC has produced a publication regarding rural services: 'Improving Access to legal advice

and information in the countryside'; the LSC could help by putting funding packs together for local agencies.

### **Comments and debate**

- There are some drawbacks with the current system of CLS funding: for example, matched funding is needed for a PIB bid, but this does not include money from CLS contracts.
- Also, the CLS won't fund projects like mobile advice centres in rural areas if there are nearer providers, although these providers may be private practice solicitors who may not be able to take on the work.
- There were queries about the effectiveness of central specialist support telephone helplines, where local knowledge might be essential, e.g. in the way a local authority deals with housing cases.
- The LSC's view is that specialist support is more economical if it is centrally based and that it can be based anywhere as long as advisers have appropriate local knowledge.
- The point was made that urgent advice cannot be given by outreach services, and there needs to be a mixture of methods to meet all advice needs. In Cumbria, a number of agencies are involved.
- A mobile service was argued to be a symbolic statement of a pro-active service, a different philosophy from waiting for the client to come and see you. Research shows that five miles is about the maximum people will travel for advice.
- In urban areas, people who may have problems accessing advice services include some older people, people with disabilities, lone parents with childcare issues. In rural areas this can also include anyone who doesn't have access to a car.
- Telephone services can be part of the solution, but it is hard to see beyond the presenting problem when giving phone advice. In some cases face to face advice is vital, e.g. when filling in Disability Living Allowance forms etc.
- It was suggested that a combination of services is needed to meet rural need including drop in, appointment, telephone and videolink services, home visits, outreach services, 'problem noticers' in GPs surgeries etc.
- Mobile advice services are a new form of legal service delivery, which may prompt people to perceive a legal dimension to their social problems. Currently there is no measure of the demand for such a service and it will be important to evaluate its impact on rural communities.
- On funding, Martin South commented that so far this has been on an annual basis, but it may be better to provide a pot of money to regional offices without going through a bidding round. There are financial constraints.

## Breakout session 5: FAInS – and beyond

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**Speakers:** Anne Williams – solicitor, Yates & Co  
Angela Lake-Carroll – head of projects, Family Law & Mediation, LSC  
Pascoe Pleasence – head, Legal Services Research Centre (LSRC)

**Chair:** Karen Mackay – chief executive, Solicitors Family Law Assoc (SFLA)

**Karen Mackay** opened by commenting on how little discussion was given to family law. Despite the fact that it accounted for half of all expenditure on civil legal aid, it is excluded from the remit of CLSPs. Consequently, family law practice has been able to develop out of the limelight – for example, through mediation and FAInS (Family Information and Service Network), which provides a holistic, multi-agency approach to relationship breakdown.

**Angela Lake-Carroll** explained the background to the FAInS pilot. Following the decision not to implement Part II of Family Law Act 1996 (which included no fault divorce and opportunity for counselling/mediation), the Lord Chancellor's Department saw FAInS as another way to help families at a time of transition.

Research shows that:

- marriage rate is the lowest ever
- cohabitation rate is rising
- the divorce rate had levelled off but is now rising again
- the 'traditional family' (two parents living with their own child/children) is falling – between 1981 and 1991 it fell by one third
- the divide between families with two earners and families with no earners is greater than ever
- one in ten children live in a household with no earners

Thus, divorce/separation indicates problem clusters; either relationship breakdown prompts the problems, or vice versa. There is evidence that people find it difficult to find a pathway to managing their needs, and FAInS is designed to overcome this. Hazel Genn (Paths to Justice) found that 82% of people facing divorce or separation problems go to a solicitor in private practice at some time and 61% go to a solicitor first; so FAInS works on this basis.

With FAInS, the client goes to a family law solicitor, who assesses and diagnoses the issues and advises on prioritising the problems. The solicitor makes referrals to other agencies that can help (mediation, debt advice, housing advice etc) and manages the case. FAInS solicitors have had extra training. The LSC wants to extend the gateway service to other providers such as mediation services and advice agencies.

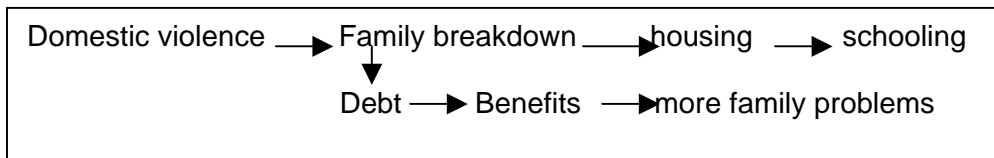
**Anne Williams**, a provider in both the pre-pilot and pilot FAInS projects, made the following observations:

- For her, FAInS was a bit like reinventing the wheel. She is an SFLA member, and uses their code of practice. She has always approached her work holistically, and continues to do so under FAInS.
- However, as FAInS is rolled out to more providers, she is more positive about it.
- She has always done diagnostic work and made referrals to other agencies. Having had experience of working in the NfP sector, she has a good network of local links, which FAInS has increased.
- She has always tried to address problem clusters in her practice, but FAInS encourages and pays for this; it is a 'made to measure' service.
- People need to know quickly whether they have a case, and whether their problem has a legal solution. FAInS encourages early diagnosis and support.

Overall, she felt that FAInS was a good model, and has signalled that the LSC would fund holistic approaches. Although the research administration (especially at the pre-pilot stage) was quite a burden on providers, the results will be interesting especially on client satisfaction. Publicly funded work is an ageing profession, and it is difficult to encourage new entrants. The FAInS approach could make the job more attractive, and should be rolled out to all areas of law, not just family.

**Pascoe Pleasance** outlined relevant findings from the LSRC's periodic survey of legal needs survey (PLNS), due for publication in February 2004.

- On problem clusters, the findings show a complex picture and suggest:
- Family problems contribute to social welfare problems, and vice versa.
- For example:



- The most defined cluster of problems coming out of the research relates to family breakdown.
- 46% of people who experience a civil justice problem will report another problem – often, but not always, linked in some way.
- Of those having a family problem, 68% will have another problem.
- Of those with family problems, 23% have another simultaneous family problem, and 18% have another non-family problem.
- Some of the common problem clusters identified are:
- Low income housing / poor quality housing / homelessness / problems with police
- Clinical negligence / mental health / immigration / welfare benefits
- Consumer / debt / neighbours / employment / rented housing / PI (the biggest cluster, in terms of the number of potentially linked problems)
- It is evident how family problems can lead to problems within the clusters (a) and (c).

On the question of where people go for help, PLNS shows that for divorce, most people – 80% - go to a solicitor. But for separation, the percentage is lower, and for domestic violence lower still. Few children-related problems go to solicitors. His conclusion was that solicitors need to be aware of who deals with other problems – and vice versa.

## Comments and debate

- On the payment system, Anne said that her FAInS first interviews lasted around 1 ½ hours. She is paid an additional £140 per client to cover the extra diagnostic, advice and case management work.
- Anne personally has no problem making links with other, non-CLS agencies because she has good networks.
- Angela noted that the FAInS research, due in October 2005, would be looking at the extent of existing infrastructure and advice provision. Hopefully it will identify shortfalls in capacity, and would lead to debate about better distribution of funding and/or need for more resources.
- On networks, Angela agreed that they are time-consuming to set up and to maintain. Each agency in a network should develop its own network in turn. But this needs ongoing commitment and energy – the LSC cannot dictate this.
- A delegate questioned the capacity of the state to respond to the problems that FAInS throws up, for example, within the benefits system, and asked how far the FAInS approach might be applicable to other areas. Angela said that the LSC had in fact used agencies working in other problem clusters as a model for FAInS, such as Alone in London which works holistically with young single homeless.
- Since June there has been a directorate for children, young people and families, which brings together a number of government departments. The FAInS research may be an opportunity to tap into different government funding streams to meet identified needs.
- FAInS is encouraging ‘seamless’ referrals, despite evidence from elsewhere that CLSP referral protocols were not working well. The PLNS showed that that even when referrals are attempted, they are often unsuccessful – even though solicitors rely on incoming referrals to get 30% of their cases. PLNS also shows that clients often give up if they do not get to the service they need in two steps.
- Part of the aim of the FAInS research is to make out the case for more funding. Angela commented that a longitudinal study was really needed, especially to look at the longer-term impact on children’s lives as adults. In the US there has been a study over 25 years, but such a study would not be funded here.
- However, it was important to link up FAInS research with PLNS and that of other government departments, such as the DWP’s study of child poverty and social exclusion.
- Pascoe said that one of the key points of PLNS was to look at the social cost of many types of problem, such as the link between domestic violence and the effect on children’s education. However, looking at the impact of ‘advice’ is more problematic.
- It was noted that the debate about problem clusters rarely extends to criminal law, although many young offenders suffer from a range of social welfare law problems.
- Concern was expressed about the lack of services in some areas, and uncertainty about the quality of providers – often in practice it was difficult to make referrals.
- There should be a range of models reflecting the area, the existing provision, and the needs of the community. There also needed to be a better understanding between lawyers and non-lawyers, with the client at the centre.

## Breakout session 6: The best laid plans?

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- Speakers:** Adam Griffith – policy officer, Advice Services Alliance  
Crispin Passmore – manager, Coventry law centre  
Janet Browning – planning and partnership manager, Eastern Region  
LSC
- Chair:** Margie Butler – director, London Advice Services Alliance

**Adam Griffith** was struck by how different the RLSC reports (and updates) are, but also that they now seem rather out of date. There is little optimism now that RLSCs can meet their targets, and at a time of retrenchment, with no new money and capped costs there is some talk of cuts. The updates seem to show little progress in meeting recommendations made previously, and little hope of letting new contracts to meet identified priorities.

In Wales there is talk of re-allocating funds from the ‘oversupply’ on family provision and in East Midlands, the update suggests ‘small reductions’ can be made in family, employment, welfare benefits, housing and consumer – up to 4% in each category.

He raised the following questions:

### What is need?

- It may be defined by categories of law, types of problem, perceived needs of client groups, or CLSP geographical areas. Needs may be met at different level of service provision – local, regional or national.
- The reports highlight a number of issues, such as the relationship between need, demand and supply; the need for research on needs assessment and the type of need – general or specialist level. Is there a case for rationing what should be done as specialist work?
- The reports are generally strong on access and diversity issues and discuss the needs of various groups.

### Prioritisation Issues

Should Regional Legal Services Committees override the prioritisation done by CLSPs? To what extent should RLSCs seek to redistribute funds within their regions, and how can they prioritise between needs in different categories of law?

What should get planned at which level?

When the CLS started, there seemed to be a simple distinction between the key issues for consideration:

- a) at a local /CLSP level (debt, benefits, housing and employment)
- b) at a regional level (mental health, community care and others)

However, the reports suggest that the distinction is less clear cut than that. Some consider everything on a sub-regional basis. Others cover the whole region.

In individual categories of law:

- *Family* is seen as requiring local provision.

- *Debt* and *benefits* are generally seen as requiring provision at the local level, (or by countywide or a sub-regional strategy in some areas).
- *Housing* is assumed to be best provided at a local level, though sometimes gaps may have to be filled by regional or sub regional contracts.
- The need for *employment* advice is generally accepted as being widespread, but provision is severely affected by issues of eligibility and scope.
- In *other categories* of law, a regional approach is largely recommended.
- Some reports suggest a need for national planning.

#### The future role of regional planning

- Regional planning cannot be considered in isolation from local and national levels.
- There has been a general failure by CLSPs to attract new funding to meet identified needs in priority areas of law.
- LSC is already proposing telephone advice on a national basis for debt, benefits and education law.
- LSC is also considering a future role for the Partnership Initiative Budget (PIB) as a pump priming investment fund, to be administered from regional offices.
- CLSPs could take a more proactive role than they have so far.
- The balance may be shifting upwards, away from CLSPs to RLSCs and perhaps also away from RLSCs to the LSC nationally.

**Crispin Passmore** referred to the origins of legal aid, and how the Access to Justice Act had made significant changes. Planning legal services is a big step forward and much work has been done to link legal and advice services and talk about legal aid in terms of social exclusion. He went on to make the following points:

- In the light of current plans to cut provision, RLSCs may seem pointless and politically driven, but 5 years ago there was no planned provision of services. The expansion of asylum work was targeted in an imaginative way to grow and expand supply. However, it is very top down.
- Since the 1970s law centres advocated developing community legal services, planned and delivered in response to local need, driven by users not suppliers. But CLSPs are not like law centres and do not analyse local need.
- RLSCs are trying to prioritise, but within the reality of a fixed budget any new service means the loss of something else.
- Lawyers, advisers, and users should take control of CLSPs, he argued, and set agendas for local people, not allowing the LSC to take the lead on this. Difficult choices may have to be made. But if CLSPs do not do this, RLSCs will do so – with less user involvement. RLSCs want the information to make informed decisions and prioritise properly.
- Lawyers and advisers should still complain if they think cuts are being wrongly made and highlight the impact on their clients.
- Planning the service would be easier with more money – and the planning process may help persuade others (for example the Community Fund and local authorities) to fund legal and advice services. What happens over the next few months is a test of RLSCs. If there is some reallocation of funding, this suggests the commitment of the LSC to listen.
- CLSPs need to be more strategic and start making - and justifying - tough choices. Their members will have to decide whether they are there to represent their organisation or their clients.

The best laid plans are at present incomplete – and only planning from the bottom up can put the Community into Community Legal Services.

**Janet Browning** gave an account of her work in Eastern region with local partnerships: her team had designed a template to ensure that CLSPs' strategic plans would offer ready compatibility with the Community Strategies being produced by LSPs. Their approach had been to assess need and supply by category of law at specialist level, and by client group at the general help level.

Janet emphasised the importance of using the evidence and priorities provided by CLSP strategic plans as the basis for the region's contracting strategy. She pointed out that the prioritisation of telephone advice in each of the main social welfare categories (debt, welfare benefits, housing, and employment) across the Eastern region, to supplement (not replace) the current level of face-to-face provision, was a response to the need for access to services in rural areas, as well as enhancing access for people with disabilities and mental ill health.

In the Eastern Region a number of CLSPs have been successful in applying to the Community Fund and other funders for new projects, and it is clear that the evidence of need provided by local strategic plans has been a key element in the success of those bids.

The published Regional Reports and Contracting Strategies focus on the deployment of the LSC's resources, but it is important to recognise the other activities that are being developed – both at local level and across the region – to inform people about legal and advice services that are available and to ensure they know how to access them. The focus must always be on the needs of the customer, and therefore access to information points and general help services are also of continuing importance, in order to encourage people to take their first step towards seeking help, and to promote early intervention.

Planning & Partnership teams therefore work extensively with suppliers of legal services (whether or not they are funded by the LSC), other funders of legal services and local CLSPs to make sure that LSC resources work in the best possible way in conjunction with the other resources available in the advice sector.

### **Comments and debate**

- Not all councils participate in the partnerships and there should be a statutory duty on local authorities to do so, even if they do not commit cash to them.
- The DCA is working with other government departments to make them more aware of the impact of their policies on the legal aid budget.
- A strategic plan can identify advice deserts.
- Agencies cannot just sit back and let the CLSP draw up the plan for them.
- Suppliers don't have all the answers.
- Sometimes a service can create a demand as well as supplying it.
- Should sign-posting be improved, if representation at court cannot be provided when it is needed?
- With limited resources from central and local government, more creativity in choosing partners is needed.

- There is a disjunction between the need for strategic plans and the LSC's short term approach and small not for profit services are vulnerable to withdrawal of LSC funding
- Flexibility can lead to inconsistency and variation.
- More work should be done on measuring services by outcome.
- Community legal education is an important means of early intervention and the LSC encourages imaginative use of this e.g. by local radio programmes – creativity is important as well as money.

## **Breakout session 7: Independence – does it matter?**

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**Speakers:** James Kenrick – advice development manager, Youth Access  
 Gary Barker – head of practice development, the Law Society  
 Nora Corkery – manager, Devon Welfare Rights Unit

**Chair:** Ann Lewis – policy director, Advice Services Alliance

**James Kenrick** outlined the issues facing Youth Access member agencies as a result of the development of the Connexions Service. Connexions is a DfES initiative aiming to help 13-19 year olds in England remain successfully engaged in education, employment and training. The issues concern the potential erosion of the principle that advice should be independent. The main concerns are:

Blurring of the edges between the voluntary and statutory sectors: where agencies receive funding from Connexions it can become very unclear to the client who exactly is delivering the advice: is it the previously independent agency or is it the statutory Connexions Service? Youth Access is concerned that agencies delivering statutory services and/or that are heavily branded will be seen by their clients as being too close to the authorities.

Advice given – quality, nature: another issue relates to the independence of the actual advice given by Personal Advisers (PAs) and its quality. PAs are supposed to help clients obtain the benefits they are entitled to, for example, but they are meant to do this in conjunction with JobCentre Plus with whom they have a statutory relationship. There are concerns about their ability to identify the limits of their competence to deal with such issues and to make referrals to more appropriate specialist independent advice services.

Information sharing: Perhaps the biggest issue at the moment relates to the government's policy on information sharing. The fear is that information sharing will adversely affect the confidential relationship with the client. Agencies will need to obtain 'informed consent' from their clients, but a vulnerable young person may feel unable to say 'no'.

Funding: there is a risk that accepting funding might have an effect on agencies' core values and traditional practices. The key question for Youth Access members is: Can they afford to stay outside Connexions and other initiatives? The answer is almost certainly 'no' if they want to avoid becoming marginalised. This means that, as far as

possible, they will have to try to work round issues like branding and information sharing in ways that do not compromise their independence, confidentiality and other principles.

**Gary Barker** outlined the Law Society's perspective. In addition to the four central principles of the Law Society's policy on legal aid, their recent consultation suggested a fifth principle – that legal aid should be delivered by suppliers who are independent.

The importance of independence is enshrined in Rule 1 of the Solicitors Practice Rules 1990, but there are a number of current issues that could be seen as threats to it. These include the role of the Public Defender Service, the issue of fee sharing, the question of whether referral fees should be allowed, the role of solicitors on legal expense insurance panels, the possibility of multi-disciplinary partnerships and the threat of 'Tesco Law'. How do you regulate Tesco? Legal work would be a minor part of their activity. It would be difficult to keep them on track. If Tesco came into the market there is a fear that they would start cherry picking the profitable work and that solicitors firms would not be around in a couple of years. Are we on the verge of a two-tier system?

**Nora Corkery** outlined the experience of the Devon Welfare Rights Unit. The DWRU and CAB service are part of a joint team, the Fairer Charging Scheme, which is the only joint voluntary / statutory finance and benefits operational team in the UK to date. The CAB had decided to take part in this scheme following a risk assessment analysis. The positive factors identified included:

- The skills which the service has to help service users to maximise their benefit incomes
- Their ability to influence their partners' culture, through joint training sessions
- Their key role in interpreting national guidance
- The opportunity to protect the role of the voluntary advice sector and minimise the risk of marginalisation, which it might otherwise face.

The negative factors included:

- Potential damage to the voluntary advice sector "brand image" from the client perspective regarding independence, impartiality and confidentiality (similar to the issues raised by James Kenrick).
- The issue of blurring of the boundaries between the respective role of the voluntary and statutory sector. This is a manageable problem. The CAB is continuing with its core activities, which the client can still access.

The current challenges for the voluntary sector in the Third Age Service (TAS) are:

- It is important we develop a unified voluntary sector response to the TAS vision
- How far should we travel down the evidence / verification route (if at all)?
- Will signing up to a partnership data sharing protocol damage public perceptions of the CAB service – confidentiality, impartiality and independence?
- Can we separate defined CAB tasks (such as Fairer Charging) from our core service provision?

## Comments and debate

- Is independence about making the client comfortable or the quality of advice?
- What happens if Fairer Charging wants to challenge a local authority decision, for example, on Housing Benefit?
- The term NfP needs to be unpicked. We are the independent voluntary sector. Statutory services are Not for Profit but not independent. It is more likely that advisers from the independent voluntary sector rather than a local authority will pick up other issues on which the client needs legal advice.

**Gary** commented that with dependence on the supplier, whether estate agents or the LSC, the issue is the same. A solicitor's answer to independence is 'I am on the client's side.' The solicitor may be able to challenge their funder, but is the client happy with that? Is that perception important? The DCA select committee report on immigration was very critical of the LSC who are implementing government policy rather than standing beside the client. The LSC is independent and it is important that they do not become an arm of government policy.

**Nora** commented that the CAB is certifying evidence for the County Council and gathering information (which they would do anyway). Where they part ways with Pensions Service Visiting Officers is with advocacy, as the Pension Service Visiting Officers refer out at that point. The CAB is funded to challenge the Department of Work and Pensions (DWP). This was an area of dispute. The DWP thought that was too far from the TAS vision, but have now accepted this divergence of roles within the Devon joint team. The CAB Visiting Officers have on numerous occasions challenged the local authority. They also have joint training and are therefore able to share the skills built up within the CAB with the Pension Service Visiting Officers who are trying to change their culture. The question is 'Can we get an effective relationship without jeopardising independence?'

**James** commented that CABx have the infrastructure but youth advice agencies do not have the bargaining power to negotiate properly with other or government agencies. Whatever their bargaining power however, information sharing will hit all advice agencies that see young people.

## Breakout session 8: Funding legal services - the alternatives

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**Speakers:** Geoffrey Bindman – solicitor, Bindman & Partners  
Richard Moorhead – senior research fellow, Cardiff Law School  
Professor John Peysner – Nottingham Trent University

**Chair:** Karen Ashton – solicitor, Public Law Solicitors

**Richard Moorhead** started by describing how a Contingent Legal Aid Fund (CLAF) works. A CLAF is a fund that underwrites lawyers' costs, and into which a proportion of damages is recouped from successful claimants, to cover the costs of those who are unsuccessful. In this country, the key question is whether a CLAF can sit alongside Conditional Fee Agreements (CFAs).

Hong Kong has a CLAF known as a 'Supplementary Legal Aid Scheme', aimed at citizens who are too rich for legal aid but too poor to be able to afford their own lawyers. The scheme was initially established in 1984 with a State Lotteries Fund loan of £90k. The loan was fully repaid in 1988 and then a further £2.5million was put into it to increase the scope and eligibility of the scheme to cover medical and dental claims and employee related issues.

In Hong Kong, applications are subject to a rigorous merits test and there is a non-refundable fee of £100. If the case is accepted, a claimant with a salary of £15k-£30k has to contribute a further sum of up to £4k, on a sliding scale. Claimants also pay a percentage of the amount they recover: up to 15% if the claim proceeds to judgement. The CLAF is self-financing: in 2000 it had a surplus of £5 million, but only deals with a modest number of applications – in 1999, 268 certificates were issued, as against 365 applications.

The Bar advocated a CLAF during the passage of the Access to Justice Bill as an alternative to conditional fees. It carried out a feasibility study that was never published. Various other studies were done, and also remain unpublished. Why is that? A possible reason is that feasibility studies on a CLAF are based on a number of assumptions that lead to an association with uncertainty and risk.

In support of CLAFs, it is possible to identify five significant problems with CFAs:

- CFA puts profit over public policy; insurance companies take on the role of gatekeepers to the courts. There is an inbuilt conflict of interest, because insurance companies are hostile to the compensation culture. A system of CFAs hides from public scrutiny what cases are chosen and why – therefore no public accountability
- There is a significant problem in delivering broad access to justice as CFAs narrow the types of claims brought (only those likely to be won and cheaper to run) because insurance companies have to manage their risk pool.
- The insurance industry is not innovative, but conservative, and does not like 'non-standard' or new types of cases, regardless of levels of risk.
- CFAs place too much pressure on firms and generate economic, rather justice-based assessments of cases.

- There is a cultural argument that the 'hard sell' looks like self-interest of the claimant and lawyers and increases public scepticism of the legal system as a whole.

These factors, coupled with the broader problem of a fall in civil legal aid expenditure, mean that clients are not getting access to justice.

In any CLAF scheme, you need to decide whether it covers all, some or none of the claimant lawyer's costs. You also need to decide the extent to which successful defendant costs are met from the fund.

In addition, the costs of the scheme itself have to be met for a CLAF to be viable. As alternatives to the Hong Kong approach, there could for example be a registration fee for firms and/or recoupment from the defendant. Each approach has its own merits. Payment that is not related to lawyer effort may have an adverse incentive on lawyer settlement behaviour.

To make a CLAF workable we would need to abolish CFAs – perhaps this is not realistic – or identify areas of work that are not in competition with CFAs (housing disrepair?)

**Geoffrey Bindman** then spoke about schemes that are based on interest from client trust accounts.

He began by explaining that a general bugbear of his is the way in which legal aid has become detached from the private part of the legal profession. Originally the profession fought to retain responsibility for legal aid to prevent an NHS style public legal service being created. In his view, it was regrettable that the private profession had turned its back on legal aid, leaving it as a public responsibility.

Of course, legal aid should be a publicly funded but in the current climate it could do no harm to persuade the private profession to provide some kind of funding to support legal aid. This would have a positive effect, as the legal profession would get a better image.

Using interest on client accounts has been around for a long time. In 1993 there was a Law Society team assigned to research the issue and decided that rather than encourage pro bono work, City firms should be encouraged to put money into legal aid. A partner at Allen & Overy was on the team at that time and very opposed to this idea. Geoffrey had wanted there to be a compulsory levy of, say, one per cent of profits on a partner's earnings of over £100k.

A National Consumer Council study in 1984 put amount of annual client interest at £40 million. In 1993 the Law Society put the figure at £60 million.

In his view, solicitors did not have a moral right to this money and it could be used as the basis of a fund. In the USA, there are funds called IOLTA (Interest on Lawyers Trust Account) which disperses money to charitable organisations that provide civil legal aid/advice. We are not looking to create a fund to replace legal aid - just to support it.

He also suggested that the commercial sector should be put under pressure (by legislation if necessary) to provide:

- legal education

- funding trainees
- research/libraries
- funding of legal aid firm start-ups

He concluded by noting that city firms boast about their large profits. They have a moral and profession obligation to their profession. As Dr Johnson said, 'Every man is a debtor to his profession'.

**John Peysner** then spoke about before the event legal expenses Insurance (BTE). He started by commenting that, in his view, a CLAF is impossible not only because of the reasons Richard had identified, but also because the government is committed to the market solution of CFAs.

He also commented that the problem with IOLTA schemes is the issue of interest rates and how they fluctuate. When interest rates are low the fund will dwindle and when it is high the interest will have to be capped.

BTE insurance works in Germany and to a certain extent in Sweden. In Germany, BTE is sold by agents who are very motivated to sell legal expenses insurance. In this country it is sold through brokers who take a large commission.

The main problem is that consumers will not insure themselves against risks they do not perceive to be likely or real to them. In Germany where insurance take up is high, there is a lot more litigation but the cost of that litigation is lower.

BTE was discussed a lot 15 years ago but is now back centre stage because of CFAs. For litigation, the way it works is by transferring clients with a problem to a solicitor on a panel. The solicitor takes the case on a 'no win/no fee basis' – although the client is likely under the impression that his/her insurance company is paying for the legal action. The effect of not protecting solicitors' costs mean solicitors are very risk-averse and are very wary of taking a high risk claims such as a boundary dispute, but very likely to do a whiplash injury.

For advice, the amount of money available for this under BTE is so low that clients cannot expect good service.

Could BTE be made universal? If so, some problems would fall away. However, we could end up with it effectively as an extra tax. All homeowners and car drivers need tax. But if we extend BTE to everyone, it becomes an oppressive form of tax as it is not income related.

One possibility would be to settle claims 'knock for knock'?

His reading of the situation was that the main reason the government won't go for an increase in BTE is the fear that it will increase litigiousness.

His own conclusions was that BTE is not the answer to our problems.

## Comments and debate

- In response to a question about whether clients could end up getting nothing under a CFA-based claim, Richard responded that he did not see how this could be possible.
- John also disagreed with the questioner's picture on CFAs. In personal injury cases the reality is that for every claim over £1000, damages are higher than the initial claim costs. Clients are not being ripped off. The Clementi Review will look at unregulated providers and rectify any bad practice.
- The whole system is based on money. The bankers are worried they will not get their money back on insurance premiums. After the fall of Claims Direct, etc, they are left with a big shortfall.
- Asked about the possibility of getting CFAs for housing disrepair claims, Richard commented that insurers are becoming risk-averse but successful solicitors can get insurance for such cases.
- There was some support for Geoffrey's call for interest on clients accounts be used; what was the response to the publicity about his views, when they got aired? Also, why will the Law Society not take a lead – are they scared of offending city law firms?
- Geoffrey responded that the reaction had been negligible. He believed that the Law Society had a research programme based on IOLTA [a delegate from the Law Society denied this was the case].
- Both the Attorney General and the Law Society seem to be actively encouraging pro bono.
- A recent shortlist for the pro bono awards had three city firms on the list. Geoffrey was opposed to encouraging city law firms to do pro bono work, because their lawyers don't have the skills. He suggested that instead they should donate the money, rather than try to feel good by sending young lawyers out to law centres once a month.
- John supported this view, and stated that he also very cynical about pro bono. Surveys show that working in a large law firm is so bad that pro bono is something they send the young lawyers to 'play with'.
- A delegate from the law centres federation commented that a movement called 'London Law Trust' has been set up and is specifically trying to get money from law firms. The fund had been supported by Allen and Overy. He made the point that law centres provide a lot of training for the city firm lawyers.

## Breakout session 9: “First they came for the asylum seekers...”

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**Speakers:** Professor Ed Cape – University of the West of England  
Derek Hill – head of Public Legal Services Division, DCA  
Thea Rogers – director of casework, Refugee Legal Centre

**Chair:** Nony Ardill – policy director, Legal Action Group

**Nony Ardill** opened by saying that when the workshop was planned the DCA’s proposals were to limit asylum work to a cap of 5 hours. That has now been modified to a threshold. The debate has therefore moved on for immigration but we still need to have a debate about whether or not fixed fees will work.

**Thea Rogers** explained that RLC is a medium/large organisation with over 200 staff, working in four locations (London, Leeds, Dover and Oakington).

The DCA’s original proposals for the funding of immigration work, launched in June 2003, are well known: a cap of five hours to first decision followed by four hours to appeal; maximum limits for disbursements and no funding for representation at Home Office interviews.

Restricting asylum seekers’ access to Legal aid can be seen as a financial measure to limit spending; however, it must be seen in the wider context of a raft of other deterrent measures aimed at asylum seekers; eg, the Prime Minister’s target of reducing the number of new asylum claims by 50 % and the new proposals in last week’s Queen’s speech.

Of course, the DCA consultation paper emphasised rapidly rising costs and poor quality advice as motivations for the proposals.

The Constitutional Affairs Committee was unimpressed by the proposals.

RLC’s response:

- questioned the DCA’s assumptions about the reasons for the rapidly rising cost of immigration work and pointed out that there are a number of external factors not considered by the DCA; eg, changes in billing practices; dispersal and changes to the system of asylum support; new and demanding requirements of the IAA.
- pointed out that the DCA ignored factors that would lead to a reduction in costs, such as the Home Office dealing with the backlog of cases.
- argued that starting with the wrong assumptions means that you will pick the wrong solutions.
- objected in principle to capping, and to the proposed five-hour cap for asylum, given the complexity of asylum law. RLC’s own experience suggests benchmarks of ten hours for initial decision and fifteen hours for appeal preparation.
- shared the DCA’s concerns about quality but was doubtful whether the proposed accreditation scheme would work in its current form.

The new proposals show greater flexibility as the five hours is now a threshold, not a cap. The DCA is also talking about devolving powers to high-performance firms. The threshold can be exceeded in 'genuine and complex cases'. As yet, no one knows how this will work. It could turn out to be a bureaucratic nightmare in which asylum seekers lose out.

RLC believes the threshold is too low and could prove to be very inflexible. There is also concern that in future it will be reduced even further.

The government should improve quality in other parts of the system and save money there too.

**Derek Hill** started by saying that the DCA worked very closely with the LSC on the consultation paper and LSC had a large input.

It is true that there are a number of factors driving up costs in asylum but the increase is very steep and there is a fixed budget. There is evidence of duplication of work and over-charging. Therefore, the unique file number and accreditation are very positive proposals.

Fixed fees are not now on the immediate agenda for asylum. DCA recognises that individual practitioners have very different types of caseload; eg, if a practitioner specialises in cases from a particular country, they are likely to complete cases much more quickly. It would therefore be very difficult to set a single tariff for asylum work.

However, fixed fees do exist in other areas of law: graduated fees for barristers in the Crown Court, standard fees for solicitors in the Magistrates' Court and the graduated scheme for solicitors in family work.

With graduated fees, there is a basic fee which is raised by a number of different factors such as the number of days in court, number of witnesses etc. Barristers are generally happy with the system because they have a fairly homogenous workload and if there are swings and roundabouts, it evens out in the end.

Some areas can never have fixed fees because the volume of work is too small or the work is too specialised; eg, actions against the police or clinical negligence.

There are significant advantages to a fixed fee system. It is easy to administer and cheap because the things that are measured (number of days in court, number of witnesses) are easy to check. There is therefore no need for contract compliance audits. The LSC just has to check the work has been done.

A possible disadvantage is the difficulty of measuring quality. With criminal work, any failure of quality is transparent; however, if the area of law means that the work done is not transparent, there would have to be another check such as peer review.

Looking to the future of Legal Help, any fixed fees would have to be category specific because the nature of the work varies. If more fixed fees were introduced, this would give the Treasury a big advantage because it would mean a predictable budget.

**Ed Cape** began by explaining that he had experience of fixed fees when they were introduced to Crown Court work in 1986 and Magistrates' Court work in 1993. He is not a fan.

Fixed fees do not work to contain costs or make them more predictable. There was a 44% increase in criminal Legal aid costs after the introduction of fixed fees to the Magistrates' Court.

There is no proper understanding of Legal aid costs in the DCA. In the DCA's June consultation, it was asserted that the number of people getting advice had fallen whilst expenditure had gone up. This is not so. The reality is that where previously two claims had been made (Legal Help and Legal aid), now the two claims are being lumped together. Number of claims is not the same as number of people assisted.

So, what is wrong with fixed fees?

Many take the view that a fee for service is a perverse incentive but, in reality, fixed fees are a perverse incentive because they cause lawyers to split cases. Under a fixed fee regime, defence lawyers split up offences and try to open as many cases as possible for one client. This reaction was not predicted but it is not surprising that lawyers ended up working the system to their advantage.

Furthermore, lawyers tend to cut out the longer, more expensive cases and only do the quick ones – unless the lawyer thinks the case will end up in the higher standard fee bracket. The lawyer may even do a little bit extra to get the case into this bracket.

On what basis are fees fixed? This is also an issue. Generally the fees don't take account of the increased costs of management resulting from contracting.

There are also external factors that are not accounted for such as Home Office activity. Fixed fees do mean a simplified claim system, but this results in the LSC having less information about the type of work lawyers are doing. This means that fixed fees end up bearing no relationship to the work being done or the work that should be being done.

### **Comments and Debate**

- Fixed fees do not take account of the policy approach taken particularly by law centres; eg, work on the homelessness policy of a local authority looks beyond individual cases. Fixed fees would not allow for this work to be done. Derek said that there has not been any decision about civil work. There will be a full consultation.
- In response to Ed, Derek accepted that case splitting is a possibility. The problem is that all systems have perverse incentives. It is also true that changes in the criminal justice system have an impact on cost and must be taken into account. The same is true of asylum and that is why DCA is looking at the whole system.
- Two years ago, the Home Office conducted research to examine whether initial legal advice has an impact on asylum cases. IAS believes it has a significant impact. Where are the results of the research? Derek said that the research was not completed so it was not published. It was not completed because the evidence coming out of it was not firm enough to support any contention. There is no conclusive evidence that asylum outcomes are improved by initial legal help, nor that representatives at interview add value. Thea said she would also like to see the

research. RLC's success rates in Dover suggest that initial work does make a difference to asylum cases.

- Why do the LSC not run a pilot fixed fee project for civil work to see whether costs balance out? Patrick Reeve (LSC) said that the results from the block contracting pilot were not impressive. LSC are waiting for the results of the joint LSC/DCA review of funding. This will lead to a number of pilots. Derek pointed out that there is also research looking at whether firms are making a profit. It is looking at about 300 firms, and would probably be published. If it concludes firms are making a profit, that will be interesting. If not, there will be clear message that something needs to be done.
- Fixed fees do not take account of the fact that different firms have different types of caseloads. Some firms specialise in complex cases that take longer. Derek agreed that was a problem that they would have to take account of.
- The FAInS pilot is demonstrating the need for a holistic approach to deal with problem clusters. Fixed fees work against taking a holistic approach. Derek acknowledged this.
- Private clients are demanding fixed fees and we have to oblige. We have to do something to secure the future of legal aid. Maybe this is the way.
- We often see clients who are unhappy with previous advice. We have to help them. How do fixed fees fit in with that? Derek said he recognised this but clients cannot have an unlimited right to go to solicitors until they get the advice they want to hear. Patrick said that the LSC often hears from firms that turned someone down for an appeal and the firm down the road has taken it on. We have to deal with that too.
- Is it only private practitioners who adopt economically rational behaviour or do NfPs do it too? Is the rise in average case costs a response – be it conscious or unconscious – to frozen remuneration rates? Ed said that the LSC wants to increase the size of suppliers in criminal and also in civil. Such suppliers are likely to act in an economically rational way. With the introduction of fixed fees in magistrates' courts, the LSC were surprised that solicitors started to make economically rational decisions. They were simply dealing with a new payment regime in an economically rational way but the LSC was offended by it.
- With regard to average case costs, there are two important external factors: decisions made by the Home Office (this will also be true of civil probably); when lawyers make decisions about how to claim, they will be thinking about what will keep them in business. This is bound to be the case when there have been no rises in remuneration rates for so long.
- The overall bill has gone up but more work is being done so there is less profit.
- Derek accepted that all lawyers will be economically rational. Even if rates go up, they would continue to try to maximise fees.
- Rates have to go up because legal aid work is clearly not profitable. Economic rationality works against service delivery. For example, a sole practitioner with 100 matter starts will cherry pick those that are likely to lead to certificates. They will not take those that will only earn £150. Derek admitted that cherry picking is a real danger. Barristers do not have the choice but solicitors do, therefore we would have to be very careful introducing fixed fees in family and civil. We would have to have a mechanism to ensure people take on the low value but useful cases.
- Thea concluded that it is very important to look at the impact of other government departments on the strapped Legal aid budget, particularly in asylum. DCA needs to consider that when looking at the budget. We need to have a more constructive dialogue about what is behind the rising costs. This will inform what measures we put in place to tackle them.

- Lawyers feel they have gone through a massive process of change and have got nothing back in return. They have had no payment increase for all they have taken on. They get vilified by the press and the profession is disgruntled. It is government ministers who need to take the responsibility for leading the profession in this direction.

### **Breakout session 10: The recruitment crisis**

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**Speakers:** Tom Williams – TPR Social and Legal Research  
 John Mulligan – regional development team manager, Advice<sup>UK</sup> (London)  
 Karl Demian – head of civil remuneration, LSC

**Chair:** Helen Carr – board member, Legal Action Group

**Tom Williams** began by outlining the fact that recent research for the Law Society on recruitment and retention of staff in small solicitors' firms had uncovered a huge problem. Issues identified include:

- 42% of positions advertised in small firms remained unfilled (and with no immediate prospect of being filled) 2-6 months after they were advertised
- Young solicitors are uncertain about funding and future of small firms, and believe they cannot provide specialist experience
- The bureaucracy of franchising is perceived as frustrating and demeaning
- Students were warned by their tutors to avoid careers in publicly funded law.
- In particular young solicitors thought crime was “bloody hard work for rubbish money”
- Particular problems identified were long hours, poor money and lack of appreciation by society
- The median profit for an equity partner in a small firm (<6 partners) is £50,000. Although money was not a prime motivation for young lawyers, it does matter – one young solicitor left to work in his family's chip shop.
- Another problem is that a legal aid salary will not increase with experience, as it is pegged to hours. The commonly accepted definition of a profession is a job where pay will increase over a lifetime, whereas manual workers peak early. Is publicly funded law a profession under this definition?

Tom asked whether it matters if small firms are struggling if there is plenty of well-paid work in large firms. He believes that it does, as large firms have a narrow focus – most tend to focus on commercial clients, do not do legal aid, and are located in urban areas.

**John Mulligan** wondered whether there was a secret agenda to make contracting so off-putting that firms give up legal aid work, and therefore reduce their recruitment needs, so reducing the recruitment problem. For example, there has been a recent loss of 12% of housing contracts and 8% of welfare contracts – and the predicted loss over the next 5 years is 38% and 28%. The picture in the advice sector is much the same as in the private sector in legal aid work.

John wanted to focus on positive suggestions such as LSC training contracts, and the possibility of law firms working together to recruit. However, he found it impossible to

separate the recruitment crisis from general morale; we may not be re-arranging deck chairs on the Titanic, but we are certainly encouraging people to sit in them!

Low morale is linked to two key factors:

- The LSC failed to honour its commitment to legal aid – the lack of inflation rise last year gave a huge message to legal aid lawyers of lack of value.
- Government constantly undervalues lawyers and legal aid workers in its comments

John has four proposals:

- The DCA/LSC must re-affirm their commitment to legal aid
- The government must stop stigmatising lawyers
- Legal aid must be funded properly
- All groups must work together to do better PR and recruitment

He draws comfort from the fact that two thirds of young solicitors working in the city hate it too!

**Karl Demian** suggested that at least the LSC now recognises the problem. LSC research supports the conclusions in the Law Society research:

- Students and trainees are not interested in legal aid work – law colleges are advising students to go into city firms.
- There are hot spots and cold spots around the country: large metropolitan firms have no problems with recruitment, there are more problems in the suburbs, and huge problems in rural parts such as mid-Wales.
- Recruitment is expensive in the Law Society Gazette and the Guardian.
- Small firms do not retain trainees once they get a practising certificate – they are poached by local firms, or move on for higher pay.
- There is poor perception of legal aid work – does it still exist? The pay and prospects are poor.
- There is little information available about legal aid practices with training contracts.
- Student debt is a problem – students need to earn enough to pay this back.

Karl outlined the LSC training contract scheme:

- 195 LSC grants for student training contracts are still in operation (only 10 have been lost).
- The LSC has recently awarded another 85 contracts, and 15 for the NfP sector.
- Firms eligible for training contracts have to be category 1 firms.

The LSC wants to give people choices earlier on – city firms start recruiting in freshers' week – so the LSC has worked with LAPG to produce a 'warts and all' brochure about legal aid work, which is honest about the problems, but also about satisfaction and motivation. They have also been talking to undergraduates at law school and on law courses. They also have a major questionnaire out on the cost of contracting, which looks at contract costs, recruitment and retention, and the LSC would like to build findings into the future.

## Comments and debate

- CABx have a problem with recruitment – the only way they can get staff is to pay £2000 more than the LSC pay them for posts, so they are in effect subsidising the LSC. Karl encouraged all contracted agencies to complete the LSC questionnaire to identify such problems.
- The Immigration Advisory Service (IAS) provides an internal career structure for advisers without needing training contracts, and for this reason can recruit external people with the relevant skills (such as management or advice) and qualified lawyers from other countries. However, IAS still cannot get staff turnover below 24%, and needs to recruit 60 new people each year, and of course internal career progression will not work in small firms.
- A delegate made the point that while many things affecting recruitment are outside our power to control, such as student debt and housing costs, some things could be changed, such as the contract compliance audit, which is both demoralising and time-consuming.
- The point was also made that the recruitment problem may be even worse than appears, as it is masked by firms which avoid attempting to recruit, knowing that as category 3 firms they are unlikely to be successful.
- A further point was that firms need long-term funding commitment from the LSC.
- Tom observed that taking on a trainee adds to the time burden of contract compliance – small firms can not afford the partner time involved in both preparing for an audit and supervising a trainee.
- Karl responded by saying that a training contract ties trainees into a firm for 5 years, which is a long-term commitment to the firm; but the LSC therefore needs an assurance of quality in order to make such a commitment, which is why training contracts are restricted to category 1 firms.
- John replied that firms need security for longer than 5 years anyway. Also, trainees in asylum work, for example, did not anticipate being devalued by politicians, or anticipate the reduction of casework time – political intervention can undermine long-term commitment and morale.
- Karl agreed that fundamental issues about how legal aid work and workers are perceived is a long term issue, but at least legal aid still exists, and the current bid round for legal aid contracts has been reasonably well supported.
- Another delegate made the point that the LSC has increasingly funded advice agencies through contracts. Core funding, which used to cover basic training and volunteer development for workers, is rarely available now. Lottery projects are time-limited, so funding is not available for long-term staff development work. Government legislation giving volunteers the same rights as paid workers has exacerbated the problem.
- Helen asked Karl whether he would advise people to become legal aid solicitors. Karl replied that he would, as when he did this kind of work it was the most satisfying that he ever did. He believes that we need an open debate about how to sustain that job satisfaction.
- It was pointed out that despite the job satisfaction, Karl had left the field, as many legal aid lawyers had done. Increased specialisation means that it is increasingly difficult to leave legal aid work and go into other areas of law, so that while women take career breaks to have children and do not return, men are now reluctant to begin a career in legal aid in order to avoid becoming trapped.

**Legal Action Group/Advice Services Alliance  
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